Litigating Liberty

For pity is the virtue of the law
And none but tyrants use it cruelly.

Timon of Athens

On September 14, 1616, Anton Bran petitioned Lima’s ecclesiastical court to compel Josef de Barcala to pay his wife for meals that she had cooked and delivered over the course of the preceding seven months. Anton’s wife, Ysabel, diligently prepared meals for Barcala as the parties had agreed. As the weeks progressed, Barcala apparently became more enamored with Ysabel’s cooking. Barcala asked Ysabel to deliver his meals on the weekends and to increase the amount of food she provided so that he could share meals with a fellow priest. Barcala agreed to pay for the extra food by raising the monthly stipend to fourteen patacones (pieces of eight). However, Barcala did not honor the agreement. Instead, he continued to pay for his meals at the originally contracted price of twelve patacones. Ysabel did not discontinue her food deliveries, but all entreaties for increased payment were unsuccessful over the next two months. Consequently, Anton filed this petition.

This case involves a married couple claiming payment for breach of an oral contract. At first blush, Anton’s complaint is the type of case that contemporary legal practitioners would classify as belonging to the subject matter jurisdiction of small claims courts—disparagingly categorized as “garbage cases.” Yet Anton’s complaint was heard by Lima’s most prominent jurist: the chief ecclesiastical judge (provisor) of the Archbishopric court, don Feliciano de Vega. Of particular interest for the purposes of this chapter are Provisor Vega’s thorough investigation and the ruling he subsequently issued in favor of Anton and Ysabel. The celerity with which Provisor Vega issued his ruling is also significant.

Provisor Vega’s ruling was brief and does not offer much in the way of an explanation as to why he ruled in their favor, but it does suggest he was most
persuaded by the couple’s uninterrupted efforts to deliver Barcala’s food, honoring their end of the bargain. Four witnesses gave testimony, including the priest, Luis Nieto Palomino, with whom Barcala shared Ysabel’s cooking. It was a shrewd move on Anton’s part to present Nieto as a witness, since Nieto’s concurrence strengthened Anton’s case. Two young apprentices living and working with Anton testified that they delivered the meals to Barcala’s quarters. The apprentices were identified as belonging to the “tierra Bran, morenos ladinos en la lengua española,” a hybrid status that signified their familiarity with the Spanish language though they were African born. There was no written contract between the parties, and no one alluded to any formal agreement beyond the oral promise of payment for services rendered.

On October 20, 1616 (twelve days after witness testimony was recorded and approximately five weeks after Anton’s initial complaint), Provisor Vega ordered Barcala to pay Ysabel 20 pesos. This included the outstanding amount due to Ysabel plus legal costs incurred in the complaint.

It bears repeating that there was nothing particularly complicated about this case. Once the couple established a breach of promise, it was incumbent on Barcala to make restitution to the harmed parties. Yet Anton and Ysabel’s experience with the law enables us to chart larger patterns with regard to enslaved complainants’ expectations that they would be able to air grievances against their adversaries in the ecclesiastical court. Legal action was pursued without hesitation when negotiations between Anton and Barcala did not yield the desired result. Though they did not have extensive legal knowledge, Anton and Ysabel were undoubtedly mindful of the weight that a priest’s testimony would carry in an ecclesiastical forum. Anton Bran’s relatively insignificant case and others like it suggest that the urban enslaved and freed community constructed networks of shared legal knowledge: one successful outcome or strategy could convince others to use the courts to air (and perhaps resolve) their grievances.

This chapter examines litigation in societies with slavery. It describes the kinds of litigation pursued by enslaved and freed peoples and gives an overview of the legal process, paying particular attention to the ecclesiastical court.

The first section retraces the steps of enslaved litigants who sought legal intervention. Although the idea of a continuum between accommodation and resistance has largely fallen into desuetude, the empirical impulse looms large in our historical accounts of litigation. How many slaves went to court? Did they win or lose? Who were their advocates? How were they paid? The second section describes the professional judicial hierarchy of notaries, procurators, lawyers (letrados), prosecutors or solicitors (fiscales), and magistrates (oidores). In so doing, it looks in depth at the social background of legal practitioners and their professional networks, the jockeying for appointments to the Audiencias by peninsular courtiers and aristocratic criollos alike, and the contentious practice of the sale of judicial appointments. The third section
focuses on the process of issuing *censuras generales* to address jurisdictional pluralism and the opportunities for forum shopping open to plebeians and enslaved complainants. In the last section, I discuss Anton and Ysabel Bran as legal protagonists and as historical and historiographical subjects, considering the ways they have been portrayed, enumerated, and studied by generations of historians, census takers, people in their community, and legal professionals.

