Fractional Freedoms: Slavery, Legal Activism, and Ecclesiastical Courts in Colonial Lima, 1593–1689

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In 1629, Gaspar Zape sought a preliminary injunction in Lima’s ecclesiastical court against Gerónimo Vosmediano de Leon to prevent him from shipping Juliana Brán off to Chile. Gaspar learned that Vosmediano de Leon, his wife’s owner, planned to send Juliana off to Chile as a wet nurse for his newborn granddaughter. Acting quickly, Gaspar sought court intervention basing his injunction on his right to marital unity and cohabitation that was the prerogative of enslaved married couples granted by the Si te Partidas.1 Vosmediano de Leon responded by invoking his

1. SP lib. 4 tit. V. law I: Concerning the Marriage of Slaves.

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right as a slaveowner to send Juliana wherever he wished. However, the court ruled in favor of the enslaved couple, reasoning that it would be impossible for Gaspar and Juliana to exercise their conjugal rights if they were separated at such far distances. On what legal basis did the court uphold the marital rights of slave couples over the property rights of slaveholders? How did enslaved litigants like Gaspar Zape prevent the dissolution of their families through court action? Did it make a difference that Gaspar asserted his conjugal rights in an ecclesiastical court? Would Vosmediano de Leon’s property defense have prevailed in a secular court? These are questions raised herein that I seek to answer.

First, I review the controversial Tannenbaum thesis and assess its usefulness in studying Latin American slave litigation. In his seminal publication *Slave and Citizen*, Frank Tannenbaum asserted that the influence of Roman law upon the *Siete Partidas*, combined with the pervasive authority of the Catholic Church, gave rise to a more benign system of slavery than the “Virginia” variant that prevailed in North America. Throughout Latin America, the Church enforced legal provisions protective of slaves, insisting on slaves’ right to marry, and intervened in their favor to prevent familial separation. In effect, Church intervention diluted the absolute authority that was declared essential to the master-slave relationship in *State v. Mann*. Under the civil law of slavery, plausibly, neither *State v. Mann* nor *Dred Scott* would have been upheld. This does not imply that Spanish slaveowners refrained from callously shooting their slaves in the back, nor deny their claims to familial integrity. But it does raise a question of the importance of the extant law in determining the social and political terrain of a slaveholding society.
Second, I review a selected sample of cases brought by slaves in ecclesiastical courts to assert conjugal rights, effect transfers of ownership, enforce oral promises of manumission, and contest matrimonial abandonment. Traditionally, scholars of colonial legal history have paid more attention to the Church’s advisory role in elaborating the rights of indigenous peoples (in the Lascasian mold) than to its jurisdiction over slaves as Christian subjects. But slaves could bring claims against their masters within the ecclesiastical forum that was—in theory—dedicated to the Christianization of the enslaved population. Moreover, ecclesiastical courts retained jurisdiction over the formation and dissolution of marriage between slave couples. The conjugal rights claims brought to the ecclesiastical court reveal a preponderance of formal marriage between slave couples, resulting from an official policy favoring marriage. Church and Crown were anxious to promote slave marriages in the belief that this would pacify restive slaves and produce a native-born, endogamous enslaved population. This endogamous population would then reduce intercaste illegitimacy, which was widely held by colonial administrators to be the source of urban crime, social unrest, maroonage, and rebellion. Countless legislation was enacted to promote marriage among slaves and deter concubinage or other forms of immoral coupling. Given the myriad social ills that marriage was thought to redress, it is not surprising that enslaved spouses were able to argue successfully against separation. The favorable outcome of other cases—cruelty, transfer of ownership, and legal enforcement of manumission promises—was not guaranteed.

The cases examined herein lay in the interstices between two competing patriarchal institutions: marriage and slavery. In imperial Rome, slaves could be manumitted through marriage, self-purchase, fealty to the Emperor, or through proving the moral frailties of their owners. Iberian slave laws, which adopted much of the laws found in Justinian’s Corpus iuris civilis encouraged the marriage of slaves. This is in marked distinction to North American and black Atlantic slave systems, in which slaves were deemed morally and legally unfit to marry. During Reconstruction, however, emancipated slaves were actively encouraged to marry as a means of

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demonstrating their readiness for citizenship. Thus, the enduring preoccupation of imperial, antebellum, and colonial regimes in promoting or prohibiting slave marriages raises a reasonable presumption that marriage performed critical regulatory functions in slaveholding societies. Moreover, the types of marriages that were permissible perpetuated racial hierarchies.

Although Iberian slaves were endowed with the legal capacity to marry, the prevailing concern was that slaves marry other slaves. Thus, intercaste concubinage was especially vilified in the ecclesiastical forum. Although intercaste concubinage was officially excoriated, it created a path to freedom—especially for children born to free fathers—as opposed to marriage that virtually ensured the generational transmission of enslavement. Given the widespread practice of concubinage among plebeians and lower castes, I trace accusations of intercaste concubinage brought by fellow parishioners in assessing community tensions and contested ideas of sexuality. I also explore issues of inequality and intimate violence in complaints raised by enslaved wives alleging extreme domestic cruelty (sevicia). The adjudication of these cases reflects the conflicting dynamic of seeking liberty while preserving or dissolving family relationships. In sum, the final section considers the ways in which enslaved women navigated between slavery and marriage in their pursuit of freedom.

The Tannenbaum Thesis, the Iberian Law of Slavery, and Legal Activism

Alfonse the Wise, drafter of the \textit{Siete Partidas}, denounced slavery as “the vilest and most contemptible thing in the world.” Alfonse subsequently declared liberty as “one of the most honorable and precious things of this world.”

11. SP Title V (Concerning the Marriage of Slaves); Title XXII (Concerning Liberty).
13. K. R. Bradley, \textit{Slaves and Masters in the Roman Empire: A Study in Social Control} (Oxford: Oxford University Press, 1987), chap. 3. Bradley acknowledges the liberal conferral of freedom and citizenship to Roman manumitted slaves but also draws attention to the vestigial duties owed between masters and slaves postmanumission. As Bradley notes, “Freedom was the greatest reward a slave could be given, and the factors which governed
The *Siete Partidas*, promulgated in 1348, retained the Roman law’s liberal provisions for manumission. As the principal source of private law in the colonies, the *Siete Partidas* was particularly influential in determining slave litigation.

Continental and colonial legal scholars have long considered the influence that the Roman law of slavery wielded in the formulation and enactment of Latin American slave laws. Tannenbaum concluded that the civil-law tradition endowed slaves with both a legal and moral personality and created greater paths to manumission than the common law. In contrast to the civil law, the common-law tradition of chattel slavery held much lower possibilities for manumission, and its societies were marked by less socioracial fluidity. Tannenbaum controversially claimed that the “moral personality” of slaves under the civil law created more harmonious post-Emancipation societies than chattel slavery systems that were marked by hostile racial segregation and rigid exclusion.

Perhaps not surprisingly, both elements of Tannenbaum’s thesis have been vigorously contested. Critics have disputed the relevance of either its acquisition as of cardinal importance for comprehension of the master-slave relationship” (ibid., 84).

15. The Recopilación was legislation that drew from the *Siete Partidas*, but it was redacted to deal specifically with Castilian law in the Americas; see Rafael Altamira, *Técnica de Investigación en la Historia del Derecho Indiano* (Mexico: José Porrúa e Hijos, 1939). The Recopilación contained numerous laws for slaves and free blacks, but it only modified the extant laws on manumission in one significant instance. The *Siete Partidas* conferred freedom on a slave who married a free woman with consent of the owner, provided that his enslaved status was disclosed to his wife (SP Part IV, Tit. V Laws I, III, IV). In 1515, the Crown extended freedom to slaves who married indigenous women in the Indies, but in 1538 it retracted the conferral of freedom through marriage (Watson, *Slave Law in the Americas*, 48). Underscoring the contrary nature of viceregal lawmaking concerning slave marriage, Watson mentions that another law passed by the royal Audiencia in Hispaniola in 1526 reiterated the provision in the *Siete Partidas* conferring freedom on the marriage of a slave man and free woman (ibid., 49). The 1526 cédula was passed in conjunction with the importation of 200 slaves—100 men and 100 women into the island, and the Audiencia specifically documented its intention to limit freedom to those who married endogamous partners. The legislation was ambiguous—indeed silent—on how those female slaves would be free so as to confer freedom on their husband in conformity with the *Siete Partidas*.

16. Watson, *Slave Law in the Americas*, chap. 3. See also Buckland, *Roman Law of Slavery*, pt. 1 (commenting on the inconsistency of Justinian’s claim that slavery was against the law of nature yet admissible under the law of nations). Buckland’s compendium examines in depth the Roman laws of manumission.
Justinian or Iberian legal codes for a realistic appraisal of slave systems and the construction of post-Emancipation societies in Latin America.\textsuperscript{19} Whether civil-law codes endowed slaves with a legal and moral personality was of little consequence when it was the political interests of planters and colonists that determined the harsh, dehumanizing treatment of slaves. Royal edicts exhorting masters to Christianize, feed, shelter, and clothe their slaves were largely ignored unless cynical masters were convinced that their enforcement would increase their slaves’ productivity or quash rebellion. Within the United States, scholars of slavery in Louisiana and Florida queried the veracity of the civil law tradition’s putative favorability for slaves.\textsuperscript{20} Empirical scholarship revealed that Louisiana’s large population of free blacks coexisted seamlessly with racial subordination and repressive master-slave relations, despite Louisiana’s civil-law tradition and its Latin heritage. Rejecting both the Tannenbaum thesis and the “exceptionalism” of Louisiana within U.S. slavery, David Rankin concluded that slavery continued to be harsh and brutal, with little preference for manumission or evidence of egalitarian race relations.\textsuperscript{21} Marvin Harris querulously refuted Tannenbaum’s thesis with demographic data that pointed ineluctably to the economic imperatives that determined slave policies and master-slave relations,\textsuperscript{22} not the slaveholder’s legal tradition. Consonant with arguments in legal realism and Critical Legal Studies, Tannenbaum’s most prominent critics de-emphasized the importance of law, challenged the autonomy of the legal institution and unmasked its collusion in perpetuating socioracial hierarchies, and reiterated the racial subordination of Latin American post-Emancipation societies.

I adopt Tannenbaum’s thesis to examine the ways that slaves used the ecclesiastical courts to press their claims and secure fractional freedoms. I consider the historiographic tradition in which the thesis emerged, but


\textsuperscript{22} Marvin Harris, \textit{Patterns of Race in the Americas} (New York: Walker, 1964). Genovese chided Harris’s critique of Tannenbaum as an example of “a savage polemical excursion” that “confused ideological zeal with bad manners” (Genovese, “Materialism and Idealism,” 239).
I avoid coming to any conclusions about its empirical veracity. An inquiry that merely refuted Tannenbaum in favor of materialist arguments would stop short of its rich potential in assessing whether the law enabled slaves to exercise agency or self-efficacy. Eugene Genovese helpfully summarized the contentious debate between materialist and idealist scholars by distinguishing between the daily conditions of slave life and the existence of broader legal access to freedom and citizenship within the civil law of slavery in Latin America. Clearly, Tannenbaum was intrigued by what he rightly perceived as a different legal treatment of slaves as compared with the Anglophone experience. But whether this created better material conditions in the daily life of slaves was a more difficult question—open to endless revision based on empirical findings. The adherents to the Tannenbaum-Freyre thesis of racial democracy were also entranced by the complexity of “race” in Latin America that was integral to the libidinal paternalism of the master-slave relationship without paying too much attention to details of power and gender dynamics.

