

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

Alejandro de la Fuente

Through the play of custom, an abuse might always by mutation become a precedent, a precedent a right.

—Marc Bloch, “The Rise of Dependent Cultivation and Seigniorial Institutions”

On August 16, 1855, Doña Carlota Dascar, a resident of Santiago de Cuba, initiated a lawsuit against the city’s public advocate (*síndico procurador*) to prevent the forcible sale of her slave María. Dascar had tried to sell María, whom she described as a healthy criolla without vices, for 700 pesos. The slave, however, “presented” herself before the *síndico* Miguel Rodríguez—the municipal official charged with the representation of slave interests—to request that he initiate the customary process of assessing her value in order to fix the price at which she would become *coartada*: the price that she would have to pay, in installments, to purchase her freedom. He invited Dascar to appoint

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an appraiser, whose valuation would be compared to that of the *síndico's* own assessor.¹

As was frequently the case, the valuations differed significantly and had to be negotiated in court. Dascar's appraiser assessed María's value at 600 pesos, while the *síndico's* agent valued her at 450. The local judge appointed a third assessor, who ratified 450 pesos as the slave's correct value and established this as the price at which María would be *coartada*. Accepting 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 returning the slave, however, the *síndico* "demanded" that Dascar issue María a sale license—"su papel de venta"—that would allow her to seek a new owner. If she failed to comply, he threatened her to take the case to court again.

The incensed Dascar claimed that *coartación* "did not limit in any sense the dominion that masters have over their slaves, and if the slave who is not *coartado* cannot be sold against his master's will without just cause, the same must be the case with *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 dominion 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 the black woman María Irene, being *coartada*, is in the position to solicit a new master any time she wishes."

The judge 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 [*a su gusto*]." Although the owner continued to object, the judge 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" and had "refused to sign or authorize anything, but in vain; everything has moved forward with a rigorous inflexibility." She also used family connections to bring the case before Santiago's town council, where her stepdaughter's husband, Regidor Don Ruperto Ulecia Ledesma, presented a lengthy memorandum depicting the *síndico's* actions and the slave's attempts to force a sale as a "verita-

1. Doña Carlota Dascar, May 3, 1856, Archivo Nacional de Cuba (hereafter ANC), Intendencia, leg. 960/3, "Expediente sobre la *coartación*, 1853-62."

ble 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 price of the slave for the purposes of *coartación*, a process that unlawfully limited owners’ freedom to determine the price they would accept for their property. The second concerned “the outrage of the *coartado* slave changing owners as many times as he wishes without having just cause,” which was tantamount to expropriation. In both instances, he noted, the “sacred . . . property rights” of masters were “curtailed.”²

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 appeals to authorities—what they perceived as a growing challenge to their dominion over their slaves. They resented municipal officials’ interference in the management of their slaves, as well as the slaves’ successful exercise of legal rights against their owners’ wishes. Not without reason, the owners contended that these prerogatives represented a dangerous concession. 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* (gradual self-purchase) and request for paper (*pedir papel*) to seek a new owner, two institutions with deep roots in the island. Through *coartación*, masters and slaves agreed on a manumission price that could not be subsequently altered.³ Slaves could then make partial payments toward their freedom. As María’s case illustrates, by the mid-nineteenth century these two legal practices had become linked, and some lawyers, judges, and slaves believed that *coartados* had the right to change masters at will. However, neither *coartación* nor the possibility of changing masters appeared as slave rights in Castilian legal codes. Rather, it seems that these prerogatives emerged as a pragmatic response to the frequent litigation initiated by slaves themselves. In this sense Cuba was hardly unique. As the processes of emancipation clearly show, slaves’ initiatives and actions shaped legislation and produced legal consequences across Latin America.⁴

2. Representación del Regidor de Santiago Ruperto Ulecia Ledesma, Aug. 23, 1855, in *ibid.*

3. 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.

4. For a few significant examples, see Carlos Aguirre, *Agentes de su propia libertad: Los esclavos de Lima y la desintegración de la esclavitud 1821–1854* (Lima: Pontificia Universidad

Until the promulgation of the Reglamento de Esclavos in 1842, the practices of *coartación* and *papel* were based on little other than custom.⁵ They fell into the category of customary rights, at best, and were quite vulnerable to the whim of individual masters. But in 1842, when plantation slavery was rapidly expanding in the island, these customary rights were codified and henceforth treated by most judges as true legal rights that could be exercised even against the will of the owners. Furthermore, some jurists and judges claimed that these rights had broad legal effects that gave slaves considerable control over their lives and labor. But how did these rights come to exist, and how did they relate to the traditional codes of Castile and to colonial legislation? And why were these customary rights codified in nineteenth-century Cuba, and codified precisely as slave rights, despite the opposition of the slave owners?

I will attempt to answer these questions by focusing, first, on the evolution of the law in order to establish the possible bases for the practices of *coartación* and *papel*. Until the Reglamento de Esclavos of 1842, the codes provided only a tenuous foundation for what María and other slaves attempted to claim as personal rights. Slave owners systematically rejected such claims, resulting in litigation that forced judges to define which practices conformed to the law and what entitlements, if any, slaves had under Spanish statutes and customary law. Individual legal cases show that judges did not share a uniform view about these issues. Conflicts surrounding these practices peaked in the 1840s and 1850s, after they were codified unequivocally as slave rights in the Reglamento of 1842, in terms that many masters deemed openly confiscatory. The very codification

Católica del Perú, 1993); Christine Hünefeldt, *Paying the Price of Freedom: Family and Labor among Lima's Slaves, 1800–1854* (Berkeley: Univ. of California Press, 1994); Camilla Townsend, “‘Half My Body Free, the Other Half Enslaved’: The Politics of the Slaves of Guayaquil at the End of the Colonial Era,” *Colonial Latin American Review* 7, no. 1 (1998): 105–28. For Cuba, see the pioneering work of Rebecca J. Scott, *Slave Emancipation in Cuba: The Transition to Free Labor, 1860–1899* (Princeton: Princeton Univ. Press, 1985).

5. Other aspects of slaves' lives were regulated in the *Siete Partidas* and in subsequent civil and religious regulations, some of which I mention later on. The *Partidas* were not just a collection of abstract legal principles, but a code that was invoked by legal actors and the courts well into the nineteenth century. See Norman A. Meiklejohn, “The Implementation of Slave Legislation in Eighteenth-Century New Granada,” in *Slavery and Race Relations in Latin America*, ed. Robert Brent Toplin (Westport: Greenwood Press, 1974), 176–203; Olga López Vera, “La esclavitud en la jurisprudencia civil del Tribunal Supremo” (PhD diss., University of Navarra, 2001); and Alejandro de la Fuente, “Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited,” *Law and History Review* 22, no. 2 (Summer 2004): 339–69.

of these legal practices, potentially favorable to slaves, in a slave society such as Cuba is something of a puzzle. I will treat *coartación* and the practice of *pedir papel* not as static, abstract rights but as contested legal institutions in which different interests—those of slave owners, colonial authorities, legal experts, and slaves—clashed.⁶

It is difficult to outline the chronological evolution of these practices with precision. The first debates about their legal contours took place in the 1780s, when the Spanish crown reviewed the slaves' legal status as part of Bourbon efforts at legal codification. By then, however, the practices of *coartación* and *papel* had evolved into customary rights—although they were highly contested and enjoyed little support in written law. This transformation took place during Cuba's long early colonial period, between the sixteenth and the late eighteenth centuries, when conditions were favorable for the creation of these customary rights. Before the development of plantation slavery in the western section of the island after the late 1700s, Cuba was a society with slaves, and not a slave society, to use a concise (if problematic) distinction.⁷ A large proportion of slaves were used in the service economy of Havana and other cities, and limited Spanish migration to the island required slaves to perform activities that might otherwise have been closed to them. Such occupations afforded slaves some degree of autonomy and allowed them to participate actively in the mercantile life of

6. 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); Scott, *Slave Emancipation*; 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 Univ. Press, 1974); Franklin W. Knight, *Slave Society in Cuba during the Nineteenth Century* (Madison: Univ. 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); de la Fuente, "Slave Law and Claims-Making."