THE LAW OF SLAVERY VIS-À-VIS ESLAVED LITIGANTS

A study that takes as its subject slaves’ use of courts implicitly differs from a study of the laws of slavery, although both approaches ultimately are shaped by the issue of agency and structure. As a qualitative study, my aim is to discover and explain how people like Anton and Ysabel located themselves in and experienced structural processes of enslavement rather than give the reader a macro-level analysis of Iberoamerican urban slavery. Generations of earlier scholars may have ignored Anton Bran’s lawsuit as tangential to the laws and decrees that proclaimed Anton’s rights, his legal personality, or the lack of both. Those adhering to Marxist or materialist approaches would probably not have regarded Anton as a legal protagonist at all. On the contrary, they might have seen Anton’s victory as evidence that the court conceded individual gains to co-opted and compromised subjects: individual victories provided an escape valve from the seething cauldron of discontent whose eruption would have led to real revolution and social change.  

Undeniably, the material conditions of people’s lives matter. Ysabel sued Barcala to force him to pay what amounted to the equivalent of a month’s day wages for a *jornalera* slave in seventeenth-century Lima. This was not a negligible sum for someone trying to purchase her freedom. In focusing on moments of “resistance” or what I prefer to call “protagonism,” I do not intend to detract from the important intellectual work performed by superstructural analyses of slavery. However, since I am urging readers to take contingent liberty (as opposed to abstract freedom or total bondage) seriously as an analytical construct, I look more closely at the instances when fractions of freedom may have been accrued through recourse to the law.

BAROQUE LIMA

The City of Kings (or *la Ciudad de los Reyes*), as Lima was known, was the capital of the viceroyalty of Peru. After its founding in 1535 and notable growth through the viceregal reforms in the 1570s, Lima blossomed into a bustling metropolitan center by the late sixteenth century. The city’s population and commerce boomed. Lima and the entrepôt of Callao served as vital port cities importing people and goods from Central and Western Africa, the
Baroque Lima

Philippines, and Europe and exporting precious metals and other rich commodities from the Andes. In 1544 the crown established Lima’s high court (*Real Audiencia*), with competency over regional *Audiencias* in Panama, Santa Fe de Bogotá (1554), Quito, Charcas, Buenos Aires, and Chile. (See Map 1.1). The *Audiencia* reviewed cases on appeal and also functioned as a court of first instance. Irresolvable cases were referred to the Council of the Indies, which met in sessions convened by the kings wherever they were in residence. Lima’s tribunal of the Inquisition
began operations in 1570, exercising jurisdiction over the non-Andean population for crimes against the faith. The Inquisition tribunal was under the jurisdiction of the *Suprema*, located in Madrid.

In 1546, Pope Paul III elevated Lima to an Archbishopric, with authority over the bishoprics of Cuzco, Quito, Popayán, Panama City, and Léon (Nicaragua). Religious orders flocked to Lima, constructing vast convents and monasteries that essentially functioned as cities within the city. The crown also authorized the establishment of colleges to educate Spaniards and the children of Inca nobles in religious instruction and arts and letters. In 1551, Carlos V
issued the charter inaugurating the University of San Marcos, which was ratified by the papacy in 1571, rendering it the first university in the Americas. (See Figure 1.5). The Dominican order established the earliest college in 1548, and the Augustinians, Mercedarians, and Franciscans quickly followed suit. The Jesuits built the College of San Pablo in 1568, initiating a stormy relationship with the crown that arose from the order’s unyielding insistence on independence and autonomy that lasted until its expulsion 200 years later. Between 1561 and 1624, five monasteries were created to minister to the spiritual needs and education of Spanish women from well-known families. Religious orders and the city’s philanthropic elite financed hospitals, orphanages, and other charitable institutions for the less fortunate (los desamparados).