Given the enormous effort that has gone into disproving the existence of a Latin American racial democracy, I confine my discussion to Tannenbaum’s first claim. Tannenbaum distinguished among the Anglo-Saxon, French, and Iberian slaveholding systems on the basis of their historical experience and possession of an “effective slave tradition”: laws and spiritual beliefs developed in association with the legal treatment of slaves. The Iberian laws of slavery had profound roots in Latin Christendom that were shaped by medieval jurisprudential thinking about the rights of infidels, conversos, and non-Catholics vis-à-vis the virtually untrammeled, divine right of Catholics to proselytize, trade, convert, and marry infidels. This was drawn almost exclusively from medieval canon law. Canon law, the law of the universal Christian Church, “occupied a unique niche among the legal systems in the late Middle Ages . . . as a working and often quite effective international law.” Iberian slave laws were a normative product of a particular set of historical experiences with

Jews and Moslems that produced a legal regime based on jurisdictional flexibility amid a plethora of local (personal) laws.\textsuperscript{27} Its jurisdictional flexibility is something that idealist scholars of slavery viewed favorably—given an expressed preference for accommodation in the face of religious and cultural diversity. But it grew out of a historical experience of expanding Christianity and its incorporation of other religious groups—spectacularly replete with its own bloody and sordid history. Thus, vital to our understanding of the Iberian law of slavery is an appreciation of the intellectual stature of the canon law in the diplomatic, philosophical, and juridical realms of the medieval and early modern period.

The primary legal framework into which slaves were assimilated arose out of the legal status of holy war captives, not human chattel.\textsuperscript{28} Commercial slavery became admissible only by dint of the imperative of conversion and the saving of infidel souls. Indeed, commercial slavery rested on tenuous legal grounds throughout the early modern and early colonial period (c. 1441–1650s), rendering the Church ever vigilant in ensuring the authenticity of the imperial soul-saving mandate. The overlapping jurisdiction between Church and Crown for infidel souls strengthened the ability of the Hapsburg monarchy to consolidate its control over elite encomenderos and Spanish settlers in the sixteenth and early seventeenth centuries. And, as evidenced by the voluminous requests for charity, mercy, and good judgment of the King and Church, overlapping jurisdiction created opportunities for enslaved litigants and other dependents to appeal directly to metropolitan sovereigns to adjudicate their complaints against local elites, masters, and other superiors.\textsuperscript{29} Thus, heavy-handed


\textsuperscript{29} The consolidation of royal court power within the thirteenth and fourteenth centuries created an “expedited” review of complaints and grievances brought by desamparados (widows, orphans, prisoners, legal minors, and infirm patients) who could opt out of the jurisdiction of their local courts and seek recourse from Crown-appointed Ombudsmen in Castile; see Woodrow Borah, \textit{Justice By Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real} (Berkeley and Los Angeles: University of California Press, 1983); Benton, \textit{Law and Colonial Cultures}. 
metropolitan control over local affairs—the aspirational mode of Iberian colonial administration—enabled slaves and their advocates to assess their odds of favorable results in various legal forums. Overlapping jurisdiction also unleashed larger political tensions over the scope of colonial control—an administrative project that was continually resisted, reshaped, and negotiated by subalterns and restive elites alike, as well as activist clerics and crown-appointed advocates of naturales (natives) and slaves.

Although the volume of litigation attests to subaltern legal agency, we are nonetheless reminded that legal activism could only succeed by appealing to, and thus reinforcing, the patriarchal norms of absolutist protection and racialized hierarchies of caste that underpinned the colonial order in which enslaved peoples lived. But prescriptive patriarchy was very much a “work in progress” rather than a given reality with stable parameters, and appeals to a plurality of patriarchs could unsettle the pretensions of some to power as well as fortify the positions of others. The financial insecurity of many enslaved husbands impinged on their ability to exercise their patriarchal roles, creating contrary expectations for slave families and conditioning women’s experience of subordination. As such, the legal actions undertaken by enslaved women—many of whom attempted to dissolve marriage, establish virtue, or resist abandonment—test the conventional limits of patriarchal power.

Enslaved litigants’ efforts to recruit ecclesiastical courts in the quest for manumission, more humane treatment, change of ownership, paternal recognition of enslaved offspring, or dissolution of marital ties provides a unique entrée for exploring the possibilities for justice (or perhaps more modestly, the vindication of grievances) in a colonial slaveholding society characterized by extreme inequality. I view these legal proceedings as acts of “imperfect resistance” among the slave community, given the pivotal role of the Church and its court in the paternalistic slaveholding legal order. I am not a zealous presentist looking for agency in all the wrong places. I am extremely conscious of the ironies inherent in invoking the power of the Church to insist on the right to marriage in order to marshal protection against slave owners. In what follows, I confront the policing and surveillance function of the Church over the sexual lives of enslaved and subaltern groups and critique its gendered policies in its (often) implacable refusal to grant ecclesiastical divorces to enslaved wives seeking relief from abusive spouses.

However, any worthwhile analysis of the legal entanglements between slaves and courts must acknowledge the Janus-faced quality of power

and agency. Although Marxist, realist, and antilegitimating critiques have demoted slaves’ legal agency as evidence of co-optation or a means of quashing Jacobin rebellion (the sine qua non of revolutionary resistance), most scholars increasingly regard the court actions of slaves as a means of contesting the power of the law. Law is of course about power and the ways those in control of the legal system allocate rights, duties, and privileges. Perhaps nowhere is this realist view more apparent than in the law of slavery, which seemingly encapsulates the pinnacle of powerlessness and social death. But whether we embrace realist, Weberian, or biopolitical visions of law, we cannot overlook counterhegemonic processes of accommodation, resistance, and negotiation. Our scholarly development in the law of slavery reflects the sensibilities of Critical Legal Studies and the enduring normative quandary posed by law’s complex abilities to be simultaneously wielded in the name of liberty and bondage. Robert Gordon cogently reminds us that even as we name sets of relationships that bind master and slave, lord and peasant—these social relationships are already constituted by a set of legal concepts of rights, autonomy, and duties: “legal relations [do not] simply condition how the people relate to each other, but to an important extent define the constitutive terms of the relationship.”

A review of the voluminous slave litigation demonstrates that access to courts indubitably affected the construction of colonial societies with

33. According to both Orlando Patterson and Moses Finley, slaves, upon being violently wrested from their social environments and forcefully transplanted into new, hostile ones with no propensity for their assimilation, become the ultimate exemplars of deracinated, socially dead beings; see Orlando Patterson, Slavery and Social Death (Cambridge, Mass.: Harvard University Press, 1982), and Moses I. Finley, Ancient Slavery and Modern Ideology (New York: Viking, 1980).
significant enslaved populations, potentially constrained the repressive behavior of slave owners, and afforded the enslaved a measure of autonomy over their lives in bondage. Litigants used the courts to achieve individual desired ends, with at least two different interpretations about what constituted a just outcome—which was contingent on a corpus of principles of justice, liberty, and prescriptive patriarchy. These principles were wielded and advanced within a religious and legal context that at times demonstrated a profound ambivalence about slavery that idealist scholars like Tannenbaum and Davis presciently observed. This “dualism” was expressed in the tension between slaves as property (res) and slaves as Christian subjects. Slaves and their advocates strategically exploited this moral and legal ambivalence to assert their humanity through the courts.35

Slave litigation must also be seen within a context in which legal action was constitutive of, and coterminous with, agency. Castilian litigiousness was legion in medieval Europe.36 Richard Kagan notes that for the sixteenth century, the royal cancillería of Valladolid received as many as 6,000 to 7,000 new cases per year, out of a jurisdiction of roughly four million people. During the reign of Elizabeth I (1558–1603), the Chancery Court (the largest of England’s five central courts serving a comparable population size) heard 500 new cases per year. Iberian legal formalism permeated the entire colonial enterprise, and colonial subjects quickly acquired an avid appetite for legal recourse. Indigenous communities used colonial courts to mobilize power struggles against local leaders (curacas) and authorities,37 and to resist brutal treatment at the hands of peninsular and criollo officials. Women turned to the courts to berate adulterous, brutal, “un-Christian

37. See, for example, Karen Spalding, Huarochirí: An Andean Society under Inca and Spanish Rule (Palo Alto, Calif.: Stanford University Press, 1984); Borah, Justice by Insurance.
husbands.”

38. Colonial historians of the family have examined numerous cases in which women turned to the ecclesiastical courts to impose sanctions on adulterous, violent, and negligent husbands and lovers. Cases abound in the Archbishopric’s Archives of Lima and Mexico City brought by women who revealed their loss of honor and their sexual improprieties by suing men who had jilted them out of marriage, or had left illegitimate children without support. Drawing on the pioneering work of Silvia Arrom and Patricia Seed, we have a range of excellent studies regarding women’s use of the ecclesiastical courts in Latin America to vindicate their rights and expand their menu of entitlements; see Silvia Arrom, The Women of Mexico City: 1790–1857 (Palo Alto, Calif.: Stanford University Press, 1985); Patricia Seed, To Love, Honor and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574–1821 (Palo Alto, Calif.: Stanford University Press, 1988); Asunción Lavrin, Sexuality and Marriage in Colonial Latin America (Lincoln: University of Nebraska Press, 1992); Susan Kellogg, Law and the Transformation of Aztec Culture, 1500–1700 (Norman: University of Oklahoma Press, 1995); Ann Twinam, Public Lives, Private Secrets (Palo Alto, Calif.: Stanford University Press, 1999); Sarah Chambers, From Subjects to Citizens: Honor, Gender and Politics in Arequipa, Peru, 1780–1854 (University Park: Pennsylvania State University Press, 1999); and Christine Hünefeldt, Liberalism in the Bedroom: Quarreling Spouses in Nineteenth-Century Lima (University Park: Pennsylvania State University Press, 2000), Maria Emma Mannarelli, Pecados Públicos: La Ilegitimidad en Lima, Siglo XVII (Lima: Centro de la mujer peruana Flora Tristán, 2004).

39. Bennett, Africans in Colonial Mexico, 2.


42. See Jouve Martín, Esclavos de la ciudad letrada, for an analysis of intertextuality and the coproduction of pleadings with slaves who were largely unlettered and their notaries or scribes.
asserted before his notary in 1611 when contesting the disruption of his conjugal rights, “my case cannot be denied according to the law that is favorably disposed to marriage and liberty.” A retrospective look at these proceedings tells us how litigants and their advocates could strategically exploit the moral appeal of liberty that held sway over the canon-law courts, even when their lived realities were decidedly unfree and unequal.