7. 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, MA: Harvard Univ. Press, 1998), 8. For some critiques, see Herman L. Bennett, *Africans in Colonial Mexico: Absolutism, Christianity, and Afro-Creole Consciousness, 1570–1640* (Bloomington: Indiana Univ. Press, 2003), 14–15; Sherwin K. Bryant, "Enslaved Rebels, Fugitives, and Litigants: The Resistance Continuum in Colonial Quito," *Colonial Latin American Review* 13, no. 1 (2004): 36–37, n. 11.

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 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.⁸

Through their participation in market transactions and other social relations, slaves gained critical knowledge about the market economy and the dominant culture—including the knowledge that, under Spanish law, masters had obligations and slaves had the right to denounce mistreatment or abuse to higher authorities. This may have been the slaves' "only right," as a Cuban official stated, but it was a critical one.⁹ The practice of *papel*, by which slaves requested permission to force their sale away from abusive masters, seems to have evolved as a consequence of this right of petition.

Slaves contributed to the definition of *coartación* as well. It is logical that slaves would want their manumission price to be fixed once they had reached an agreement with their masters. It is also understandable that they would seek to inscribe such agreements in the public sphere by noting them in sale contracts. As early as the 1590s, some contracts noted that slaves were entitled to freedom once they had paid a stated amount. Slaves who had begun to make payments toward manumission, in turn, began to claim that this constituted the purchase of a portion of their time and labor, and they thus were entitled to some autonomy. By the late seventeenth century, some contracts confirmed this belief and implied that *coartados* had, in fact, purchased a portion of themselves. A century later, some *coartado* slaves claimed that any limitation on their ability to complete payments constituted abuse and thus, they concluded, entitled them to request *papel* and change owners. Each suit created a precedent that strengthened subsequent suits and added to what Sherwin Bryant calls "a corpus of case law."¹⁰ Thus, by the eighteenth century these two practices were frequently linked.

These practices did not vanish in the wake of the transformations that Cuba experienced during the early nineteenth century, when the island became a

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

9. This case is discussed at length in Alejandro de la Fuente, "Su único derecho: Los esclavos y la ley," *Debate y Perspectivas* 4 (Dec. 2004): 7–22.

10. Bryant, "Enslaved Rebels," 21.

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 had limited access to authorities and the law, but as I have asserted elsewhere, the new economic and social order was nevertheless superimposed on existing customs and social mores and had to be reconciled with them.¹¹

The creation of the office of *síndico procurador* in the 1760s increased slaves’ opportunities to press for claims. A municipal institution transplanted to the colonies in 1766, the *síndico* was to provide legal representation for slaves and mediate in their conflicts with masters. The Real Cédula of 1789, “on the education, treatment, and occupation of the slaves,” referred to the *síndico* as the “slaves’ protector” and established that no slave could be criminally prosecuted without his intervention. He was also responsible for entering charges against slave owners and overseers in cases of excessive punishment. Since the *síndico* was elected by the town council and the position considered an honorable public duty, we can assume that many were themselves slave owners and not particularly concerned with the well-being of the slaves.¹² At the same time, the institution represented a clearly delimited institutional channel through which enterprising slaves could claim rights, and it expanded state involvement in the master-slave relationship. As we will see, over time *síndicos* seem to have developed procedures and values that many owners deemed intolerable. In the midst of Cuba’s slave society, *síndicos*’ actions not only sustained customary legal practices such as *coartación* and *papel* but also cloaked them with a mantle of legality.¹³

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 article 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

11. Scott, *Slave Emancipation*, 13, n. 20; de la Fuente, “Slave Law and Claims-Making.”

12. 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 cédula real 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.I, T. 18, L. 7 of the *Novísima Recopilación*.

13. For a critique of the *síndicos* and an appeal for them to cooperate with the submission of the slaves, see Mojarrieta, *Exposición*, 16–17.

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.¹⁴ These scholars have found that under Spanish absolutism, slaves were constituted as subjects who were “socially not so dead”; civil and religious authorities encroached on the masters’ control over slaves, and slaves learned how to navigate the contradictory Spanish legal maze and to use it to their advantage.¹⁵

Many slaves seeking to take advantage of these normative cracks were women.¹⁶ The predominance of slave women in the urban labor force facili-

14. Older studies concentrated primarily on Spanish legislation and on the prescriptive aspects of the law. Important contributions include Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas* (1946; Boston: Beacon Press, 1992); Ortiz, *Los negros esclavos*; 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); and 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: Univ. of Texas Press, 2004). Two useful compilations have been recently issued in CD-ROM 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).

15. Bryant, “Enslaved Rebels,” 7–46; Renée Soulodre-La France, “Socially Not So Dead! Slave Identities in Bourbon Nueva Granada,” *Colonial Latin American Review* 10, no. 1 (2001): 87–103; Brian P. Owensby, “How Juan and Leonor Won Their Freedom: Litigation and Liberty in Seventeenth-Century Mexico,” *HAHR* 85, no. 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, no. 2 (2000): 225–46; Aguirre, *Agentes de su propia libertad*; Hünefeldt, *Paying the Price of Freedom*; María E. Díaz, *The Virgin, the King, and the Royal Slaves of El Cobre: Negotiating Freedom in Colonial Cuba, 1670–1780* (Stanford: Stanford Univ. Press, 2000). See also the contributions in *Su único derecho: Los esclavos y la ley*, special issue, *Debate y Perspectivas* 4 (2004). For 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.