Some demographic data will be helpful to contextualize the commingled lives of enslaved and free peoples within the dense urban spaces of colonial Lima. A well-cited census conducted in 1613 estimated the city’s population at 25,167. Numerically, the largest group were blacks and mulatos, followed closely by Spaniards. Anton Bran was among the 10,000 plus negros visited

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**Figure 1.2.** Main cloister of the Monastery of San Francisco, Lima 1557–1678. Image credit: Kelly Donahue-Wallace.
by an indefatigable enumerator in the 1613 census. Also enumerated were small numbers of urbanized Andeans living within the city walls and others who were interned (recogidos) in religious institutions.¹¹

By the beginning of the seventeenth century, the Spanish population included at least four groups: an established criollo community (beneméritos who traced their lineage back to the earliest conquistadors), peninsular nobles and functionaries serving in the viceregal bureaucracy, other migrants, artisans, and merchants seeking fortune and fame in the Americas, and members of religious orders or secular priests who spread the Catholic faith in the New World.¹²

**1613 Lima Census**

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Españoles</td>
<td>5,271</td>
<td>4,359</td>
<td>38.9</td>
</tr>
<tr>
<td>Religious personnel</td>
<td>894</td>
<td>826</td>
<td>6.9</td>
</tr>
<tr>
<td>Negros</td>
<td>4,529</td>
<td>5,857</td>
<td>41.9</td>
</tr>
<tr>
<td>Mulatos</td>
<td>326</td>
<td>418</td>
<td>3.0</td>
</tr>
<tr>
<td>Andeans (indios)</td>
<td>1,116</td>
<td>862</td>
<td>7.9</td>
</tr>
<tr>
<td>Mestizos</td>
<td>97</td>
<td>95</td>
<td>0.8</td>
</tr>
<tr>
<td>Interned population (orphans, divorcees, the infirm)</td>
<td>79</td>
<td>438</td>
<td>1.3</td>
</tr>
</tbody>
</table>

*Source: Padrón de los Indios de Lima en 1613.*

With the development of the Transatlantic Slave Trade Database, we know a great deal more about the African-descent population in the Americas. Questions invariably remain, but we know enough to make a set of educated guesses about the provenance of people enumerated as “Negros” in the 1613 census.¹³ Most of the slaves destined for Lima disembarked in Cartagena de Indias, the Atlantic port city that furnished slaves for all of Spanish South America.¹⁴ As Table 1.1 shows, Cartagena experienced a surge in slave imports between 1601 and 1625. Approximately half this number arrived in the preceding and subsequent decades. Most of the Cartagena-bound slaves in the late sixteenth and early seventeenth centuries came from the Upper Guinea Rivers, Senegambia (Cabo Verde), and West Central Africa.¹⁵

Throughout the sixteenth and early seventeenth centuries, the Spanish Crown relied exclusively on its Portuguese subjects for slave procurement. Spain made little effort to invest in the slave trade: it built no alliances with West and Central African kingdoms and established no maritime forts or trading posts on the Slave Coast or Gold Coast of Africa. Rather, Spain pursued alliances through imperial annexation and dynastic marriage, thereby exploiting the efforts of their subjects who had connections and commitments to the slave trade. Throughout the sixteenth century, the merchant guild and the royal house of trade (Casa de Contratación) complained
vociferously to the crown about unreported freight and lost income that resulted from the Portuguese monopoly over the slave trade. However, the *asiento* model (whereby the Spanish Crown granted royal licenses to certain commercial trading houses) was convenient as long as Portugal and its colonies were ruled by Spain. Moreover, the Portuguese *asiento* upheld the theological justification that undergirded the slave trade as the church and crown struggled with the thorny issue of indigenous slavery. As George Fredrickson puts it succinctly, Spaniards were “more averse to making slaves than buying them.”

Concomitantly, the Dutch increasingly grew prominent in the slave trade after 1596, and the British solidified their presence in the Caribbean in the latter half of the seventeenth century. The Dutch rivaled the Portuguese in the seventeenth century and even occupied parts of Brazil between 1630 and 1654. After the separation of the crowns, the Spanish authorities were demonstrably reluctant to grant the *asiento* to the Dutch traders, whom they continued to regard as former vassals rather than global powerhouses in the slave trade. Spain’s hostilities with the Netherlands would not end until the Peace of Westphalia in 1648. In sum, Spain’s lack of maritime infrastructure, strained relationships with the powerful trading entities in Britain, the Netherlands, and Portugal, and a growing need for slave labor in the Americas created a trifecta that led the crown to grant the *asiento* to two Genoese trading houses between 1663 and 1674.