Slave Litigation and Ecclesiastical Courts

In 1678, Josefa de Herrera, a mulata slave, objected to the impending marriage of Juan de Zamudio and Juana de Salazar. Josefa claimed that Juan, a zambo espadero (low-ranked military guard of Afro-indigenous parentage), had previously made her an offer of marriage, which according to canon law would invalidate any subsequent matrimonial promises that he made to other women. Upon seeing the marital banns posted in the parish, Josefa appealed for a suspension of the marriage license authorizing the couple to wed, and she further requested that the court oblige the philanderer Juan to fulfill the outstanding offer of marriage that he made to her. According to Josefa, she and Juan had been involved in an “illicit friendship” and that she had borne Juan a child out of this union. She also claimed that Juan had given her his promise of marriage before the image of the Virgin Mary and other witnesses in church, and that Juan had repeated his offer of marriage on many other occasions. Josefa’s advocate concluded that the weight of evidence should compel the judge to oblige Juan to marry Josefa and legitimate their child.

In 1679, Juan de Mendoza, a criollo negro esclavo (Peruvian born slave), complained to the church procurator that his wife’s owner had plans to remove her from Lima through either resale or relocation to Cuzco. Using very similar language to Gaspar Zape (our first petitioner), Juan proffered witnesses who testified definitively of the master’s plans to relocate his wife, Susana. One witness testified that he had seen Susana the night before, tied up and imprisoned heading south, presumably en route to Cuzco. Given the fact that Susana’s owner left the city without obtaining

43. AAL, Causas de Negros, Leg. 2, exp. 17, 1611.
44. See Brian Owensby, “How Juan and Leonor Won Their Freedom: Litigation and Liberty in Seventeenth-Century Mexico,” Hispanic American Historical Review 85 (2005): 39–72. Owensby argues that libertad carried with it a powerful moral meaning within seventeenth-century Spanish law, as a “God-given faculty of human beings who had been created with free will” (ibid., 72).
45. AAL, Causas de Negros, Leg. 19, exp. 11, 1678.
46. AAL, Causas de Negros, Leg. 19, exp. 28, 1679.
Juan’s permission, Juan appealed for swift legal intervention, arguing that “justice should not fail to uphold my claim to married life as dictated by the holy Church.” Juan’s owner joined him in the petition, reasoning that as a matter of law, Susana’s owner should be obliged to sell Susana to him so that both spouses could live with one owner.

In 1672, Catalina Conde, a mulata slave, asked the Church court to summon any witnesses who possessed knowledge or evidence about her parentage. Using the procedure of censuras, which functioned in an equivalent manner to banns, Catalina managed to find at least five witnesses who lived outside of Lima who heard her petition read in their churches, and responded to her request for evidence. Three witnesses, one male and two female, identified themselves as Spaniards. The remaining witnesses were identified as parda (dark-skinned) and negra esclava (black female slave). At issue was whether Catalina could prove that she was the illegitimate daughter of the deceased don Alonso Conde de Salazar. Apparently, Catalina was the product of an illicit relationship between the deceased Alonso and his slave, María Brán. As the story unfolded, each witness was able to fill in parts of the relationship that took place prior to Alonso’s marriage to his legitimate wife, and largely occurred in the Chancay Valley outside of the city of Lima. One witness, identified as a Spanish laborer and resident of Chancay testified that Alonso confessed his relationship with María to a visiting priest, during which he stated his desire to free María and their children. Apparently, Alonso had fallen gravely ill as a young man during his time in Chancay, and he wanted to depart this world with a clear conscience. All the witnesses—not all of whom seemed to know each other—individually corroborated Alonso’s lifelong desire to emancipate the mulatilla Catalina. The notaries described the clothing, appearance, and mien of each mantilla-clad witness with Austenian precision that corroborated any pretensions to virtuous or elite status. By asking the Church procurators to issue censuras públicas, Catalina was able to provide evidence regarding her father’s reiterated desire to free her, despite the absence of a carta de libertad (letter of freedom) or testamentary manumission.

47. AAL, Causas de Negros, Leg. 16, exp. 21, 1672.
48. Censuras refer to the process in which litigants compelled witnesses to come forth and testify to court notaries about their knowledge in the case for which evidence was being sought. Censuras generales were often read in a parish church or chapel and proved an effective way of summoning witnesses to testify in cases of contested manumission or paternity.
49. Cartas de libertad were formal legalized documents that proclaimed the emancipation of a slave in which the conditions of freedom—whether through manumission or self-purchase—were explicitly enumerated. In the case of self-purchase, an appraisal fixed and notarized the price of self-purchase. For an interesting case study of a disputed appraisal,
At stake was Catalina’s liberty, given the refusal of Alonso’s heirs to liberate her. The distinct absence of any mention of legitimate children raises the presumption that Alonso not only died intestate but also without issue. Thus, if Catalina successfully managed to prove her paternity, she was entitled by the law of inheritance to a portion of her father’s estate.

In 1659, Ana de Velasco, a parda slave, asked the court to impose an obligatory transfer of ownership (variación de dominio) on the basis of defloration and denial of wages that she suffered at the hands of her master.50 Ana’s master was a cleric (Bachiller), Pedro de Velasco. In her testimony, Ana alleged that Pedro de Velasco purchased her for the exorbitant price of 800 pesos when she was ten years old. (This was at least three times the price paid for young children given their fragile mortality and the expense of feeding, clothing, and instructing enslaved children.) While his justification in paying the elevated price for Ana was to educate her in religious instruction, Pedro went to great lengths to gain access to her in the convent. Between the ages of ten and twelve, Pedro tried repeatedly to take Ana’s virginity. While inside the convent, she managed to resist his overtures. However, when Ana was fifteen, Pedro took her virginity after persistent soliciting and persuaded her to leave the convent by promising to find work for her as a domestic slave in the house of a friend. True to his word, Pedro found Ana a domestic placement, during which he smuggled her out at nights with the help of another of his slaves, returning her at dawn unnoticed by her mistress. After a month and a half of these nocturnal trysts, Pedro managed to transfer her permanently into the domestic servitude of a friend. There, according to Ana, Pedro and she maintained a public though illicit relationship. They had two children, aged six and three respectively.

see Fernando de Trazegnies, Ciriaco de Urtecho, Litigante por el Amor (Lima: PUCP Fondo Editorial, 1995). Legal formalities were of vital importance since owners had the upper hand in setting prices that varied according to age, gender, education/training, fertility, and affective ties. Slaves and owners agreed on the proportional rate of jornal earnings that were deposited on a monthly basis towards the self-purchase price. Not surprisingly, disputes over misunderstandings of purchase price and jornal accumulation accounted for a great deal of litigation between masters and slaves. Once the purchase price was accumulated, it behooved slaves to move swiftly towards legally recognized manumission in the form of a notarized carta de libertad. Jornalero slaves carried around with them another formal document called a conque, which was a legal document detailing the purchase or sale of a slave. The conque was an important piece of identification, since undocumented slaves were liable to be arrested as runaways (cimarrones) and put to work in the city’s notoriously arduous public bakeries and other forms of corvée labor.

50. AAL, Causas de Negros, Leg. 13, exp. 16, 1659. This proceeding has been analyzed by Jouve Martín, Esclavos de la Ciudad letrada, 105–8.
Although Ana offered poignant testimony about the force with which Pedro took her virginity and her reluctance to remain in the relationship, things seemed to deteriorate between the couple a year before bringing suit. Ana was working as a laundress and giving part of her wages to her owner under the typical agreement of jornaleros and owners. Pedro did not allow Ana to stay overnight at any of her jobs, however, and indeed this type of vigilant control over her workplace and her movements was not typical of the day-wage arrangement. As a result, she was unable to accumulate as much savings as she needed to pay her jornales, which Pedro had increased to an unmanageable rate of twelve pesos a month. Ana claimed that she was overcome with guilt about the relationship with Pedro, and his presence became repugnant to her, so she tried to separate herself from him. Although Ana’s conscience weighed heavily upon her, she could not confess her sins to another priest given the scandal that would ensue. Pedro became very erratic in his behavior—following Ana, beating her, withholding her wages, soiling the clothes that she laundered, and destroying the few pieces of jewelry that she had that were of value. Desperately trying to avoid returning to the relationship with Pedro—a result he obviously desired—she sought ecclesiastical intervention. In concluding her complaint, she asked the Church procurator to oblige Pedro to sell her to another owner and asked for a restitution of her wages that had been withheld for eight months. Most importantly, she asked the procurator to protect her from Pedro’s wrath that would surely be unleashed upon learning of her complaint to the authorities. Fearing reprisal, Ana requested that she be placed in “deposit” (protective custody) where Pedro could not find her until the procurator had a chance to investigate the charges and find her another owner. Ana further asked that the court grant her request for a new day-wage arrangement where she would have at least two hours a day to attend to her litigation, which, as she said, was the time customarily allotted to those slaves pursuing legal claims. Undoubtedly anticipating Pedro’s wrath and ability to prolong the investigation, Ana astutely left little room for either maneuver in Pedro’s response.

In 1632, Augustina de los Ríos presented six witnesses who corroborated her marital plight in her abusive relationship with her husband, Juan de la Rua. Augustina alleged that her husband abused her continually but the incident that prompted this complaint involved Juan publicly stating his intention to kill her. According to one witness, Ysabel, criolla negra esclava, she knew Augustina because they were “raised together”

with the same owner in a boardinghouse. Ysabel testified that Juan was publicly and physically abusive towards Augustina. One Saturday, Juan appeared in the courtyard of the boardinghouse where both Ysabel and Augustina were washing their feet. (Enslaved couples usually exercised their conjugal visits on Saturdays and Sundays and other feast days). Dragging Augustina out of the courtyard upstairs to their room by her hair, Juan berated Augustina for acting like a child instead of a grown woman, who performed her ablutions in private. A heated fight quickly ensued, with Juan drawing a sword held against Augustina. Ysabel physically intervened between the couple, and within minutes the other residents in the boardinghouse came to both women’s rescue to save them from the wrathful Juan. Another witness, identified as Juliana, *criolla negra esclava*, owned by Angela de los Ríos, decried Juan de la Rua for abusing his wife without provocation. Juliana berated Juan for calling Augustina and her mother whores and taking her hard-earned money on weekends during the year and a half that the couple had been married. In reading through the witnesses’ testimonies, we glean a tale of escalating domestic violence with a young woman protected by the solidarity of her coresidents against the physical abuse of her emotionally volatile husband. In his response, Juan de la Rua claimed that he was forced to exercise discipline over Augustina, who repented her early marriage and refused to relinquish her youthful customs. Juan further asserted that Augustina was under the undue influence of her mother and other friends who “influenced her insolent and contrary behavior.”