16. Women represented 60 percent of the slave population of Havana in 1792 and 50 percent in 1817 and 1861. Their proportion in the island as a whole in those same years was 44, 38, and 41 percent respectively. In 1855, women represented 53 percent of Cuba’s urban slaves, compared to 36 percent among rural slaves; calculated from Comité Estatal de Estadísticas, *Los censos de población y vivienda en Cuba* (Havana: Instituto de Investigaciones Estadísticas, 1988), 1:2, 71, 73, and 112; Kenneth F. Kiple, *Blacks in Colonial Cuba, 1774–1899* (Gainesville: Univ. Press of Florida, 1976), 61. See also Knight, *Slave Society*, 79.

tated the development of valuable networks within and without their social group, increased their chances to purchase freedom, and, above all, gave them easier access to authorities and legal intermediaries such as the *síndicos procuradores*.¹⁷ Gender ideologies and family considerations informed their legal strategies and opportunities. The Spanish legal tradition contained significant ambiguities with respect to slave families, so slaves sought to use these to their advantage. Some slaves and free blacks invoked the sanctity of marriage to press claims on behalf of their enslaved spouses. Others invoked paternal or maternal bonds to demand the manumission of a child. After all, as Bianca Premo states, “Spanish law preserved a measure of patriarchal authority within the slave family itself,” so slaves could petition the courts to uphold their authority over their own children.¹⁸ Under some circumstances, masters actually agreed, although in such cases, they argued, the enslaved mothers—not the masters—should be financially responsible for the child. State authorities had their own views on this as well, for these children were also subjects of the king and were entitled to his benevolence and protection. These cases witnessed the clash of different notions of patriarchy, property rights, and family rights—a conflict that slaves and their legal representatives sought to use for their own purposes. As historian Herman Bennett puts it, “[T]he enslaved gained an acute awareness of competing obligations and rights, a form of ambiguity they

17. Laird W. Bergad, Fe Iglesias García, and María del Carmen Barcia, *The Cuban Slave Market, 1790–1880* (Cambridge: Cambridge Univ. Press, 1995), 124, 128–31. As numerous studies confirm, women represented between 55 and 68 percent of slaves manumitted across Latin America. Given that about two-thirds of imported Africans were males, women’s manumission rates were in fact much higher than those of males. For a recent contribution that summarizes previous findings, see Frank “Trey” Proctor III, “Gender and the Manumission of Slaves in New Spain,” *HAHR* 86, no. 2 (2005): 309–36. For a useful overview, see Herbert S. Klein, *African Slavery in Latin America and the Caribbean* (Oxford: Oxford Univ. Press, 1986), 227. For early colonial Havana, see my “A alforría de escravos em Havana, 1601–1610: Primeiras conclusões,” *Estudos Econômicos* 20, no. 1 (Jan.–Apr. 1990): 139–59.

18. Bianca Premo, *Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima* (Chapel Hill: Univ. of North Carolina Press, 2005), 211. In addition to the cases in this article, see Townsend, “Half My Body Free,” 105–28; Camilla Cowling, “Negotiating Freedom: Women of Colour and the Transition to Free Labour in Cuba, 1870–1886,” *Slavery and Abolition* 26, no. 3 (Dec. 2005): 377–91; Bryant, “Enslaved Rebels,” 20–31. On manumissions as a gendered process, see also Proctor, “Gender and the Manumission”; and Kathleen J. Higgins, “*Licentious Liberty*” in a Brazilian Gold-Mining Region: *Slavery, Gender, and Social Control in Eighteenth-Century Sabará, Minas Gerais* (University Park: Pennsylvania State Univ. Press, 1999).

willingly exploited by deploying regulatory devices in a manner that the Spanish monarchs never intended.¹⁹

This is precisely what happened with the little-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.²⁰ 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*, out of a slave population of over 280,000. In their study of the Cuban slave market, however, Laird Bergad and his colleagues found that out of a random sample of notarized sales between 1790 and 1880, 13 percent were *coartados*. "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 significant numbers of slaves were becoming *coartados*, although their perceptions were no doubt 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" concurred a town councilor from Santiago in 1855.²¹

Whatever the numbers, it is difficult to sustain the claim that *coartación* represented a quantitatively significant avenue toward freedom in nineteenth-century Cuba. According to various sources, each year during the 1850s and early 1860s some two thousand slaves were manumitted on the island. This suggests an annual rate of less than 1 percent.²² Since this figure includes manu-

19. Bennett, *Africans in Colonial Mexico*, 4.

20. The best empirical research on *coartación* during the nineteenth century is Bergad et al., *The Cuban Slave Market*, 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. Rafael Duarte emphasizes the economic advantages of *coartación* for the masters; *El negro en la sociedad colonial* (Santiago de Cuba: Editorial Oriente, 1988), 53–61.

21. The 1871 figure is quoted by Scott, *Slave Emancipation*, 14n26; Bergad et al., *The Cuban Slave Market*, 123. The other testimonies are from Mojarrieta, *Exposición*, 19, 23; Representación del Regidor de Santiago Ruperto Ulecia Ledesma.

22. According to an 1861 report, 16,243 slaves were manumitted in the island between 1851 and 1858. The 1862 census registered 9,462 manumissions between 1858 and 1861 and estimated a slave population at 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).

missions of all sorts and not just gradual self-purchase, the number of slaves obtaining freedom through *coartación* each year would have been even less.

But the significance of *coartación* goes beyond the number or percentage of slaves who successfully availed themselves of it. As with *marronage* or revolts—which always involved a small proportion of total slaves—the impact of *coartación* cannot be reduced to mere statistics.²³ Slave owners resented *coartación* and its concomitant practice of *papel* not so much because large numbers of slaves used it to obtain freedom, but because they could do it without their masters' consent. Manumission through *coartación* did not reflect the owner's generosity, nor did it constitute a pious act in God's service, as was frequently stated in letters granting voluntary and *gratis* manumission. Through *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 at least in the eyes of some slaves and justices was understood to produce) a number of poorly defined and contestable 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, *coartación* represented a serious attack on their property rights as masters.

Slave Owners' Obligations

The masters' outrage was not without foundation; as they repeatedly claimed, the rights that some slaves claimed and some judges attempted to impose were not explicitly laid out in Spanish law. Although Castilian codes and legal traditions had long recognized the possibility of manumission, it was always dependent on the goodwill and benevolence of the master: a master's prerogative, not a slave's right. Castilian codes granted slaves a few rights that were not conditional on their masters' consent—such as the right to marry and to petition authorities in cases of abuse—but these were the exception, rather than the rule.

The codes did, however, systematically regulate the obligations of a master. In addition to religious instruction, the master's most important duty concerned the physical well-being 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 he was not to wound, kill, or mutilate his slaves, at least not without proper judicial order, nor starve them to death. In cases of severe

23. I am grateful for this point suggested to me by Stanley Engerman. Eugene D. Genovese makes a similar statement concerning runaway slaves; *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon Books, 1974), 598.

abuse, which the law defined as starvation or intolerable physical punishments, slaves could make a petition to a judge. If the judicial inquiry corroborated the accusation, the judge could then order the forcible sale of the slave to another master.²⁴

These three principles—that masters should not abuse their slaves, that slaves could complain to a judge, and that judges 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 farms and gathering information about excessive punishments, “ill treatments,” and inadequate rations. Upon finding violations, they were to notify local authorities, and judges were to proceed “according to justice.” The 1784 code referred to the usefulness of these visits, which were “frequently” carried out.²⁵ 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*.²⁶

The first comprehensive ordinances for Cuban villages, issued in 1574, replicated the language that the Audiencia of Santo Domingo had used in its own regulations. This is not surprising, since the Cuban regulations were drafted by a visiting judge from that court, the *oidor* Alonso de Cáceres y Ovando. His “*ordenanzas*” referred to two forms of “ill treatment”: inadequate rations or clothing, and cruel punishments, particularly excessive flogging or “burning with different types of resins.” To prevent these abuses, Cáceres ordered municipal officials to visit the farms in their jurisdiction twice a year. As in La Española, these visits were a way to gather information concerning “the treatment” of slaves and the level of compliance with ordinances concerning food and clothing. Reiterating the stance of the fourth *Partida*, justices were instructed

24. I have used here the English translation of the *Partidas* edited by Robert I. Burns, *Las Siete Partidas*, 5 vols. (Philadelphia: Univ. of Pennsylvania Press, 2001), 4:979. For a useful analysis of this regulation, see López Vera, “La esclavitud,” 99–101; and Ortiz, *Los negros esclavos*, 312–13. Here the law of Castile followed precedents from Rome, where city prefects heard slaves’ allegations of starvation. See Keith Bradley, *Slavery and Society at Rome* (New York: Cambridge Univ. Press, 1994), 100.