In this tableau, slave procurement was marked by transimperial traffic and contraband. Even with the Transatlantic Slave Trade database, we know comparatively little about the importation of Africans into Peru after 1640. Older scholarship on the slave trade identified Buenos Aires as an important secondary source of slaves for Lima, especially with regard to contraband trading. The most current scholarship depicts a precipitous decline of slave importation into Spanish America after the separation of the Portuguese and Spanish crowns. Thus, the increase in the African-descent population throughout the seventeenth century was due to a combination of “internal” trades, contraband, local reproduction, and the growing community of freed

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**Table 1.1. Provenance of Slaves Landing in Cartagena de Indias, 1576–1650**

<table>
<thead>
<tr>
<th>Years</th>
<th>Port of origin</th>
<th>Cartagena</th>
</tr>
</thead>
<tbody>
<tr>
<td>1576–1600</td>
<td>Senegambia, West Central Africa</td>
<td>37,819</td>
</tr>
<tr>
<td>1601–25</td>
<td>Bight of Benin, West Central Africa, Senegambia, Gulf of Guinea</td>
<td>79,332</td>
</tr>
<tr>
<td>1626–50</td>
<td>Gold Coast, Senegambia, Gulf of Guinea, West Central Africa</td>
<td>38,740</td>
</tr>
</tbody>
</table>

*Source: Transatlantic Slave Trade Database*
people and quasi-free *pardos* and *mulatos*. Newly arrived *bozales* in the latter part of the seventeenth century were likely to be in the minority of the black population.

Given the prolific investigation of slave importation associated with the Transatlantic database, today’s slavery scholars are both blessed with an abundance of information about ports of provenance and cursed by the interpretive impulse of microhistory. On one hand, we have reliable information (subject to constant modification and updating) of the early waves of African arrivals. On the other hand, we have a legacy of qualitative scholarship that accepted African ethnonyms (within certain constraints) as evidence of ethnic affiliation. Quantitative scholars answer with greater precision the questions of where (provenance), who (ethnic affiliation), and how many (unrecorded voyages, contraband, and surges related to raiding, political strife, dynastic decline). Social historians figure out who individuals were, how they forged new lives and families, and how they reconstituted new identities.

Let us presume that Anton Bran did, in fact, hail from “the rivers of Guinea” as we retrace his steps as a litigant in the early decades of the seventeenth century. By the time Anton Bran sought judicial recourse in 1616, he could rely on an elaborate set of ecclesiastical, administrative, and juridical structures. King Philip III had just appointed the Prince of Esquilache, don Francisco de Borja y Aragón, as viceroy in December 1615. The city was on edge, due to an attempted attack by Dutch pirates intent on diverting the galleons of the Armada. The viceroy’s principal agenda was to secure the port of Callao, as well as fortify the defensive structures to guard against foreign attacks.

The resplendent viceregal couple entered Lima with an unprecedented number of courtiers and attendants, which caused both awe and resentment among the local criollo elite. An aficionado of the arts and belle lettres, Esquilache expanded “court society” in Lima and relied heavily on legal and ecclesiastical advisers for daily affairs of governance. During Esquilache’s six-year reign, governance was largely in the hands of learned advisors and magistrates (*let-rados*). This greatly increased the power and influence of the men appointed to the bench. In fact, when Esquilache withdrew from his viceregal post in 1621, he left the chief judge at the time, don Juan Jiménez de Montalvo, in charge of governance in the viceroyalty until his successor arrived one year later to assume his post.

**MERcy IN THE MARKETPLACE**

The sale of high-level judicial appointments was vigorously contested throughout the colonial period, but it became particularly heated during the sixteenth and seventeenth centuries. Viceregal policies dictated that magistrates should not be citizens (*naturales*) of the locality or jurisdiction over which they presided, creating a preference for staffing judicial positions in
the Audiencias with peninsulares. However, the fiscal crisis at the dawn of the seventeenth century unleashed by Philip II’s exorbitant military expenses incurred in the Dutch wars and by his foreign policy commitments increasingly led to the (somewhat disingenuous) practice of creating supernumerary judicial offices and then selling them to generate revenue for the crown.\textsuperscript{30} In tandem with the fiscal emergencies of the period, a considerable number of well-trained criollo jurists were willing to purchase judicial posts at significantly high prices.

Besides inveighing against the commodification of justice, royal advisers repeatedly cautioned against selling judicial appointments to wealthy local bidders, warning that criollos were so imbricated in economic, political, and social relationships that they could not possibly issue impartial judgments in cases brought before them. Perhaps more importantly from a monarchist perspective, the commodification of these positions imperiled the king’s ability to reward his loyal subjects, whose families spent decades if not generations in his service. These advisers also warned of potential criollo insurgency, raising the prospect of the lack of fealty or allegiance to the monarch if offices were sold.\textsuperscript{31}

However, even before the systematic sale of supernumerary offices was formally endorsed in 1687, the practice of selling judicial posts piecemeal did not lead to any discernible secessionist uprising or ardent criollo republicanism. By nominating criollos and those who claimed status as \textit{beneméritos} as servants of the king, the viceroys strategically reinforced institutional and political loyalty to the crown.