**Ecclesiastical Jurisdiction Over Slaves**

These five vignettes compose only a small sample of the litigation brought by slaves in the ecclesiastical court of Lima that pertain to conjugal rights, testamentary manumission, enforcement of marriage promises, dissolution of marriage, and complaints against owners. In total, there are 1,045 records classified as “Causas de Negros” on file at the Archbishopric’s Archive in Lima. The archived cases encompass litigation from 1593 to 1862 and are assembled in thirty-six chronological folios. Enslaved litigants engaged with the Church court through marriage, divorce, and annulment petitions, criminal cases seeking ecclesiastical immunity, and accusations of concubinage.52 In keeping with the Church’s enumerative

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function, birth, death and marriage records of slaves appear in parish registers. Testamentary bequests of slaves to religious orders or their voluntary entry into the orders are also registered in the Archbishopric’s Archive. The litigation records housed in the Archbishopric’s Archive give us an intimate look at the lives of urban slaves during Lima’s formative period as an important colonial center.

These five vignettes were brought between 1593 and 1689—a century prior to the promulgation of the Código Negro in 1789. Most scholarship focuses on the Código Negro and the impact of those laws and the political upheavals of the late colonial period on freedom suits and slave litigation. I use the seventeenth-century court proceedings to adumbrate the influence of the canon law on the adjudication of slave lawsuits before the imperatives of large-scale agriculture and impending Creole independence determined the Crown’s policies and practices toward slaves. I rely on Frederick Bowser’s, Emilio Harth-Terré’s, and James Lockhart’s masterful studies of the early African experience in Peru that demonstrate a strong African presence within Lima, leading to its designation as a “black city.”

According to Bowser’s and Lockhart’s respective accounts, the residents of seventeenth-century Lima were almost evenly divided between Africans and Spaniards. A census taken in 1636 registered an urban population


54. The reasons for slower importation during the early stages of Conquest were primarily financial. The importation of slaves from Africa was costly, and slaves were steadily and more cheaply procured from elsewhere on the continent and from the Iberian peninsula. Moreover, the Spaniards believed they had an ample available source of indigenous labor that they could marshal through tribute and the workforce corralled into the encomiendas (Matthew Restall, “Black Conquistadors: Armed Africans in Early Spanish America,” The Americas 57 (2000): 171–205; Peter Gerhard, “A Black Conquistador in Mexico,” Hispanic American Historical Review 58 (1978): 451–59). Indigenous communities experienced waves of decimation through disease and removal throughout the sixteenth and seventeenth centuries, but the hardest hit communities in terms of demographic decline were coastal chieftaincies. The coastal city of Lima was populated, for the most part, by those who were forcibly relocated (i.e., slaves) and those who came voluntarily: Spanish colonists called chapetones or peninsulares seeking fame and fortune in the New World.


composed of 13,620 negros, 11,088 españoles, 330 clerics, 1,426 indios, 861 mulatos, 377 mestizos, and 22 Asian slaves. The internal diversity of the black population is poorly reflected in the 1636 census. From her surname, we know that Juliana Brán was a bozal: an African-born slave married to Gaspar Zape. Gaspar’s surname also identifies him as a bozal from West Africa, though not from the same territory as those bearing the Brán appellation. Juan de Mendoza, the second litigant, was a Peruvian-born slave married to Susana Brán (bozal). Annulment proceedings show a high degree of intermarriage between moriscos (peninsular-born African slaves often referred to as ladinos) and criollos or bozales. In addition to the diversity among the African population, the seventeenth century was one of considerable mobility. Many spouses in the conjugal rights lawsuits protested removal of their partners to Mexico, Panama, Nicaragua, and Chile along with their internal relocations to other cities in Peru. Some enslaved men requested permission to return to other countries where they had left wives after decade-long absences. One enslaved woman, Barbola de Cáceres, petitioned to stay in Lima with her husband, Alonso del Coto, mulato del pueblo de Realejo, Nicaragua. One complainant, María Santos Vargas, reported her husband José for bigamy, neglect, and child support, alleging that José had contracted marriage with another woman in Guayaquil, leaving María destitute and pregnant. Even though these suits allude to a degree of mobility, this was largely contingent on gendered lines. Enslaved men in the servitude of military masters or elite Spaniards (who were

59. African-born slaves known as bozales were identified by the area of Africa in which they were born or procured. Brán was the surname ascribed to slaves from Senegambia and Guinea-Bissau; see Bowser, *African Slave in Colonial Peru*, 40.
60. See Lavallé, *Amor y Opresión en los Andes Coloniales*, for seventeenth-century annulment cases.
61. AAL, Causas de Negros, Leg. 4, exp. 14, 1621.
62. AAL, Causas de Negros, Leg. 2, exp. 15, 1611.
63. AAL, Causas Criminales de Matrimonio, Leg. 7, exp. 22, 1689.
themselves more mobile) could leave hapless wives, as evident in María Santos’s bigamy case.

In sum, the ecclesiastical court was a vibrant forum of slave litigation, wielding exclusive or concurrent jurisdiction over family reunification, testamentary manumission, paternal recognition of slave children, and self-purchase price disputes—all legal matters central to the pursuit of freedom and autonomy. The ecclesiastical court retained subject matter jurisdiction over a wide range of litigation involving slaves, given the premise of Christianization that legitimized slavery. The ecclesiastical court wielded concurrent jurisdiction over civil disputes between purchasers and sellers over nondisclosure of slaves’ preexisting health concerns, “immoral” behavior, or runaway histories. And of course, Church procurators retained personal jurisdiction over lawsuits with a defendant priest, curate, or any member of the clergy. Considering the considerable clerical presence within the Peruvian colony and the extensive slaveholdings of many religious orders, the Church court’s personal jurisdiction practically ensured a lively traffic in litigation.

The efficacy of slave litigation depended on three factors: (i) access to courts, (ii) the ability to garner funds for self-purchase, and (iii) the concurrent political struggles among Church, Crown, and colonists for control over colonial administrative affairs. Access to courts and the proximity to Crown-appointed Ombudsmen were critical components in the implementation of slave laws and codes, and largely determined the litigious propensities of urban slaves. Limeño slaves could use channels of communication to learn of an owner’s covert plans to relocate their spouses and mobilize courts to issue injunctions to prevent the removal of their spouses. Juan de Mendoza, for example, was able to act quickly to retrieve his wife before she traveled very far outside of Lima. Slave couples strove valiantly to stay within Lima where the function of the courts and its appointees guaranteed them a measure of protection against their owners. The second factor relates to the ubiquity of slaves in the urban labor economy, which enabled them to accumulate funds for self-purchase and the purchase of their children. The third factor is tied to larger political struggles over local autonomy and metropolitan control between the Crown and the colonists who competed for the Church’s influence to wield a two-thirds, majoritarian position. This competition created a


65. Hünefeldt, Paying the Price of Freedom, 16.

66. As Patricia Seed argues, the Church’s independence in the colonies in the sixteenth century enabled the ecclesiastical courts to zealously assert control over marriage and to
space for Church mediation, which in the seventeenth century largely reflected the concerns of the Crown over controlling colonial subjects. Although slaves were largely removed from these power struggles, the availability of ecclesiastical courts created another outlet for pressing their claims. Herman Bennett notes that urban slaves pressed for autonomy with a “Christian inflected cultural and legal consciousness,” which he equates with the process of creolization that unfolded as Africans adapted to their Latin American existence.67 As Bennett writes, “Savvy in their quest for autonomy, urban Africans acquired a legal consciousness composed of an awareness of rights and obligations, familiarity with the legal system, and the ability to initiate litigation that rallied the courts and its personnel in the quest for justice.”68 Part of this legal savvy depended on what lawyers typically refer to as “forum shopping.”

In all legal systems, particularly where there are multiple forums, litigants instrumentally bring cases in a court where they believe they will prevail. Litigants strategically state their cases so that they appear as exemplary citizens who should win against the other side, and they bring their cases in forums where they have some possibility—even remotely—of influencing the system. In addition to the ecclesiastical courts, slaves also sought to bring their claims before the Inquisition tribunals,69 which exercised jurisdiction over slaves who pronounced (whether nominally or vociferously) their Christian faith as persons with souls.70 Many slave complainants astutely raised the specter of the Christianizing mission of slavery to call attention to their errant masters’ abuse and neglect. This was a tactic frequently used by slaves to change masters or to assert their dominical rights. For instance, in 1610, six slaves denounced their master, Vicento Polco, for extreme cruelty, abuse, and vociferously protest incursions into their authority by secular courts. As the criollo elite consolidated its hold over local affairs, it grew increasingly impatient at metropolitan control and tried to recruit the Church as an ally. The Church astutely played one party off against another to maintain their position, but in the early republican period, it weighed in on the side of the conservative criollo elite, promoting its role as a stabilizing force in the transition to Independence; see Seed, To Love, Honor and Obey.

67. Bennett, Africans in Colonial Mexico, 2.
68. Ibid.
69. See Owensby, “How Juan and Leonor Won Their Freedom.” Owensby makes a similar procedural argument about forum shopping in following the ten-year litigation of Juan and Leonor to win their freedom through the Inquisition Court in New Spain.
70. Bennett, Africans in Colonial Mexico, 4–5: “The African diaspora—a lived experience—also constituted a field of identities made possible by the complexity of Spanish imperial ideology and Christian political thought, which assigned Africans discrete juridical identities as slaves, royal subjects, and persons with souls.”
Polco’s refusal to let them hear mass on Sundays.\textsuperscript{71} Polco was quickly served notice and put in jail where the charges against him for his negligence and cruelty were investigated. Polco responded that he had diligently baptized his slaves and exposed them to the doctrine, recognizing that failure to Christianize his slaves would have been a mortal sin. He claimed that the slaves were not interested in learning prayers or going to mass; they merely wanted the Sundays and feast days off. Polco’s own Catholic morals were subjected to strict scrutiny by the ecclesiastical court and found wanting, and the case ends with the transfer of ownership of all his slaves to another buyer at a reduced rate. This may have been prearranged given the difficulty of finding one owner to purchase multiple slaves who wanted to remain together. However, given the forum and Polco’s refusal to comply with the numerous royal edicts that insisted on the Christianization of slaves, the imperative to transfer ownership was unequivocal.

Colonial scholars have repeatedly pointed to the propensity and skill that subaltern subjects developed in playing one political faction off against another to advance individual or communal agendas. This was partially a result of the peninsular system of direct intervention that allowed the poor and less fortunate to appeal to a remote but kind sovereign “onto which all manner of benevolent and protective policies could be projected … [providing] slaves with a wider array of officers to appeal to or report on.”\textsuperscript{72} Although forum shopping demonstrated a savvy manipulation of potential outlets for protection, I am nonetheless cautious about overestimating the institutional responses to the exercise of that agency. Ana de Velasco reminds us of the limits of jurisdictional choice, given her modest “victory” in the case she brought against her owner. The procurator restrained Pedro de Velasco’s nocturnal access to Ana by prohibiting her overnight stays in his house, but he did not compel the transfer of ownership or oblige Pedro to pay the restitution of her wages that she sought.