25. These regulations are reproduced in Malagón Barceló, *Código Negro*, 134, 141, 225–29.

26. See, for instance, a R.C. of 1710 in Malagón Barceló, *Código Negro*, 255; R.C. 15 April 1540, later ley 8, tít. 5, lib. 7 of the *Recopilación de Leyes de los Reinos de las Indias*.

to force the sale of slaves subjected to cruelty or “excessive punishments” and to proceed legally against the owner.²⁷

It is difficult to establish whether these visits were performed in Cuba as often as mandated and whether municipal officials inquired about the treatment of slaves as they were supposed to do. But two things should be noted. First, the ordenanzas continued to be invoked as the law of the land well into the late eighteenth century. Second, by then the visits continued to be seen as one of the responsibilities of town councilors. For instance, in 1762 a colonial official noted that these visits allowed authorities to “watch over the good treatment of slaves, whether they are attended to 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 regulations. A 1754 inspection revealed a case of egregious abuse, and the visiting judge initiated a case *ex-officio* against landowner Fernando Ramos for mistreating one of his slaves, a child five or six years old whom he had “punished with fire and other cruelties.”²⁸

Justices continued to uphold the centuries-old notion that masters were to treat their slaves properly, and local regulations reproduced the traditional mandates of adequate nourishment and clothing and prohibition of cruel punishments. The 1789 Real Cédula on the treatment of slaves similarly identified the physical well-being of the slaves with, among other things, a given quantity and quality of food and clothing. Following the letter of the Partidas, excessive punishment would result not only in the forcible sale of the slave but also criminal prosecution against the master “as if the injured party were free.”²⁹

27. The ordenanzas are reproduced in Marrero, *Cuba*, 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 Cáceres uses 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, 1864–84), 11:55.

28. 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.

29. This royal cédula is reproduced by Ortiz, *Los negros esclavos*, 408–15; and Barcia Paz, *Con el látigo*, 85–94.

Thus, by the late eighteenth century colonial law encompassed well-established principles regarding acceptable treatment of slaves, as well as the authority of local officials to interfere when these principles were violated and to force the sale of the slave if necessary. A subtle but telling distinction had taken place since the *Partidas* established this doctrine, however. Although still preoccupied with the physical well-being of the slave, the colonial ordinances and the Real Cédula of 1789 shifted the initiative from the slaves themselves to judges 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 abuse and mistreatment; they seized the initiative and approached judges to complain about abusive masters and seek redress. In some cases, this redress consisted simply of mediation by an outsider to improve working conditions or replace an abusive overseer, but in other cases slaves' demands went further. What all these cases had in common, however, was that slaves attempted to transform what the law had envisioned as masters' obligations into slaves' 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 nineteenth-century Cuban records suggest, however, that rural slaves did occasionally complain to authorities, using words that echoed the dominant legal culture. For example, in 1846 eight slaves walked out of the San Miguel sugar mill and presented themselves before the local justice in the town of Corral Falso, Matanzas. The slaves had come "to complain against the administration" of the mill, arguing that they did not receive enough food, were forced to perform "excessive work," and did not get proper clothing or medical attention. Similarly, in 1879 19 slaves escaped from the Buenavista sugar mill, in the municipality of Trinidad in central Cuba, to complain to authorities that the overseer abused them and gave them "bad food." And in 1865, a slave from the Caridad sugar mill in the municipality of Colón presented himself before a local official to lodge a complaint against his overseer, whom he claimed had punished him excessively by giving him over one hundred lashes, as well as abusing the slaves in a variety of ways. Asked to elaborate on the conditions at the mill, the complainant 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.³⁰ In his deposition, Pablo testified that the overseer had punished those slaves who sought the patronage and protection of local authorities (the verb he used was “*apadrinarse*”). He specifically 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, 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 patronage and mediation. It is possible that slaves reserved this recourse for extreme situations, such as 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 the complainant, as justices 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 one judge reported, appealing to authorities in cases of abuse was the slaves’ “*único derecho*”—their only right.³¹

Although the *Partidas* and subsequent regulations allowed judges to force the sale of abused slaves, nowhere did they suggest that slaves themselves were entitled to pursue a change of owners under such circumstances. By the late eighteenth century, however, slaves took their initiatives a step further, requesting authorities’ assistance to change owners by means of a “papel,” as if the masters’ negligence of their legal duties entitled slaves to select a new owner. The 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 some rural workers nevertheless attempted to force a change of owners when abused or neglected. For example, in 1795 the slave Manuel de la Trinidad 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

30. Expediente sobre haberse presentado al capitán de Macurijes ocho negros del ingenio San Miguel, 1846, ANC, Gobierno Superior Civil (hereafter GSC), leg. 944, no. 33303; Barcia Paz, *Con el látigo*, 57; Criminales por sevicia al negro Pablo del ingenio Caridad, 1865, ANC, M.E., leg. 2851, no. J.

31. Expediente . . . de Macurijes, 1846; de la Fuente, “Su único derecho.”

not attend to him as is required and they give him too much work.”³² Trinidad’s reference to the “attention” that owners were “required” to give follows closely the letter of the law. In addition to excessive work, he denounced the lack of “necessary food” and “the cruelest treatment that can be imagined.” Similarly, 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 about the treatment he receive[d] 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.” Another slave, Cristobal del Castillo, placed the standard of abuse much lower. In 1836, he complained he was mistreated on the cattle farm where he worked 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.”³³

It was urban slaves, however, who more frequently attempted 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 nineteenth century were surprised when slaves approached them to ask, “Would you like to buy me?”³⁴ A Havana *síndico* reported that out of 307 slave complaints he handled in 1861, 66 slaves had received papers and another 28 owners voluntarily pledged to sell the slave. In all these cases, the transfer of ownership was a direct consequence of the slaves’ initiatives.³⁵ 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*

32. “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, AHN, Consejos, leg. 20839.

33. 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.

34. 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.

35. At most, 263 of the 307 demands concerned change of ownership, 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; Expediente promovido por el Sr. don José Morales Lemus, *síndico segundo*, 1862, ANC, GSC, leg. 954, no. 33747.