\textit{Beneméritos} were descendants of the conquistadors and early settlers who claimed the right to royal grants of encomiendas (tributary rights paid by indigenous subjects) and favors (\textit{mercedes}) based on their long-standing service to the king in the Indies.\textsuperscript{32} Disgruntled aristocrats vociferously complained to the king about viceroys who granted income-generating municipal appointments to their retainers, violating the king’s explicit orders to set aside a number of positions for \textit{beneméritos}. They were particularly outraged when the Prince of Esquilache granted his personal musician a lucrative \textit{corregimiento} in flagrant disregard of the king’s orders. This appointment prompted a furious flurry of correspondence to King Philip III, alerting him to the viceroy’s infractions.\textsuperscript{33} King Philip responded with a lengthy decree prohibiting his viceroys from nominating members of their entourage to positions in the Indies and limiting the number of retainers with whom viceroys could travel from Spain.\textsuperscript{34}

Despite the \textit{beneméritos}’ bitter complaints, they did not reject the underlying regalist premise that authorized the king to name his courtiers as advisers.\textsuperscript{35} Rather, \textit{beneméritos} were angered by the unfair geographical advantage peninsular retainers enjoyed in securing the king’s patronage and his \textit{mercedes}.\textsuperscript{36}

In the judicial realm, nominations unfolded differently than they did for the Treasury (Hacienda). \textit{Beneméritos} who specialized in law used their position, legal training, and expertise to consolidate their social standing, precisely because of the career paths that a law degree facilitated. Viceroy...
circumvented the king’s orders by nominating criollo letrados to the Real Audiencia. Astute viceroys recognized the impracticality of the embargo on criollo appointments to the Audiencias and often intervened personally on behalf of a preferred nominee to the monarch for special dispensation. As the president of the Audiencia, the viceroy was especially motivated to request these dispensations. A viceroy’s tenure was relatively short – ranging between three and five years. As evidenced by Montalvo’s transitional reign, magistrates with long-term appointments provided administrative stability. When faced with a criollo nominee who demonstrated moral rectitude and probity in his affairs or an inexperienced peninsular, viceroys did not hesitate to express their preferences for local appointees. Indeed, a careful review of administrative correspondence shows that viceroys were not above rigging elections to ensure that preferred beneméritos were appointed to the bench.

Though the plebeian litigants who sought the would-be nominee’s services had little influence over who was appointed, they were nevertheless significant for two reasons. First, the most important feature of Iberoamerican law was the magistrate’s position as a delegate or instrument of the king’s clemency and justice. A magistrate’s professional reputation depended in large part on his fairness in the courtroom ruling over the cases plebeian litigants brought before him. The appeals to justice were directed at the king, whose appointees were duty bound to execute his will with fidelity and rigor. The normative appeal and moral stature of this discourse was a powerful disincentive to challenging or undermining those ideals themselves. Nowhere or at any point did the discourse of mercy undermine social hierarchy.

Second, the closeness of the legal community itself also opened up the potential for scrutiny from intimates and confidantes. What this meant in practice was that a small legal community existed among Lima’s elite with aspirations and the requisite connections to judicial appointments, but also whose private affairs were subject to scrutiny; in the event of egregious infractions, information leaked about such infractions could lead to magistrates being removed. Magistrates and their families were subjected to a strict body of rules intended to diminish the inevitable conflicts of interests that would emerge as they adjudicated legal affairs in the jurisdictions in which they wielded influence. Practically, these rules were impossible to enforce, as magistrates were thoroughly connected through social ties of marriage, kinship, and servitude – networks that in effect determined their eligibility to serve in the positions they sought.

Slaves lived in close proximity to their masters; they knew their secrets and could put their most intimate and embarrassing secrets on display. Allegations of scandalous behavior, vindictiveness toward one’s neighbors, associates, and slaves, and financial irresponsibility were detrimental to one’s public standing and honor. Sexuality was constantly subject to judicial review. Slaves often occupied a supporting role onstage in colonial scandals – either as protagonists or as witnesses. The knowledge they held could be selectively wielded (or strategically disclosed) to secure individual victories.
The (Oftentimes) Lengthy Life of a Lawsuit

If you need to slow down the timing of the lawsuit
Ask for three recesses during the time of harvest.
When harvest is over,
You need to present your proof,
(which is the stage for which you requested a recess). You should then request a fourth extension of twenty days.