\textbf{Rules of Ecclesiastical Legal Procedure}

Structurally, the complete case record adhered to a uniform procedure. First, the litigants stated their identity: caste, status, residency, age, marital status, and occupation (if relevant). Enslaved litigants’ domicile was legally attached to their owners. This was followed by a rendition

\textsuperscript{71} AAL, Causas de Negros, Leg. 2, exp. 2, 1610.
\textsuperscript{72} Díaz, \textit{Virgin, the King}, 15–17.
of the complaint that appeared as a notarized pleading, alternatively called a *denuncio*. A well-prepared litigant came accompanied to her notary with witnesses, as did Augustina de los Ríos, or provided the names of witnesses who would corroborate her grievance. Upon registering receipt of the complaint, the court procurator notified the accused, requesting him to present his witnesses and issue a notarized response to the accusation. In petitions for ecclesiastical divorce, wives were “deposited” in a reputable Catholic home or a specialized home for divorce litigants called a “*Casa de recogimiento*” where their movements remained under the supervision of a suitable family. Poorer women and slaves traditionally went to religious *casas de recogimiento*, where they could pay for their upkeep through service to the convent. Elite women were placed in homes reflecting their status. Ana de Velasco specifically requested a “deposit” where she would remain protected from her owner’s wrath. If they were in domestic servitude with a sympathetic owner, it appears from the record that many enslaved women remained with their owners while their complaints were litigated, ensuring residential continuity and a degree of safety for their children. Augustina de los Ríos, for instance, remained with her owner. Perhaps more importantly, men were responsible for paying the custodial costs if they lost their cases. Even in cases where plaintiffs lost, the court often apportioned custodial costs to husbands and masters as a punitive measure.

Rebuttals or refutations from the accused were admitted only upon compliance with these minimal procedural steps, and many records simply end with only the *denuncio* on record. Defendants (particularly husbands and masters) simply refused to respond or appear in court, despite repeated summons. Recalcitrant defendants sought to prolong the preliminary procedure by counterclaims, casting aspersions on the quality of the witnesses, the veracity of the complaint, or disputing the legal standing of the complainant or their ability to be sued. This was a common strategy with slave owners, who often ridiculed their slaves’ legal capacity. Vosmediano de Leon, (Juliana Brán’s owner) acknowledged Gaspar Zape’s conjugal claim, but he countered that Juliana’s removal was

73. As Nancy van Deusen points out, status, caste, and enslavement determined the types of *recogimiento* arrangements that were available to women seeking an ecclesiastical divorce. “Spaniards and wealthy women went to the Hospital de la Caridad and the Recogimiento de las Divorciadas. Casta women went to Las Divorciadas (usually on the condition that they work), or a beaterio. Enslaved women were employed as laborers throughout the term of their deposit in hospitals, beaterios, or recogimientos. If there was any danger to them escaping, they were sent to panaderías (bakeries)” (Nancy van Deusen, “Determining the Boundaries of Virtue: The Discourse of Recogimiento Among Women in Seventeenth-Century Lima,” *Journal of Family History* 22 (1997): 373).
temporary. He reasoned that as Juliana had milk (como la negra tiene leche), she should be obligated to nurse the granddaughter with whom he had been blessed. Vosmediano de Leon alternated between a deferential and defiant mode in his response, but he did not prevail in removing Juliana to Chile.

Defendants in suits alleging impediments to marriage understandably complied with their summons and often strove to accelerate the investigative process so that their planned marriages could take place within twenty-one days. But ecclesiastical justice moved at a glacial speed. There is an old rueful saying in Latin America that those who seek immortality start an ecclesiastical suit. Here, the dilatory nature of ecclesiastical justice favored those aggrieved partners seeking to prevent the marriages of their lovers.

Common to the inquisitorial system, the defendant’s guilt was presumed and could only be overcome with countervailing evidence. If the defendant was diligently and repeatedly served with notice and failed to respond, he could be brought into the Archbishopric’s prison and forced to answer the charges. An official investigation was instigated at the discretion of the Church procurators if the weight of the evidence was sufficient to warrant investigation or arrest. Whether this measure corresponded to the gravity of the crime, the vigilance with which “justice” was sought, or the relative power of the complainant is harder to discern from the records. Pedro de Velasco, for instance, was not incarcerated by his peers.

Witnesses were summoned to give more evidence as needed, either in response to a set of interrogatories after the rebuttal was received, or asked to state their general knowledge of the tenor of the complaint. Defendants typically responded through outright denials or through impugning the legal reasoning of the complainant—and often a combination of both. But a critical factor in securing a favorable judgment rested on assembling a witness team drawn from the litigant’s immediate circle of friends, business associates and guildsmen, confraternities, relatives, neighbors, and parishioners. Neither Josefa Herrera nor Ana de Velasco could proffer the witnesses to prevail in their cases—Ana de Velasco seemingly led an isolated and sequestered life away in convents or in servitude with coconspirators of her owner. After much deliberation, the procurator would issue a judgment (sentencia) in the case. Common to medieval legal procedure, the investigative, prosecutorial, and adjudicative functions were all merged into the figure of the ecclesiastical procurator, and the procedure assumed an inquisitorial tone.

74. Mirow, Latin American Law, 28.
Illicit intimacies—eating at the same table and sleeping in the same bed—were automatically conflated with immoral cohabitation. These accusations of immoral cohabitation were brought to the attention of Church court authorities by parishioners’ complaints. These accusations were based on close surveillance of the couple’s movements. In the case of adulterous wives, the witnesses cited details about the hours and locations in which the “carnal act” occurred, while nominally withholding the name of the married woman. Withholding the name of the accused adulterous woman ostensibly protected her husband’s honor; it was not a presumption of her innocence. Anonymity also protected her from reprisals and crimes of passion, in which husbands and male relatives could take drastic actions against her for the assault on the family honor. Thus, in one proceeding, a witness testified that he saw Dionisio de Valdez (the named accused) in bed with and eating at the same table with “the married woman referred to in the proceedings whose name it would be imprudent to divulge.” A host of witnesses then maligned the unnamed woman for her illicit relationship with Dionisio, causing her to neglect her husband and her duties to him, which predictably provoked “great concern and scandal in the community over her bad example.” The visiting procurator issued an arrest warrant for Dionisio to answer the charges, but Dionisio apparently fled the town for parts unknown.

Commensality was also used to establish paternity or the desire to manumit enslaved children. In a testamentary manumission case very similar to Catalina Conde’s, commensality was repeatedly proffered as evidence of intimate and tender ties unrelated to paternity. Dominga de Llanos, negra libre, presented a series of witnesses who testified regarding the expressed desire of her deceased owner to free her young daughters, Elena and Gregoria. The witnesses were similarly numerous and of diverse backgrounds, as in Catalina Conde’s case recounted previously. Dominga’s notary had prepared a set of interrogatories to which the witnesses responded. First: Did the witness know whether the said Dominga de Llanos gave birth to two children after she had been purchased...

76. The *Siete Partidas* dealt extensively with rules for accusations of adultery. See Partida IV, Title IX, Laws VII–XIII.
77. AAL, Causas Criminales de Matrimonio, Leg. 2, exp. 15, 1646.
78. AAL, Causas de Negros, Leg. 25, exp. 9, 1701.
by don Cristóbal, and did the said don Cristóbal raise them with affection and tenderness as if they were his? Did the said don Cristóbal eat with them at the same table and caress them? Second: Did the witnesses know whether as a consequence of said affection, if don Cristóbal made it known to others close to him that he intended the two mulatillas to be educated in a convent to prepare for a devotional life? And third: Did the witnesses know whether don Cristóbal had repeatedly refused offers of others to purchase the two girls and whether his refusal was based on his intention to educate and liberate the girls? Although these would be leading questions by contemporary standards of evidence, the witnesses unanimously concurred in their answers to the three interrogatories.79 Two Spaniards testified that don Cristóbal had purchased Dominga for the stability and well-being of his slave, Julián Angola, but added that Julián mistreated Dominga. Julián’s whereabouts or fate were not the focus of the interrogatories, but one witness—a priest of high rank—mentioned the marriage between Julián and Dominga and reiterated don Cristóbal’s desire to raise the girls in a convent under the tutelage of his cousin.

Cristóbal clearly died before making testamentary manumission, but the unanimous evidence from witnesses across the spectrum of Limeño society demonstrated his intention to free the girls—an intention that was not apparently based on his paternity, as in Catalina Conde’s case. Thus, not honoring the decedent’s wish, coupled with a presumption in favor of testamentary manumission, left his executrix with no moral option but to emancipate the girls. It was well known that slaves’ fate depended on the testamentary provisions taken by their owners to dispense with their property. Many slave suits arose out of contested liquidation or dispensation of the master’s assets. Slaves, as property, were appraised and seized to settle outstanding debts against the estate. However, in the case where a slave had already amortized his or her purchase price and paid towards it with a significant part of the jornal arrangement, that slave was encumbered by the contract and could not be sold. In a more ambiguous situation,

79. In medieval canon law, the evidentiary weight of witness statements was dealt with under the rubric of *fama*. *Fama* is analogous to contemporary notions of hearsay, but the credibility of a witness’s testimony depended very much on the personal reputation of that witness; see, for example, Chris Wickham, “Fama and the Law in Twelfth-Century Tuscany,” in *Fama: The Politics of Talk & Reputation in Medieval Europe*, ed. Thelma Fenster and Daniel Lord Smail (Ithaca, N.Y.: Cornell University Press, 2003), 15–16. Medieval jurists struggled to determine the veracity of witness statements by finding consensus in what people commonly knew about the characters or events in legal proceedings. *Fama* signified commonly held knowledge, “which was more stable than rumor, and often more depersonalized than reputation. It was what everyone knew, so it was socially accepted as reliable” (ibid, 16).
particularly without a written, notarized document, or where affective ties demonstrated the intention to emancipate, it behooved litigants to show the wishes of the deceased to strengthen the slave’s claim to freedom against a recalcitrant executrix. *Censuras* did not end with judgments; they were renditions of witness statements, and thus could not legally obligate a result. In today’s litigation parlance, *censuras generales* correspond to pretrial discovery.

**Witness Statements as Fighting Words**

In 1632, Juan de Castro, a master blacksmith from Jaén, was indicted along with María de Allyón, a free black single woman, for immoral conduct.80 Six witnesses testified regarding the physical mistreatment of Juan de Castro towards his legitimate wife, and his numerous affairs with other women, which ultimately forced his wife to seek refuge with her brother in Panama. According to the witnesses, María and Juan ate supper together at the same table on many occasions. One witness alleged that María entered the house at night as if it were an ordinary act (*muy de ordinario*) in order to sleep with Juan de Castro. That witness reported that one day she entered Juan de Castro’s house and saw María de Allyón hide behind the bed so the witness would not see her. When that witness asked one of Juan de Castro’s household slaves if María had left the house that night, the slave told her that María remained lounging around in the bed after her master Juan had departed in the mornings for work. Francisco del Alguilar, the neighborhood alderman, also testified that “this black woman María de Allyón” governed and ruled the house as if she were its mistress, which was disturbing and outrageous to the neighborhood because it was such scandalous and *public* conduct. Juan de Castro was placed in the Archbishopric’s prison and made to answer the charges. In his response, Juan de Castro denied all charges, claiming that his wife had fled Peru because of her fearful and timid nature, and that María de Allyón was in his house to heal some of his apprenticed slaves. María de Allyón, also detained in the parish jail, denied the charges.81 Evidently, the investigative process progressed very slowly, and the case ends with Juan pleading for absolution and release so that he could resume his work obligations with the “fifteen *negro* apprentices awaiting his command.”