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 cases the complainant made no attempt to demonstrate mistreatment or else used a definition of abuse stretched well beyond the tight limits regulated in the codes.³⁶

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 his master’s negative reaction 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 that was difficult to control. The custom may have developed as an extension of the widely practiced hiring-out system in which slaves sought to work for a temporary “master” with the authorization of their owners. A passage by 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. The paper . . . stated . . . : 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 the 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 suitable job, a new master, or both.³⁷

Finally, there were also masters who, faced with the possibility of legal proceedings and outside interference, resigned themselves to selling an otherwise intractable 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 ser-

36. 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.

37. Edward Mullen, ed., *The Life and Poems of a Cuban Slave: Juan Francisco Manzano, 1797–1854* (Hamden, CT: Archon Books, 1981), 98; Cirilo Villaverde, *Cecilia Valdés*, quoted by Ortiz, *Los negros esclavos*, 350.

vices than suffer her impertinence.” As a *síndico* reasoned in one case, allowing a slave to change masters was frequently in the best interest of the owners, whose “tranquility” and “security” might otherwise be at risk.³⁸

As a customary right claimed by slaves who declared themselves to be the victims of various forms of abuse, the practice of *papel* had some foundation in law—however flimsy. Slaves attempted to invoke rights born out of their masters’ unfulfilled legal obligations. The legal bases of *coartación* were even flimsier. No written law referred to this practice, although the *Partidas* establish that when slaves were sold “under the condition that they be emancipated within a certain time,” such conditions could not be altered—a central element of the institution as it later evolved. The contours of *coartación* seem to have become defined over time as masters and slaves negotiated the implications of this gradual purchase of freedom. The institution was known in Havana and in southern Spain since the late sixteenth century, and shifting terminology reveals some of the changes that *coartación* underwent after that time.³⁹ 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 slaves “adjusted” with their masters the terms of their freedom, “cutting” their total purchase price into pieces. By the late eighteenth century, however, the practice was known as “*coartación*,” which literally means “hindrance” or “restriction.” Whereas *cortar* refers to the slave’s action, *coartar* refers to limitations on the master’s power. Over time, slaves’ actions had become a constraint on the master’s dominion.⁴⁰

38. 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.

39. See ley 45, tít. 5, p. 5, in Burns, *Siete Partidas*, 5:1045. Bernard Vincent reports the existence of “*cortados*” in Málaga, Spain, in 1581; *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, no. 216 (May–Aug. 1999): 357–74; Watson, *Slave Law in the Americas*, 51; de la Fuente, “Slave Law and Claims-Making,” 339–69; Marrero, *Cuba*, 13:63–68. I thank Vincent for sharing his work on Málaga slaves with me.

40. 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 April 18, 1673, mentioned in Ortiz de Matienzo to the king, Havana, Nov. 23, 1673, ANC, AH, leg. 89/548; Real Academia Española, *Diccionario de la Lengua Castellana* (Madrid: Imprenta de Francisco del Hierro, 1729), 626.

Because it lacked a precise definition, *coartación* should be seen as an emergent legal institution with poorly defined and contested legal effects. The one element of the institution that seems to have been widely accepted was the fixity 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 manumission letter as soon as he paid the difference. Juana, a 20-year-old resident of Guanabacoa, agreed with her master in 1690 on a manumission price of 300 pesos, of which she had 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 slaves who had paid a fraction of their redemption price could not be mortgaged or sold for a higher value. Thus when Juan, a 17-year old *criollo* slave, was sold four times in 1690, it was always on condition that he be freed as soon as he paid 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.⁴¹

Less clear were other implications of *coartado* status. Litigation sometimes ensued over *coartados*' possible control over a part of their time and labor, according to the proportion of their freedom they had already paid for. Some believed that *coartados* had purchased a portion of themselves, and therefore the master owned only part of the slave. The sale of the above-mentioned Juana, who had paid half of her price in 1690, exemplifies this belief: “[C]oncerning 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.⁴²

By the late eighteenth century, non-*coartado* slaves were referred to as

41. 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 June 21, 1768, and its analysis in Lucena Samoral, “El derecho de *coartación*,” 366–66; and R.C. of April 8, 1778, reproduced by Mojarrieta, *Exposición*, 21.

42. ANC, PNH, Escribanía Fornaris, 1690, fol. 44; Escribanía Regueira, 1590, fol. 26v.

enteros (complete, entire), which illustrates the special status many associated with their coartado counterparts as only partially enslaved. As one local official reported in 1826, coartados, “not being free, can barely be called slaves.” And a *síndico* argued in 1861, having paid a portion of his price, the slave “became associated with ownership of himself.”⁴³

Some owners, however, did not believe that coartados were entitled to a portion of their own labor. In 1826 Don Francisco Prado went to court over the earnings generated by his slave José Genaro. The *síndico* representing the slave demanded that a portion of the profit he had produced during the two and a half years he had been coartado be credited toward his coartación. The owner refused. Some lawyers shared this stance with owners and decried the custom of reducing slaves’ obligations according to the price they had paid toward their freedom. As one stated in 1830, “[S]ome *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. . . . Coartación . . . was not established to reduce slavery into halves, but only to prevent any alteration in the price of slaves.”⁴⁴

In practice, however, at least some coartados managed, if not to reduce slavery by half, then at least to credit a portion of their time and labor toward 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 nineteenth century, in Cuba, as in Puerto Rico, 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 still owed toward manumission.⁴⁵

43. The term *enteros* was used by the Consejo de Indias in a 1778 consultation, and it was frequently used during the nineteenth century. See Marrero, *Cuba*, 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*, 13:166. The statement of *síndico* José Morales Lemus in ANC, Intendencia, leg. 760/3.

44. 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 Richard Madden’s translation as it appears in Mullen, *The Life and Poems*, 201.

45. 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.

Another contentious point concerned the situation of pregnant coartada women and the status of their unborn children. Some Havana jurists understood that the child's value should be reduced in proportion to the payments already made by the mother. Governor José de Ezpeleta issued a decree in 1786 supporting this view, based on the legal principle that the status of children always followed the status of the mother. But the Consejo de Indias, sensitive to allegations concerning the need for agricultural laborers, reversed this ruling as "contrary to law, for coartación in mothers is something that only pertains to 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 their mothers' condition as coartadas, these cases did not prosper.⁴⁶ Later litigation and conflicts concentrated on a different question instead: could mothers initiate the process of coartación for their infants?

Two additional elements of coartación, also poorly defined, were litigated in the courts of Havana in the early nineteenth century. The first concerned a master's obligation to accept his slave's payment toward coartación. Although some owners clearly resented any attempt to treat manumission as a slave right and not a master's prerogative, síndicos were invariably successful on this point. They invoked the traditional principle of *favor libertatis*—favoring freedom—contained in the Partidas and forced reluctant masters to issue manumission letters and coartación papers to those slaves who could pay for them.⁴⁷ As a síndico said in a demand against a master who claimed outstanding debts to refuse a payment from a coartado slave, "[N]either 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."⁴⁸

46. Mojarrieta, *Exposición*, 23; Lucena Samoral, "El derecho de coartación," 367–70; Marrero, *Cuba*, 13:165; El moreno Pedro Pascasio sobre su libertad, 1835, ANC, GSC, leg. 937/33074.

47. 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 ley 1, tít. 34, p. 7 and ley 8, tít. 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," 107–8, 116–20.