Because Lima was the site of the Real Audiencia and the Archbishopric court, enslaved men and women there had relatively unimpeded access to both tribunals to request injunctive relief, to air grievances, and to protest breaches of oral and written contracts. No legislation prevented slaves or other dependents from approaching a procurator about retaining their case.
Andeans had special procurators (protectores de naturales) appointed by the crown to adjudicate their complaints. Indigenous disputes were presided over by alcaldes mayores and corregidores at the district or municipal level. This administrative structure was intended to consolidate the spatial/territorial arrangement of two separate republics – one for Spaniards and the other for Andeans who were brought under the protection of the crown. Slaves, like other nonindigenous plebeians, were subjects of the jurisdiction of the república de españoles.

The steps taken by enslaved or freed peoples seeking legal representation reflected those of any potential litigant – notwithstanding their gender, status, or condition. It is true that Anton Bran brought a suit on behalf of his wife Ysabel, but the laws of coverture did not prevent Ysabel from retaining her own counsel. Indeed, enslaved married women litigated independently of or on behalf of their husbands.

From the extant records, it is impossible to estimate Limeño slaves’ litigiousness with any degree of precision. An impressionistic view of the traffic in the ecclesiastical and royal court does, however, lead to the unequivocal conclusion that slaves took legal action quickly, filing petitions and seeking protection. Some cases warranted rapid legal action. Petitions for injunctive relief were filed almost immediately when a spouse’s owner threatened to separate the couple through travel or relocation. Similarly, slaves filed writs of amparo, requesting the royal court’s protection against inflictions of physical harm, to stay the abusive actions of owners and aggressors. Enslaved criminal fugitives swiftly sought protection against their arrest by secular lawmakers by claiming sanctuary on hallowed ground. These sanctuary cases were sites of vigorous contestation between church and crown over public order and ecclesiastical privilege.

Other causes of action – divorce, breach of contract, annulment, probate, inheritance, and change of ownership – followed the more typical glacial pace of colonial litigation. Causas de negros were civil actions brought by enslaved and freed litigants, like the action Anton Bran brought against the gluttonous priest in the ecclesiastical court, which exercised jurisdiction over actions involving religious personnel and institutions. Enslaved parishioners could also bring accusations of concubinage and idolatry to the attention of church authorities, as these were deemed crimes against the faith. Divorce and annulment petitions, as well as enforcement of matrimonial promises, were also subject matter that fell within the ecclesiastical court’s jurisdiction.

The first step in lodging a complaint was to approach a notary to record one’s grievance. The initial complaint is often the least mediated part of the folio that constitutes the legal record. Although the complaint was highly stylized and formulaic in that the petitioner presented himself with the utmost respect for the law before the magistrate (con la major forma que haya lugar en derecho parezco ante Vuestra merced), this is where the person told his story.
and appealed for justice. It is perhaps more accurate to depict the person as a supplicant rather than as a complainant at this point.

Once recorded by the notary, the petition was read during one of the daily sessions in front of a panel of magistrates. The magisterial panel in the Real Audiencia was much larger than the panel in the ecclesiastical court. In the ecclesiastical panels, petitions were read to the provisor, the promotor fiscal, and two notaries assigned to the court. The Archbishopric employed its own sheriff (alguacil eclesiástico) and operated its own jail where it incarcerated ecclesiastical personnel and perpetrators of crimes against the faith. If the Archbishop was present in the city, he made every effort to attend the sessions, and his presence was recorded. Many Archbishops had doctorates in canon law and played an active role in the ecclesiastical panels that were convened after daily mass. If neither the provisor nor the Archbishop were available, the dean, archdeacon, or cantor would convene the sessions.