Within the Archbishopric of Lima, *causas de amancebamiento* were accusations of immoral cohabitation or adultery that were investigated

80. This proceeding has been analyzed by Mannarelli, *Pecados Públicos*, 110.
81. AAL, Causas de Amancebamiento, Leg. 3, exp. 33, 1632.
during official visits (*visitas*) by Church officials. Concubinage accusations invoked the ecclesiastical court’s jurisdiction to adjudicate and censure threats to the institutional stability of marriage. As historian María Emma Mannarelli has noted, concubinage accusations usually involved lower-caste women who were maligned for their relationships with Spaniards or with *criollo* men of a higher caste.\(^\text{82}\) Mannarelli attributes the relative absence of enslaved and elite women in the accusations to other modes of sexual access that did not involve concubinage. However, concubinage was a prominent domestic arrangement among many sectors of plebeian society in colonial Lima.

Slaves feature prominently in these proceedings as witnesses rather than as defendants.\(^\text{83}\) Enslaved women could testify about the intimate trysts between the accused by virtue of their function as confidantes and their presence within the household. But slave witnesses’ condemnation of the behavior of freed and lower-caste women raises interesting questions about tensions over sexuality and ideas of virtue that existed between the slave and lower caste communities. Although marriage was favored as a route for survival and stability among enslaved couples, its stability (and hence respectability) was less available to women once they transitioned into free society via unions with men of higher status.\(^\text{84}\) Sexuality was used to “trade up” into concubinage but rarely into marriage, and consequently lower-caste women and freed black women like María de Allyón were deprived of the institutional protection that was legally extended to married couples. Conversely, they had greater flexibility in forming and dissolving partnerships. In Josefa Herrera’s case, this flexibility worked to her detriment, but the outcomes for María de Allyón and María Brán were less clear. Augustina de los Ríos might have welcomed the flexibility to leave an abusive husband, given the slim chances of obtaining ecclesiastical support for her divorce petition.

In a pioneering article on concubinage, Verena Martínez-Alier stated that marriage remained the ideal in colonial low-caste and enslaved communities, but concubinage was regarded as a satisfactory alternative.\(^\text{85}\) Numerous studies have shown that concubinage and illegitimacy were

\(^{82}\) Mannarelli, *Pecados Públicos*, 114, 123–24.

\(^{83}\) Mannarelli points out that *amancebamiento* accusations overwhelmingly involve *casta* women, and that both enslaved and elite women were virtually absent in these folios. However, slave women were also indicted for concubinage, although these appear under *causas criminales de matrimonio* and *causas de negros*.


\(^{85}\) Ibid., 126.
synonymous with caste and low social status. Yet, enslaved concubines like Josefa Herrera, María Brán, and Ana de Velasco occupied a pivotal social and moral position. They were involved in long-term, relatively stable, sexually exclusive relationships with men with whom they invariably had children. They were neither chaste by elite standards nor a priori immoral in the eyes of their peers or the Church. As Patricia Seed has argued, when there was relative parity of caste between the couple, and if there was no impediment, ecclesiastical officials generally obligated the couple to marry. This was an important weapon in the armory of lower-caste women facing abandonment and possible financial destitution for their children. But their ability to recruit the persuasive power of the Church depended on the simultaneous presence of parents, male relatives, or supportive owners to pressure a profligate suitor to marry. The objective was to posit the initiation of sexual intercourse as evidence of the matrimonial promise. The legal determination of the validity of the promise depended on the witnesses, the complainant’s “reputation,” and other evidence proving the exchange of consent that the complainant could muster. Sexuality operated at different levels across the socioracial scale—but converged around “virtue” rather than chastity among nonelite women who already had borne children.

Josefa de Herrera’s complaint demonstrates the (in)ability of lower-caste and enslaved concubines to avail themselves of legal protection. Josefa had no guaranteed right to the outcome she sought unless she could prove that the exchange of consent had in fact occurred, and that it predated Juan’s matrimonial promise to Juana de Salazar. On its face, Josefa’s complaint concerned the claims of three people with coeval status: They were all


87. *Amancebamiento* refers to couples living in semipermanent concubinage, known alternatively in the legal literature as *barraganía*. James Brundage argues that prior to the Council of Trent, canon lawyers were predisposed to construe intent to form a marriage from concubinage, especially if there were no legal impediments to marriage, if the couples’ sexual relationships were exclusive, and if the broader community “accepted” the couple as a functioning marital unit. After the Council of Trent adopted the constitution *Tametsi* in 1563, the official position on concubinage crystallized into a formal abolition of the practice, with excommunication as the punishment for accused couples. For purposes of inheritance, the status of illegitimate children was drastically affected. This shift from flexibility to the post-Tridentine rigidity coincided with the Church’s growing insistence on the sanctity and indissolubility of marriage, and of increasing public control over marriage (James A. Brundage, “Concubinage and Marriage in Medieval Canon Law,” in *Sex, Law and Marriage in the Middle Ages* [Aldershot: Variorum, 1993], 1–17).


89. Van Deusen, “Determining the Boundaries of Virtue.”
slaves, and both women were identified as *mulatas*. (Even though we suspect that this blanket ascription may not have corresponded with self-perception, we accept the status equivalency between both women.) Juan de Zamudio occupied a military post, which significantly raised his marital eligibility among women in both the slave and lower-caste communities. Josefa denounced Juan to the court authorities in an attempt to block his intended marriage with Juana de Salazar. Josefa may have been justifiably aggrieved at Juan’s infidelity, but she lacked a *sponsalia*, a notarized document proclaiming their intention to marry.\(^90\) Juan resolutely denied ever stating his intention to marry Josefa in front of the sanctified image of the Virgin Mary, and he defied Josefa to produce the witnesses she claimed were present at the time of his supposed promises. Juan then deftly portrayed Josefa as a loose and desperate woman who tricked him into the sexual tryst and presented him with a child. In the process, he somewhat predictably insinuated that Josefa was a woman of questionable virtue in comparison with Juana de Salazar, with whom he so honorably wanted to enter into holy matrimony. Josefa retaliated that she entered into an immoral tryst only on the strength of her belief in Juan’s promise of future marriage. One could argue that due to the small, intimate size of most church parishes, their relationship, her “reputation,” and her child’s illegitimate status were public knowledge. Both Juan de Zamudio and Juana de Salazar would have anticipated Josefa’s objection once the banns were posted. However, without the *sponsalia*, Josefa took a sizable risk in asking the procurator to issue a judgment as to whether there had been an exchange of future consent between her and Juan. If Josefa succeeded in either preventing Juan’s marriage or legitimating their union, then, arguably, her actions were worth the risk. Regrettably for Josefa, the record does not end with a favorable determination or a judgment. However, similar *causas* have split decisions on enforcing marriage promises in favor of concubines over the intended brides if the *mancebas* can bring parental pressure, witnesses to the exchange of consent and a less spotty reputation to bear on their objection to the marriage of their suitors.

Lower-caste concubines like María de Allyón in relationships with married men, especially those belonging to a higher status, were understandably chastised by Church procurators.\(^91\) But female slaves similarly denounced them for their perceived lack of virtue. Curiously enough,

\(^90\) Patricia Seed notes that the move in the seventeenth-century colonies from oral to written notices of intent to marry left many women who believed in their suitor’s oral promises without legal recourse (Seed, “Marriage Promises”).

\(^91\) Even when there was no impediment to marriage, canon lawyers were loath to enforce an order of marriage between “unequal” couples; see Muriel Nazzari, “Sex/Gender Arrangements and the Reproduction of Class in the Latin American Past,” in *Gender
Catalina Conde’s parents had been indicted for concubinage in an accusation lodged in 1646 with the visiting procurator that involved many of the enslaved and Spanish witnesses living in Chancay who later responded to the censuras she issued in 1672.92 In that accusation, Alonso Conde (presumably not having achieved the honorific status of “don” that he did in later life), was excoriated for “bringing a single black woman, María Brán, from Lima to Chancay, and keeping company with her in his house in scandalous concubinage.” If the sentiment that “it was better to be the mistress of a white man than the wife of a slave”93 was widely shared among slave and casta women, these concubinary arrangements should not have incited the kind of moral opprobrium we see from enslaved witnesses during the visitas. The tacit understanding would be that this was the route to freedom and social mobility via “racial” whiten- ing. In the early decades of a slaveholding colony, María de Allyón would recently have been liberated or born to a free mother. (The case against her and Juan de Castro was brought in 1632, and the complaints against Alonso and María lodged in 1646.) These women were neither quite free nor enslaved—they had some degree of investment in upholding the privileges of whiteness, but they were also linked through kinship and affective ties to the enslaved, black underclass.

Once we realign elite and subaltern views of concubinage, we can then consider the larger social dimensions that ushered in the accusations of concubinage that occurred during the visitas.94 Visitas were conducted periodically to inspect public morality and to hear grievances among the parishioners. The visitas conformed in a similar, but considerably smaller scale, to the judicial administrative system of Audiencias, where Crown-appointed lawyers reviewed the complaints of their colonial dependents. In visita cases, we see clear instances of alliances between community officials and aggrieved parishioners who used the power of visiting church lawyers to rein in errant or unpopular parishioners or to pursue
personal vendettas against local clerics. These complaints reveal tensions and factional cleavages within the parishes, sometimes strengthened by mobilizing the investigative power of the Church against local magistrates, aldermen, or mayors. Subaltern litigants adeptly exploited long-standing jurisdictional tensions between local authorities and visiting officials (vice-regal or ecclesiastical), converting adjudicatory venues like the visitas into theaters for the enactment of local tensions and rivalries among subordinate groups of slaves, castas, and poorer Spaniards.