48. 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,

By far the most contentious issue was the coartado's alleged right to seek *papel* to change masters. 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, 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 *papel*. By 1766, Governor Antonio María Bucarely made reference to the "disputes" generated by the "voluntary and involuntary sales" of coartados. Although the Consejo de Indias stated unequivocally that coartación did not entitle slaves to change masters without the latter's consent, slaves and the *síndicos* who represented them continued to claim this as a customary right. In some cases they did so by alleging abuse, which was construed broadly as any limitation on coartados' ability to work toward their freedom. In other cases they simply held that the right to change masters was inherent in the status of coartación.⁴⁹

The case of Micaela O'Farrill is an example of the first stratagem. This urban slave presented herself in the palace of the captain general in 1835 to request assistance to obtain her *papel* to change owners. She reported she had suffered "unbearable" but unspecified "ill treatments" at the hands of her owner and held that "the laws allow the slave to change owners, particularly when . . . she is coartada." Claiming distaste for judicial proceedings, the master agreed. In the same year, coartado Pedro López followed the second line of attack, demanding to change owners without any accusation of mistreatment. Here the *síndico* argued that the slave should receive his *papel* because this was "in his unfortunate situation [slavery], the only relief that the law gives him." Other *síndicos* put it more forcefully, as in this 1837 case: "her master must give her *papel* to search for a new master because this is a prerogative of coartado slaves," while alleging no abuse whatsoever.⁵⁰

Masters resented this assault on their dominion and litigated against their slaves and the *síndicos* who championed them by invoked rights without foun-

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*, 13:164.

49. Bucareli's report is mentioned in Marrero, *Cuba*, 13:164; on the consejo's recommendation, see Lucena Samoral, "El derecho de coartación," 365–66.

50. Micaela O'Farrill to the captain general, 1835, in ANC, GSC, Correspondencia sobre esclavitud, 1834–42, 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 testamentaria de Pedro Santo, 1837, ANC, Escribanías (Junco), leg. 309/4743.

dation in the codes. Lawyers, justices, and even *síndicos* who shared the owners' view offered a sympathetic ear. 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 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 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 the only legal effect of *coartación* 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.⁵¹

According to Mojarrieta, who in the 1820s worked as a lawyer at the Audiencia of Puerto Príncipe, this appellate court always rejected *coartados*' demands to change masters. Indeed, there is evidence that in the early decades of the nineteenth century masters successfully litigated against this practice. In 1820, for instance, Don Leandro García agreed to the petition of his slave Bernardo Lucumí to become *coartado* but rejected his request for paper to change owners. When the *síndico* failed to broker a settlement, the case went to court. The judge found the slave's petition without merit: "As the causes put forth by Bernardo Lucumí are not sufficient to compel his master Leandro García y Sanabria to this alienation," he was not entitled to paper. The owner, however, had to accept "the amounts that his slave may give him for his freedom." Equally successful in rejecting his slave's petition for paper was the marquis of Campo Florido. He alleged, in 1833, that "he could not be forced by the *síndico*" to sell and that the petition did not conform to reason, the law, or the "delicate political order" in a country where slaves outnumbered masters by the hundreds. The judge concurred, stating further that the *síndico* did not have jurisdiction in this case to begin with.⁵²

As long as these practices remained anchored only in custom or in frag-

51. Mojarrieta, *Exposición*, 20–21, as translated by Maddan, in Mullen, *The Life and Poems*, 202; Expediente en que el moreno Cristóbal del Castillo solicita carta de libertad.

52. 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.

mentary 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 nineteenth century. The Reglamento de Esclavos of 1842 modified the legal landscape, however, creating new bases for slaves and *síndicos* to claim rights. 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.⁵³ Internally, the colonial state sought greater control over 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 exposed the precarious balance of Cuba's slave society.⁵⁴ An unfavorable international climate made matters worse. Great Britain was determined to halt the slave trade and had abolished slavery in its own colonies in the 1830s. In 1841, British consul David Turnbull's arrival in Havana was greeted with "alarm" by planters and authorities, and the central government instructed the captain general to counteract Turnbull's efforts in favor of emancipation. In order to prevent "the worst," says historian Jean-Pierre Tardieu, 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."⁵⁵ A few months later, Valdés promulgated the Reglamento de Esclavos.

53. Knight, *Slave Society*, 126. See also Tardieu, "Morir o dominar"; Robert Paquette, *Sugar Is Made with Blood: The Conspiracy of La Escalera and the Conflict between Empires over Slavery in Cuba* (Middletown, CT: Wesleyan Univ. Press, 1988), 77–80; Ortiz, *Los negros esclavos*, 339–40; Moreno Fragonals, *El ingenio*, 2:83–90.

54. 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 Univ. Press, 1971), 55–57; Gabino La Rosa Corzo, *Runaway Slave Settlements in Cuba: Resistance and Repression* (Chapel Hill: Univ. 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).

55. El Ministerio de Marina al Capitán General, Madrid, July 28, 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.

The reglamento was approved over the objections of the planters, who realized that the new regulations would control not just slaves but slave owners as well—"an attempt to rein them in," as Robert Paquette puts it. Owners resented almost any form of state interference in their properties, including attempts to regulate slavery legally, arguing that slaves would always understand such regulations as a "bill of rights and a tacit accusation against masters."⁵⁶ 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 one 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 owners' authority. "Any direct government intervention, which in any way allows a slave to suspect that he has rights against the master," would automatically escalate the number of demands, another slave owner warned. As soon as slaves knew that there existed an authority who would protect them and keep an eye on their masters, "all the links of subordination" would be lost, and the very survival of the institution of slavery would be endangered.⁵⁷

The very approval of the reglamento illustrates 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.⁵⁸ Governor Valdés himself referred to his position, in the introduction of his proclamation, as "the center of power and action" and the interpreter of "the *true interests* of this rich and important part of the monarchy."⁵⁹

56. 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 on 265.

57. "Encuesta sobre . . . los siervos," 1842, ANC, GSC, leg. 940/33158. This whole dossier, which includes reports by 12 plantation owners, is reproduced by Tardieu, "*Morir o dominar*," 206–63.

58. 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: Univ. of Pittsburgh Press, 1999), 16–17; Manuel Moreno Fraginals, *Cuba/España, España/Cuba: Historia común* (Barcelona: Editorial Crítica, 1995), 165–69, 190–98; Paquette, *Sugar Is Made with Blood*, 47–49.

59. Gerónimo de Valdés, *Bando de gobernación y policía de la Isla de Cuba* (Havana: Imprenta del Gobierno, 1842), 4, my emphasis. I have used Knight's translation in *Slave Society*, 127, for the second quote.