Lima’s Real Audiencia had a staff of eight judges (oidores), four criminal prosecutors (alcaldes del crimen) and two civil prosecutors (fiscales) who represented the crown’s interest, one sheriff or voluntary law enforcement officer (alguacil mayor), and a notary attached to the court (escribano de cámara) who recorded the proceedings. The large number of criminal prosecutors was related to the crown’s mandate to keep the peace, which had to be defended and upheld, even if the victim or the aggrieved parties chose not to press charges. Alcaldes del crimen were responsible for the pretrial stages of detention and criminal adjudication. They conducted daily prison inspections – especially during an active investigation – apprehended suspects in tandem with the volunteer constabulary force (cuadrilleros) that patrolled the city at night, brought charges against the suspects in custody, and ordered interrogation and torture to obtain confessions. Given the size of the Audiencia, it is unlikely that all personnel would have been present at the daily sessions. In addition, judicial offices often remained vacant if the post was up for sale or if bidding for the position was under way after a sitting magistrate died while holding a seat. However, a quorum of magistrates would convene to hear cases on the daily docket.

In both judicial forums, the magistrate would rule after oral presentation as to whether to admit or dismiss the complaint. If the complaint was deemed meritorious, the magistrate summoned the other party to appear before the court within a brief period. The notary or a member of his staff attached to the court who recorded the session served the defendant notice, usually that afternoon.

These initial proceedings did not take a particularly long time. Hearings were convened almost every day of the calendar year except feast days, Sundays, and special occasions, such as the birth of a prince, the coronation of a monarch and entry of a new viceroy, or death of an important official. The expedited nature of getting on the docket largely explains why the courts adjudicated so many complaints. Nevertheless, a notary still had to be found...
(and paid) to record the complaint. Furthermore, there were numerous points subsequent to the initial filing at which an enslaved litigant’s complaint could be delayed.

The first potential delay occurred at the stage when the opposing party was notified about the action pending against him. Notice had to be personally served, and witnesses had to verify that the defendant understood the charges that were read to him. A defendant who wished to evade service could simply refuse to open his door, have a slave attest to his absence, or not leave his home. Pedro de Velasco – the lascivious priest denounced by Ana de Velasco – avoided service for five weeks with these tactics.\(^5\)

Once the defendant was summoned to appear in court, he had to be notified three times before a default judgment could be entered for failure to appear. In practice, the court gave the defendant between two weeks and twenty days to appear after each citation for nonappearance, thus potentially extending the case for another six weeks.\(^5\) After each consecutive failure to appear, the petitioner accused the defendant of violating a court order. Upon the third citation, the petitioner asked the court to issue condemnatory censuras generales with the threat of excommunication (sopena de excomunión mayor). These censuras were not taken lightly and had the pronounced effect of ensuring a court appearance from the opposing party if he was present in the city.

Defendants routinely deployed dilatory techniques before responding to the substance of the complaint alleged by the enslaved plaintiff. Magistrates would not expedite the proceedings unless the subject matter warranted prompt judicial intervention. Thus, in a suit where a parent contested the continued enslavement of a child on the basis of a testamentary grant of freedom or purchase, the judicial process was slow and weighted down by procedural impediments. Unless the parent could prove that the child was in danger of imminent physical removal from the city, the courts continued to demand formal adherence to procedure, notwithstanding a parent’s anguish. This was the cumulative effect of having low barriers to court entry, administrative torpor, and labyrinthine procedures in place to deal with clogged dockets. There was also nothing that prevented petitioners from lodging complaints in multiple forums.

When a defendant finally appeared in court, invariably his response was to refute the charges alleged against him by the enslaved petitioner either on substantive or procedural grounds. Sometimes, defendants would allege that the property relationship negated the complaint altogether, that they could not be sued by their own slaves. However, this was a weak argument and never alleged as the sole basis for summary judgment or dismissal. The defendant’s response was also subject to review by the magistrate, and the case could be dismissed for lack of merit.

Before a case could proceed further, both parties had to retain a procurator who was capable of representing their interests in court. The provisor ordered the plaintiff and the defendant to name procurators and to grant them powers of attorney. Retaining a procurator was another source of potential delay.
However, the process of gathering witness statements and admitting written evidence could not begin before both procurators entered their appearance into the written record. Some enslaved litigants took their cases to a special procurator for the poor (procurador de pobres or procurador de menores) who provided services free of charge.\(^5\) However, in the majority of cases, litigants paid procurators – either on retainer or on a fee-per-service basis.\(^6\) Though I have not seen official decrees setting prices for legal fees, I suspect that procurators adjusted their fees according to the petitioner’s abilities to pay and used the notarial fee structure (arançelas) as a guide.\(^7\)

The crown rigorously regulated notarial fees. Fees were authorized according to the kind of document being drafted and the amount of paper used for recording. The archived cases often include jotted calculations on loose papers or at the end of proceedings that tabulated their fees – calculations that depended on how the court allocated legal costs. (See Figure 1.4). In Anton Bran’s case, for instance, Barcala was responsible for the costs of the proceeding.