The above-mentioned community tensions were evident in a visita case brought in 1616 against Nicolás Flores for adultery with a married woman, and incest with her aunt. Nicolás had been indicted three years earlier by another visiting procurator for concubinage with a mulata named Juana, and of being in an illicit relationship with Elena, negra tía hermana of Juana (her mother’s sister). Although the complaint mentions the incest charge, it never featured in the interrogatories prepared by the procurator. I suspect that Nicolás’s accusers accumulated a number of charges they knew to be venial and sinful, and they conflated the legal meaning of incest with a social sin: the simultaneous bedding of two closely related women. Several witnesses—most of whom were slaves and horros (freedmen)—regaled the visiting procurator with details of Nicolás’s sexual exploits. According to Tomasina, negra horra, Nicolás was seen sleeping in the bed of the unnamed married woman as if they were man and wife. Tomasina also claimed similar knowledge of Nicolás’s illicit relationship with Leonor, the unnamed married woman’s aunt. Pedro Guinea, a second witness, testified that Nicolás was seen copulating with Leonor when he was fourteen years old—a date Pedro Guinea remembered distinctly because it was the anniversary celebration of their pueblo. (Apparently Nicolás and Leonor got carried away by the patriotic spirit of the festivities.) A third witness, Lázaro, negro esclavo, elaborated his rendition of Nicolás’s violent relationship with his wife and belligerent reputation with other negros in the community. In sum, Nicolás Flores was unanimously denounced as a philanderer, an adulterer, and a violent and belligerent man towards his wife and fellow residents. The witnesses were particularly perturbed by the simultaneity of Nicolás’s relationships with “the married women” and their aunts. Nicolás, a freewheeling Don Juan, seemed to thrive on multiple couplings by attaching himself to various households and living off the fruits of women’s labor. Not surprisingly,

95. AAL, Amancebados, Leg. 2, exp. 23, 1616. Seven witnesses, the majority of whom were slaves testified against Flores. It is reasonable to presume Nicolás’s freed status, given that he stated his age, occupation, marital status, and residency (twenty-six years old, laborer, legitimate husband of María Gallardo, and resident of Cañete).
the case ends with Nicolás’s arrest, the inventory and seizure of his modest assets, his indignant protest against his incarceration, and denunciation of his enemies for the calumnious accusations to his honor.

Legal anthropologists have long studied community disputes of this nature with an eye to exploring the mechanisms for mediation, consensus, and resolution. Yet it is the conflict, indeed the vituperative sparring between litigants, that reveals the contours of the social world of lower-caste and enslaved communities. As legal anthropologists June Starr and Joan Collier observe, “legal orders inevitably create conflict... Conflict, and not consensus is an enduring aspect of any legal order.”96 In this vein, I emphasize another side of inquisitorial disputation: its public, performative appeal. The visitas and the ecclesiastical courts served as important venues for the public pursuit and the performance of enmity and grievances between social actors in closely monitored environments.97 Although parties never faced each other in a courtroom, their grievances were announced in the parish—one of the most important social forums in the community—and escalated during the time of the visita. The accusation instigated a formal process in which the accused had to establish his innocence before an official arbitrator. Clearly, conjugal conflict and adultery were known among one’s neighbors and parishioners before a case was publicly aired. The concubinage and domestic violence accusations demonstrate convincingly that parishioners and neighbors monitored conflict between partners because it inevitably spilled over into the community.98 Outside of the closed, corporate world of elite families, enslaved and lower-caste people lived closely together in a congested urban environment, and brawls or trysts between spouses, lovers, and neighbors were virtually impossible to conceal. Indeed, in Augustina de los Ríos’s case, the intervention of her coresidents saved her life.

Any analysis of the content and scope of the amancebamiento accusations raises the important question as to why these accusations were brought at all. Punishment was for the most part minimal. María de Allyón was forced to buy candles for the parish and sweep the chapel for an indeterminate period. This was no doubt distressing and shameful, but accused concubines were not subject to the more stringent punishment of the Inquisition for adultery—obliged to walk the streets wearing sanbenitos subject to public scrutiny. It would be one thing if only the compliant


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and faithful lodged accusations and acted as a moral police force for the Church. But it is certainly not the case that only the chaste and pious submitted accusations against the sinful couple. And although concubinage was repudiated by elite legislators and clerics, the overwhelming demographic patterns of the period clearly demonstrate that the majority of plebeian men and women ignored the sociolegal perils of their sexual improprieties. Moreover, the chastised couples often resumed their relationships after they paid their fines or served their sentences, despite the fact that procurators spent inordinate amounts of time investigating the complaints.99

Repeat offenders were severely reprimanded by the visiting ecclesiastical authorities, with little perceptible impact on changing the couple’s behavior. For instance, Martín Hernández, español resident of Pachacamac, resumed his concubinary relationship with Juana Maldonado, mulata soltera (unmarried mulata), despite having been repeatedly punished by the magistrate for their “sinful relationship.”100 One folio of forty-five cases brought between 1612 and 1619 shows that twenty out of the forty-five cases involved accusations against couples who had been publicly living “in sin” for at least four years, many of whom had multiple children as a result of their concubinary union. Two couples in that folio of cases had been together for over twenty years—although in both accusations, the men were identified with the honorific title “don” that alluded to their high social status. If we calculate the time that the accusation was lodged against Alonso Conde and María Brán in 1646 to Catalina’s paternity litigation in 1672, their relationship spanned at least two decades. In this sense, we overemphasize the importance of these accusations in affecting the longue durée of people’s relationships and domestic arrangements by focusing on the moments when these arrangements were brought under the ecclesiastical gaze. As such, I doubt that concubinage was repudiated by the accusers—rather the opposition to it expressed by elite and religious orders was conveniently mobilized to settle old scores. We see constant references to these grudges in the defendants’ rebuttals.

Our indefatigable philanderer, Nicolás Flores, emphatically stated in numerous interrogatories to his multiple accusations of concubinage and adultery:

99. Mannarelli, Pecados Públicos, 120. In my review of the five folios of Amancebados cases, at least 30 percent were brought against reincidentes (repeat offenders). But they were vigorously investigated. Nicolás Flores’s case, for example, was a hefty folio with over 150 pages of testimony.
100. AAL, Causas de Amancebamiento, Leg. 11, exp. 6, 1614.
In response to the allegation that I am involved with a married woman, I had honest and virtuous working relations with her, free from scandal, to support myself and my wife. I further deny that I was involved with the aunt of that married woman. I don’t even know her. I do not know anyone who could say that, yet alone anyone who is faithful and honorable in the eyes of God. Those people are not satisfactory to be able to judge my character. The witnesses who have declared against me are my enemies. The principal witness (Bernal) is an enemy of mine, and I have my suspicions about him. Bernal is the capital enemy of the married woman. I am sure he has agitated his slaves to testify against me, and seeing as they are all his slaves, they have to do what he says. I ask Your Honor to send another notary to investigate this claim, a person of science and conscience. As I said earlier, I have enemies who wish to destroy me.

With regard to motivation, it is helpful to distinguish between the accusations that were brought against the amancebados and those in which women confessed to their status as mancebas. My sense is that concubinage accusations had more to do with pursuing personal animosities and less to do with upholding a rigid honor code. The emphasis on commensality as definitive proof of immoral cohabitation and illicit intimacy leads us to explore the context in which plebeians shared meals. Dionisio Valdez and his unnamed married mistress were indicted for sleeping together but also for eating together at the house of the unnamed married woman’s sister, a pulpera (tavern keeper). Many accusations of commensality occurred in the pulperías: in-house taverns that were simultaneously public and private—or rather, where the intimate act of eating together was publicly performed. Leo Garofalo describes the pulperías as an interethnic, plebeian “public sphere” owned and operated by mestiza and mulata women, that often served as centers of credit and urban-rural patronage, given their monopoly on wine, guarapo, and chicha production. Those pulperías that doubled as overnight inns
and boardinghouses were located within the domestic space of the houses, alongside rooms that they rented out to other tenants. These establishments were usually (but not exclusively) owned by nonelite Spaniards and staffed by castas and slaves, who could cook, clean, launder, carry water, and perform the arduous domestic labor involved in tavern keeping and rooming. I suspect that Augustina’s owner operated this type of boardinghouse.104 Those tavern-boardinghouses that served meals were largely operated by casta women and patronized by men of all castes and classes.105 This kind of transient and rowdy environment inevitably led to tensions among neighbors regarding the respectability of the neighborhood—which was guarded jealously by the residents—and women who ran taverns and boardinghouses were overwhelmingly suspect as loose women. When one reads the witness denunciations, the line between taverns and brothels was none too clear. Once again, when commensality was used by witnesses as evidence of illicit romantic affairs, accused men indignantly counterclaimed that eating and drinking at the same table were not intimate acts but “business affairs” given the nature of the in-house tavern. Others attributed their accusations to smoldering grudges among business associates, creditors, or neighbors. Many men cast aspersions on the moral standing of their accusers by disclosing knowledge of dubious romantic or financial affairs that served to discredit their accuser’s testimony. Not surprisingly, the process of assembling witnesses also gave individuals in those circles opportunities to pursue personal vendettas and private animosities against the plaintiff or defendant. As seen in Nicolás Flores’s vehement rebuttal, it was common in the counterclaims for defendants to refer to the vendetas as a means of disqualifying the characters of the witnesses, and by extension, impugning the veracity of their statements.


104. Garofalo recounted that viceregal licenses were issued for 270 pulperías in 1632 in Lima—a number that corresponds to the chronicler Bernabé Cobo’s observation that there was a pulperia on every street corner in Lima (Bernabé Cobo, “Historia de la Fundación de Lima,” in Monografías Históricas sobre la Ciudad de Lima [Lima: Imprenta Gil, [1639] 1935]).

105. Saundra Lauderdale Graham describes the ambiguity of colonial public and private spaces by contrasting the domesticity of the house and with the dangers and diseases of the street. However, for women in domestic servitude, the street offered recreation, solidarity, and respect as long as enslaved women legitimated their public excursions as part of their domestic occupation. Pulperías were semidomestic and semistreet spaces, where enslaved women and men could meet friends, acquaintances, or lovers while procuring food, or doing errands for their owners (House and Street, pt. 2).
This bitter haranguing of claiming/counterclaiming led to bad feelings among neighbors, guildsmen, kinsmen, and friends. These accusations held long-term consequences for people’s access to credit (which would principally be available from each other), their capacity to participate in solidaristic guilds, tradesmen’s associations (oficios menestrales), and confraternities, and imperiled their ability to rely on the financial security networks that formed part of slave, plebeian, and casta society. For these admittedly more temporal reasons, it is important to look at these accusations both in terms of who was doing the accusing (i.e., their relationship to the accused) and what the longer-term implications were for the parties involved rather than merely focusing on the deterrent and punitive aspects of these proceedings.

This does not imply that plebeians unanimously rejected the moral opprobrium directed at concubinage. However, it does lead us to question how widely those elite ideas about prescriptive patriarchy/sexuality were shared, and whether elite disapproval was strategically mobilized to harass fellow parishioners. It also prompts reflections about the enormous effort that Church and Crown expended to regulate intercaste sexuality and marriage. Borrowing from Ann Stoler’s prodigious insights about the links between the carnal and the imperial, feminist scholars routinely call our attention to the pattern of regulating sexuality that is ubiquitous in the history of conquest/settler colonialism—particularly during the early stages where patriarchal domestic arrangements were supplanted by concubinage, involuntary, and interethnic sex.