Many slave owners and planters 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, blaming 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.⁶⁰ The members of this commission claimed that the reglamento had transformed “the protective mission” and “rights” of masters, laid out in the royal cédula of 1789, into obligations that slaves could claim. Indeed, the reglamento accorded with traditional principles of Castilian law, asserting that masters should feed, clothe, and provide medical care for their slaves and that courts were authorized for force a sale in cases of excessive punishment or cruelty. All this, the commission elaborated, eroded the authority of the owners to the point that slaves no longer saw masters as “the absolute and legitimate power.” They did not recommend, however, that the reglamento be repealed, an action that would “alarm” 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.⁶¹

That is not what happened, however. Slaves, judges, authorities, and masters continued to invoke the reglamento as the law of the land well into the 1860s.⁶² Masters most frequently attacked the articles dealing with coartación. Article 34 defined coartación as a true slave right, stating that owners “may not refuse” the coartación of any slave who offered at least 50 pesos toward his or her price. The coartación price, the next 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 not transmitted to children born of coartado mothers.⁶³

60. The best study of the conspiracy is Paquette, *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).

61. Parecer de la Real Junta de Fomento sobre el Reglamento de Esclavos, 1845.

62. 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*.

63. Valdés, *Bando de gobernación*. The reglamento is reproduced in Ortiz, *Los negros esclavos*, 442–52; Barcia Paz, *Con el látigo*, 95–104; and in Marrero, *Cuba*, 13:193–95. For

Slave owners opposed the reglamento through litigation and efforts to have it modified or repealed. For example, some slave owners continued to litigate over their obligation to accept payments toward *coartación* under all circumstances. Plantation owners complained that the right of *coartado* slaves to seek a new master broke up work units and disrupted production, while other slaves used *coartación* to evade the mills altogether. In 1859, Máximo Arozarena, owner of the sugar mill Mercedes, tried to transfer 19 slaves from a cattle farm to his mill. The slaves abandoned the unit and presented themselves to the *síndico* Antonio Bachiller y Morales in Havana to request their *coartación*. The owner worried that as *coartados* they could invoke the right to seek a new master—“the most terrible and destructive weapon against territorial property.”⁶⁴

Masters also resisted slaves' attempts to initiate the *coartación* process for their young children. The low sales value assigned to such children could not be changed; once grown, these slaves could easily complete payments for their freedom. In the meantime, however, the owner was responsible for all the expenses associated with raising the slave child. In 1861 Angela Vázquez Prieto, a resident of Bayamo, complained to the governor that the *síndico* forced her to accept “the *coartación* of a two-month-old” unnamed girl. Vázquez protested against the “mistaken” application of articles 34 and 35 of the reglamento and explained how injurious they were when applied to children. 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 she objected to *coartación*, as she would remain financially responsible for the infant.⁶⁵

Slave owners such as Vázquez Prieto not only recognized that slave prices increased with age but also suspected that average slave prices would continue to rise. *Coartación* could work to the master's advantage if the slave's market value depreciated due to age, but only if the slave completed payments after his prime age and prices remained stable. Slave prices held steady between 1800 and 1850, but they increased significantly afterward, with average prices dou-

a discussion of the reglamento, see Tardieu, “*Morir o dominar*,” 178–200. Lucena Salmoral and Knight note that the reglamento owed much to a Puerto Rican 1826 slave ordinance. See Knight, *Slave Society*, 136–32; Manuel Lucena Salmoral, *Los códigos negros de la América española* (Madrid: Ediciones UNESCO, 1996), 140–59.

64. Máximo Arozarena to the captain general, Mar. 8, 1859, ANC, Intendencia, leg. 960/3.

65. Instancia de Angela Vázquez Prieto, Holguín, Oct. 2, 1861, ANC, Intendencia, leg. 960/3.

bling between 1850 and 1858 for prime-age slaves.⁶⁶ In the early 1840s, when the reglamento was approved, the average price of prime-age slaves was around 350 pesos, and thus the minimum amount a slave needed to initiate the coartación process (50 pesos) represented about 14 percent of his or her price. In the late 1850s, however, prices grew to over 800 pesos, and the amount needed to become coartado now represented just 6 or 7 percent of the price. In the 1850s, several alarmed owners and local officials proposed that the central government increase the coartación amount to at least 10 percent of the market price, with 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—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 at 25, but the mother’s value having tripled to 1,200, it is obvious that the daughter’s triples as well.”⁶⁷

The most common point of litigation by far continued to be 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 the criollo Paulino 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 at 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 coartado Filomeno Lula, a cigar maker, requested *papel* in 1852 because his master was sending him to the countryside. In order to secure the transfer of his children and their mother, Clara Diago, back to Havana from “*el campo*,” free black Felipe Herrera deposited 150 pesos with the *síndico* to go toward their coartación, demanding that they be sold in the city afterward.⁶⁸

66. Bergad et al., *The Cuban Slave Market*, 47–56. See also Manuel Moreno Fraginals, 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, no. 5 (1983): 1201–18.

67. 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, Aug. 30, 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, Oct. 22, 1853; and Memorial de José Matos, Apr. 5, 1859, both in ANC, Intendencia, leg. 960/3.

68. 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

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.⁶⁹ The town councils of Puerto Príncipe and Santiago supported their views, which were shared by some councilors and other authorities in Havana as well. In 1853, the prosecutor of the Real Audiencia (the court of appeals) of Havana asserted that these articles had been detrimental to the interests of “all social classes” and recommended their repeal. Slaves should still have access to coartación, but only if they paid one-fourth of their market value. Moreover, masters should only be forced to sell slaves if they had injured, mistreated, or punished them in ways “contrary to humanity.” In 1855, a legal adviser to the governor of the eastern department called coartación an evil suffered “by all slave owners,” which the courts were unable to remedy due to the existing law. A councilor from Havana concurred: “[O]ur 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 households.” In order to “conserve with all strength the links of respect and subordination to masters, the principle and foundation of the social order,” the councilor suggested that síndicos should inquire as to whether the funds collected by the slaves had been honestly earned. He also argued that the minimum amount for coartación should be raised and that coartados should not enjoy any special rights due to their status.⁷⁰

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. In 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 síndicos and judges understood the institution. They argued, as had lawyers like Mojarrieta since the early nineteenth century, that slavery was a total status

buscar nuevo amo, 1852, ANC, GSC, leg. 947/33417; Expediente promovido por el moreno libre Felipe Herrera, 1864, ANC, ME, leg. 4105/Ñ.

69. 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*, 13:167. See also the cases included in Expediente sobre la coartación, 1853–62, ANC, Intendencia, leg. 960/3.

70. These testimonies are included in Expediente sobre la coartación, 1853–62.

and that individuals were either free or slave, with no “halfway slavery.” Consequently, *coartación*’s only legal effect was to fix the slave’s manumission price. The *coartado*, Olavarría stated, was just as enslaved as the *entero*. Recognizing that the *reglamento* clearly rejected these principles, Bachiller claimed that this ordinance was not technically “a law” and did not supersede previous regulations on the matter.⁷¹

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.”⁷² To the notion that slavery was a totalizing status, they responded that *coartación* represented one exception to this general principle.⁷³ Through *coartación* the slave acquired partial dominion 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.⁷⁴ This condition had several legal effects, the most important of which was the possibility to change masters at will, a capacity that the various authors repeatedly described as a *derecho*.⁷⁵ Rodríguez referred to it as “a right of the *coartado* slave, established by the law and sanctioned by an old custom.” Nicolás Azcárate concurred: “The right that the *coartado* slave undoubtedly has among us to change masters is based on custom, more than the law, because the *Reglamento* has only confirmed customs.” 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 Mojarrieta’s tract but disagreed with it, and that the governor understood *coartación* and the possibility of changing masters as entitlements that were not contingent on the consent of the masters.⁷⁶

71. *Diario de la Marina*, Nov. 2 and 6, 1856; Bachiller y Morales, “De la *coartación* y sus efectos,” *Revista de Jurisprudencia* 1 (1856): 426–30.

72. N. Azcárate, untitled entry, *Revista de Jurisprudencia* 1 (1856): 363.

73. Azcárate, “Réplica al Señor don Antonio Bachiller y Morales,” *Revista de Jurisprudencia* 1 (1856): 477–81.

74. Rodríguez, “La *coartación* y sus efectos,” *Revista de Jurisprudencia* 1 (1856): 353–62, quote on 355.

75. 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 dominion, since the slave owned a portion of himself.

76. 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, José Cintra, “*Coartación*,” 474–76.

Opposition to the reglamento was not without effect. Havana's court of appeals issued a statement in 1853 endorsing the need to modify articles 34 and 35. In 1855, a commission appointed by the governor to "revise" 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 that article 34 be changed to stipulate that "no master may refuse to coartar his slaves whenever they pay him one fourth of their value, acquired by legal means." Likewise, they requested that the controversial article 35 specify that "masters of coartado slaves cannot be forced to sell them unless there is just cause, as is regulated for those who are not coartados."⁷⁷

Slave owners sought to modify the reglamento 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 the slave's "accomplice." One *síndico* offered a typical argument on behalf of the slave José Casanova in 1846, stating that "according to article 35 . . . 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 declared as coartado any slave who gives his master the amount of fifty pesos according to the Reglamento." When they were asked to issue a statement concerning the application of this right to small children some years later, they replied definitively: 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 judges were obligated to resolve any doubt in favor of freedom.⁷⁸

When slave owners attacked them for contributing to the erosion of property rights and the social order on the island, *síndicos* countered that they were simply performing their duties and enforcing the laws. As one of them said in 1858, "[B]ecause 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 imperative need to press a demand . . . for the coartación of Evaristo." Another *síndico* stated in 1850, "The duty of my ministry, which I cannot ignore, compels me to initiate

77. Expediente sobre la coartación, 1853–62.

78. Expediente sobre la queja del negro José Casanova, 1846, ANC, GSC, leg. 944/33306; Expediente sobre la coartación, 1853–62. See also García, *La esclavitud*, 147.

a claim on behalf of the said slaves.” When the *síndico* of Santiago de Cuba, Miguel Rodríguez—who represented the slave María in her quest to change owners against Carlota Dascar—was accused of protecting slaves who asked for papel, he claimed to be “astonished.” He had simply “enforced what is regulated in the Reglamento and royal *cédulas* of slaves.”⁷⁹

The *síndicos* argued that laws had to be upheld, reinforcing owners’ conviction that it was necessary to repeal or modify articles 34 and 35, as the *audiencia* and the commission in charge of drafting revisions to the *reglamento* recommended in 1853. The governor acknowledged receipt of the commission’s recommendations but “reserve[d] approval” for a future moment.

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*.⁸⁰ Addressed to the governor, the report carefully assessed the conflicts of interest that surrounded *coartación*. On one side there were “private interests” that, invoking property rights, discipline, and order, aspired to “curtail concessions given to slaves.” On the other side was “a well-understood public interest” supported by the law, which members of the council depicted as monuments to humanity and Spanish civilization. Beyond these abstractions, however, the councilmen acknowledged the weight of practical concerns. They noted that the island was living through “difficult circumstances” as part of “an evidently transitional period,” and thus it was not prudent to attack “rights or concessions sanctioned by law,” particularly when they affected a large segment of society. Although they acknowledged that some owners might be irritated by certain implications of *coartación*, particularly for slave children, they deemed those interests “too secondary to influence a matter of such social importance.” The council thus recommended that neither article 34 nor 35, nor the traditional manumission price of 25 pesos for unborn children “established by custom,” be altered. They further stated that masters were financially responsible for raising even freeborn children of slaves, until they turned seven and were old enough to be transferred to a master artisan to learn a trade, or to a public institution.⁸¹

79. 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.

80. 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.

81. El Consejo de Administración al Gobernador Superior Civil, Oct. 27, 1862, in Expediente sobre la *coartación*, 1853–62.

The council's statement did not represent an end point but rather a new stage in the long-standing conflict surrounding *coartación* and the legal effects of the institution. An ordinance issued in 1863 to regulate *síndico* activities codified the council's pronouncements and wrote into law some of the most restrictive interpretations concerning the effects of *coartación* on masters: that unborn children could be liberated for the customary amount of 25 pesos, that owners remained responsible for their upbringing and could not prevent slave mothers from breastfeeding them, and that those who employed *coartado* slaves had to pay them a salary proportional to the fraction the slaves had already paid toward their freedom. This arrangement had been long observed on the island, but it had not been previously written into law. Furthermore, appraisers were instructed that manumission prices should be based only on the slave's 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 with a higher manumission price. Finally, article 13 stipulated that if a slave—any slave, not just a *coartado*—was sold due to no fault of his own, then he or she had “the right to be authorized to spend three days looking for a new master,” after which time the owner could sell the slave to whomever he pleased.⁸² We do not know to what extent these regulations were enforced. What seems clear, however, is that this ordinance further restricted the dominion of slave owners and expressed yet again a legal philosophy that subordinated the rights of the property owners to the stability and “true interests” of the colony.

Slave owners, of course, did not resign themselves to what they perceived as repeated assaults on their sacred rights, and they continued to challenge 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 as to 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 farmhands. The very existence of this consultation suggests that judges remained ambivalent about this right, its codification in law notwithstanding.

Although the *consejo* upheld articles 34 and 35 as valid and applicable to all slaves, including those in the countryside, the planters' pressures eventually

82. “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,” Jan. 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.

bore fruit. In 1871 the governor issued a circular declaring that rural slaves “did not have the right to change owners,” even if they were coartados.⁸³ By then, however, slave owners faced a far more serious threat: the anticolonial revolt that erupted in eastern Cuba in 1868, which threatened the slave system as a whole.

Colonial authorities rationalized the practices of coartación and pedir papel as concessions grounded in the humanitarian spirit of the Spanish laws, a characterization that was at best partially correct. Although these practices may have been tenuously linked to Spanish legal codes and customs, they had developed in ways that were frequently quite different from those intended by the law. The exercise of these customary rights was sufficiently widespread that by the middle of the nineteenth century, colonial authorities—feeling the need to regulate slavery—codified some 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 not only in custom, but in 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—rights that spawned other rights in turn. Coartación complicated considerably the social and legal status of slavery. 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.”⁸⁴ Slave owners realized that any right that slaves could claim came at the expense of the master’s dominion and therefore at the expense of their own rights.

83. 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,” May 1, 1871, in Cano and Zalba, *El libro de los síndicos*, 59.

84. This statement appears in a marginal note that Bachiller wrote on Máximo Arozarena, letter to the captain general, Mar. 8, 1859, Expediente sobre la coartación, 1853–62. The text was reproduced with some variation in Bachiller y Morales, *Los negros* (Barcelona: Gorgas y Compañía Editores, [1887]), 156–57.

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