Clearly, the Crown sought to buttress viceregal authority through the threat of (often draconian) punishment for sexual transgressions, although their deterrent effects were patently negligible. Predictably, the fluidity of libidinal arrangements was especially vilified and targeted. Given the virtual synonymity of caste and concubinage, viceregal administrators recruited the moral policing capacity of the ecclesiastical courts to castigate extramarital relationships to publicly punish interethnic coupling. We see evidence of this in the voluminous legislation aimed at regulating public morality, concubinage, vagrancy, and sumptuary codes for blacks and castas. Erstwhile domestic practices that were publicly performed were demoted and pushed underground. But as the cases described herein demonstrate, interethnic sex and concubinage coexisted with formal

106. For men, upward mobility and financial security pivoted around their entry into artisan guilds and lesser-ranked oficios menestrales. Entry and participation into these associations was jealously guarded (cf. Harth-Terré and Márquez, El artesano negro, alluding to the oficios as relatively open professional associations for casta apprentices and artisans in sixteenth-century Lima).

endogamous marriage. The intimate arrangements that the clerics and vice-
roys sought to reorder were notoriously resilient, and sexuality remained a
 crucial element that mediated and reinforced racialized structures of
inequality. The coexistence of marriage and concubinage left intact the
sexualized arrangements that created paths to freedom and social mobility,
but it also complicated them through increased scrutiny.

**Sex and the City: Urban Slave Divorce Lawsuits**

Slaves used courts to prevent familial separation, but they also used courts
in their fights with each other to bring about familial separation. As men-
tioned previously, many enslaved women seeking an ecclesiastical divorce
sought refuge with their owners. Consider, for instance, the fate of Cuarita
Castilla, china libre (a freed woman of black and mestizo parentage), alle-
ging extreme cruelty at the hands of her husband, José Barrenas, zapatero
cuarterón natural de Estremadura108 (a Spanish shoemaker of one-quarter
black heritage). Cuarita and her three children sought shelter with her for-
er owner and asked the court to grant her an ecclesiastical divorce with
child support for the three children.109 She offered evidence of José’
repeated whippings, senseless rages, and threats to her life—referring to
numerous public indignities and verbal assaults in which “he treated me
like a slave.” Many recently freed litigants voiced their grievances at
such verbal insults, which undoubtedly reminded them of the precariou-
ness of their freedom. We see constant references to the offensive desig-
nation of “slave” in mixed-status marriages by the freed partners in their
petitions for annulment or ecclesiastical divorce—labeled a defective con-
dition (en su defecto de ser esclavo) on par with sexual impotence, heresy,
or insanity that should legally invalidate the marriage.

Despite alleging these physical and verbal assaults, the procurator told
Cuarita that she had failed to state her case of extreme cruelty and ordered
her to resume married life without further hesitation as God and José had

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108. “Cuarita Castilla, china libre, mujer legítima de José Barrena . . . por la cruel sevicia y
mala vida que me da a causa de sus corrompidas costumbres . . . y contrayéndole esta a las
enormes infurias, golpes y atrocidades con que ha intentado quitarme la vida y cautelándome
de experimentar semejante infortuna y desgracia, tomé por auxilio la casa de la Señora
Castilla, mi ama que fue donde me hallo acogida . . . que solicito que me contribuya mi
marido José . . . los premios y alimentos a mi persona como para sus tres hijos que mantengo
a mi lado.”

109. Under canon law, ecclesiastical divorce was granted on the grounds of heresy, mutual
decision to enter religious orders, adultery, and sevicia—cruel and inhuman punishment.
The parties were not free to remarry.
This was not an uncommon ruling—rather, it reflected the role of the Church courts in ensuring appropriate gendered norms. Church procurators were more favorably disposed to uphold men’s disciplinary powers even while upbraiding owners against excessive cruelty to their slaves. This was not a sympathetic forum for women’s complaints about marital unhappiness. Though in many cases ecclesiastical judges berated husbands for exceeding their disciplinary boundaries and “educated” them on appropriate methods of dealing with wayward/unruly/negligent wives, they nonetheless reproached women for seeking legal separation and told them instead to resume married life with their husbands to conform with the will of God.

As many scholars of ecclesiastical divorce litigation have noted, judicial admonition afforded unhappy wives a measure of autonomy to redress the abuse they suffered, because women garnered support from more powerful actors to remind their husbands of the limits to their disciplinary power. But we do not know the long-term effects of these ecclesiastical remonstrations on redressing abuse if and when the couple resumed married life, especially when husbands prevailed in the proceedings. At most we expect that husbands were put “on notice” that their spousal conduct was prone to lasting ecclesiastical surveillance.

Enslaved mothers, wives, and lovers went to the courts to enforce child support (premios y alimentos), paternal recognition, and to resist domestic violence and abandonment. Imperial lawmaking was notoriously contradictory with regard to children. Despite the considerable inveighing against intercaste concubinage and illegitimacy, a 1563 decree stipulated that preference was to be given to Spanish fathers of enslaved children who were being sold, if the fathers wanted to purchase and liberate them. Child support claims reveal the competing interests and responsibilities of slave-owners and fathers in the paternity of the child. Since enslaved status

110. AAL, Divorcios, Leg. 2, 1569.
111. Van Deusen, “Boundaries of Virtue”; Arrom, Women of Mexico City; Lavrin, Sexuality and Marriage.
112. “Cuando se vendieren los hijos de españoles en esclavos se diese preferencia a sus padres si los querian comprar para libertarlos” (Recopilación de las Leyes de Indias, Lib. 70, Tit. 50, Ley 60). Two other pieces of royal legislation expressed concern over Spanish children who “wandered around lost” in their mother’s communities lacking the guidance and instruction of their Spanish fathers (R.C. 80, 1533, “Que los hijos de españoles habidos en indias y andando fuera de su poder sean recogidas”; R.C. 93, 1535, “Para que los que tuvieran hijos en indias los puedan recoger y tenerlos consigo,” reprinted in Konetzke, Colección de Documentos, 147, 168).
113. Bianca Premo, Children of the Father King: Youth, Authority and Legal Minority in Colonial Lima (Chapel Hill: University of North Carolina Press, 2005). “Child support” is a misleadingly modern term for these cases. Attempts to secure premios y alimentos could
was transmitted maternally, the mother’s owner was legally responsible for feeding and clothing the child. However, if the child’s father was free and/or better off financially than the mother’s owner, the expenses of childrearing (primarily costs associated with the child’s education, apprenticeship, or tutelage) accrued to him after the age of three. This paternal legal obligation was happily pointed out by cash-strapped owners, who were often the motivated parties instigating these suits. These complaints often reveal tensions over the scope of patriarchy, complicated even more by enslaved status, competing paternal claims, and the ecclesiastical mandate to promote responsible paternity.

Conclusion

As argued consistently throughout this article, sexuality, affect, and gender shaped the avenues to freedom accessible to slaves, but these were also contingent on the day-labor arrangements germane to the particular urbanism of Peruvian slavery. The demographic concentration of slaves within the capital city of Lima and the predominance of waged day-labor practices resulted in a high degree of social and physical mobility and self-manumission. The historical record shows that both types of manumission (i.e., self and testamentary) were disproportionately common to urban

involve pleas for better clothing, intervention on behalf of sons for occupational opportunities, and money from wealthier fathers.


115. Premo, *Children of the Father King*; Harth-Terré and Márquez, *El artesano negro*, (showing the elaborate apprenticeship agreements that were redacted to stipulate responsibilities for clothing, food, health care, and transmission of knowledge that devolved to the maestro who became in loco parentis for his young charge.)


117. For self-manumission in Peru, see Carlos Aguirre, *Agentes de su propia libertad* (Lima: Fondo Editorial PUCP, 1995); Harth-Terré and Márquez, *El artesano negro*; Hünefeldt, *Paying the Price of Freedom* (all showing that women were more often manumitted through testamentary means than men, but both achieved self-manumission at equal rates).
slavery and to women in domestic servitude. In Lima, self-manumission was the principal path to freedom, raising the presumption consistent with observations of other slaveholding societies that women’s higher rate of self-manumission resulted from negotiations for lower purchase prices through the exchange of sexual favors, and in some cases, resulted in outright freedom. Sexual intimacy (forced or consensual) incontrovertibly limited the transmission of inherited slavery. Interethnic sexuality affirmed racial mixing but maintained white superiority by conditioning social mobility on the interplay of religious conversion, assimilation of elite norms, and restricted access to education or entry into religious orders and trades.

My purpose in looking at litigation brought primarily, though not exclusively, by women was threefold. First, the historiographical treatment of women in slave societies has been centrally concerned with their double exploitation—through their status as enslaved and female. Understandably, a great deal of this literature is dedicated to outlining the specifics of women’s experience of subordination, especially with regard to sexual and reproductive violence and oppression. I have tried to situate enslaved women as legal agents who simultaneously occupied multiple identities as mistresses, workers, wives, mothers, wet nurses, and domestics that conditioned their experience of slavery. Despite the variable outcomes of their lawsuits, I explored the ways that enslaved women mobilized channels of affection and sexuality to access freedom, showing that the experience of enslavement was less encompassing than has been traditionally thought. These cases reveal instances in the lives of enslaved women in which they acted as subjects other than human property.

My second purpose was to look at the slave family. The rich body of literature about the survival strategies of the slave family shows the resilience on the part of slave couples to maintain strong familial bonds, disputing the widely held notion of pathological black families. Family historians and feminist scholars have also repeatedly drawn our attention to the dual nature of the family—at once a site of protection, nurturance, and extreme cruelty for many women (and some men) and children. Without romanticizing the experience of enslaved families, I was struck by the use of legal avenues to pursue family integrity that appear so frequently in Latin American ecclesiastical courts in comparison with their virtual absence in U.S. courts. These valiant efforts of slave couples add to the canon of

knowledge about the slave family and situate the broader role of courts in slave litigation. Finally, I wanted to go back to the disputed claim of slaves as socially dead versus agentive beings. In particular, I found Moses Finley’s claim about alienation and the sexual exploitation of slave women equally disturbing and compelling. Finley wrote that “the final proof of non-status is the free sexual access to slaves which is a fundamental condition of all slavery. . . . Sexual exploitation is a denial, not a recognition of a woman’s humanity whether she is slave or free.” Perhaps of all the litigants in these vignettes, Finley’s comments are most applicable to Ana de Velasco, who was frustrated by the court in her attempt to change the terms of her relationship with her owner. But I cannot see Ana de Velasco as a socially dead being. I agree that our assertions of sexualized agency must necessarily encompass the limitations of her experience even as we look more favorably at the rule-flouting machinations of the María de Allyóns of the seventeenth century. Our retrospective explorations vacillate according to the trends dominating slavery studies, which swing between the pendulum of extreme domination and the assertion of agency in contexts inimical to the exercise of self-determination. Admittedly, my study is positioned on the agency side of the pendulum, negotiated through the complex and often contrary dimensions of gender and caste in the hierarchies of a slaveholding society as women navigated between marriage and slavery. My aim here has been to add to what we know about the laws of slavery through examining proceedings brought by enslaved litigants themselves—which must be cautiously filtered through the lens of paternalism and domination that characterized slaveholding societies. I have sought to uncover the processes through which it was possible to negotiate fractional freedoms, despite the overwhelming odds against success.