In the incipient life of a lawsuit, notaries and procurators were vital to the litigation process. We deduce that notaries and procurators often worked together as a team, as the same names appear repeatedly as representatives and recorders of enslaved litigants’ complaints. In addition, procurators worked

![Figure 1.4. Papelito inserted into a case folio.](https://example.com/figure1.4.jpg)

Image credit: Kathryn Burns.
for both enslaved litigants and for slave owners. In other words, they did not establish a professional reputation by aligning themselves with one or another side. Rather, they were retained because of their punctiliousness or their infallible sense of when to intervene, when to switch tactics, and above all, how best to slow down or expedite the process depending on the interest of the party they represented.

Juan Muñoz’s Práctica para procuradores excerpted earlier is filled with tips and strategies for delaying a lawsuit on procedural grounds. (See Figure 1.3). Because all procurators were well versed in these dilatory techniques, the opposing party had to be vigilant in order to ensure that the case moved forward. In his study of Lima’s procurators, Renzo Honores calculates that there were at most twelve registered procurators in the Real Audiencia at any given time. The evidence I have examined suggests that procurators served in both secular and ecclesiastical forums. Lima’s professional community was similar to other close-knit legal systems, in that referrals and preferential networks existed between notaries and procurators. Accordingly, a well-prepared litigant initiated her lawsuit with the procurator-notary team in place.

The slow-grinding pace of justice was not always an enemy of the enslaved. Sometimes it could be to the litigant’s advantage that a case moved slowly, particularly when slave owners used the courts to contest ownership over a slave’s body, offspring, and labor. A few lawsuits show the court levying lowered day-wage payments due to owners while the lawsuits were ongoing – lower jornales were beneficial to enslaved litigants and enabled them to meet their legal costs. In lawsuits over disputed inheritance and ownership, the courts could allow petitioners a reprieve until the legal issues were settled. Since this could potentially take years of litigation, this reprieve effectively removed the petitioner from the custody and supervision of her new owner. As we see in Chapter 5, this release does not mean that the petitioner gained her freedom. Rather, it gave her time to perhaps find another owner, cultivate more powerful patrons and allies, amass enough evidence to prove her case, or frustrate her opponents through persistent pleadings.

Agitated or repeated pleadings in the record on the part of enslaved petitioners showed persistence and a determination to move their cases forward in the repetitive, back and forth, formal requirements that comprised the legal process. Cases were rarely resolved quickly – which is why the celerity with which Anton Bran’s case was settled was so remarkable. Lawsuits against religious orders were always long, drawn-out affairs: with typical baroque irony, people commonly joked that those who sought immortality started an ecclesiastical suit.

Letrados, provisores, prosecutors, solicitors (fiscales), and judges were officials appointed to the upper branches of the judicial hierarchy. Letrados intervened when arguments had to be made before the magistrates or at decisive moments in the life of the lawsuit. In contrast to procurators and notaries, letrados had university training. Letrados could be trained in either civilian or
canon law, and most of Lima’s letrados chose to specialize in both. Students who specialized in canon law required two more years of training beyond civil studies. Criollos’ embrace of a law degree reflected the immense popularity of legal studies in sixteenth-century Spain, where increased litigation created the need for practitioners and specially trained jurists.

It took seven to eight years to earn a civil law doctorate, and a canon law doctorate was conferred after ten years of study. The lengthy duration of study did not seem to deter erudite criollos from pursuing both civilian and ecclesiastical doctorates. The doctorate in law conferred tremendous prestige and created an expedited path to the corridors of justice as learned viceregal advisers. Biographies and prosopographical studies of Lima’s magistrates highlight the allure of legal learning and the brilliance with which celebrated canonists and jurists articulated their subject in the classrooms and tertulias of the city. Don Feliciano de Vega (the provisor who presided over Anton Bran’s case) excelled in his qualifying exams at an astoundingly early age, after which he was unanimously appointed to hold an endowed chair and professorship in the University of San Marcos’s law faculty. In addition to serving as provisor of the ecclesiastical court, he served as the rector of the University of San Marcos on four occasions and was elected to prestigious bishopric appointments until his death in 1639. Vega was an exemplary criollo jurist whose

Figure 1.5. Patio de los Naranjos, University of San Marcos. Author’s photograph.
qualifications rivaled – if not exceeded – that of peninsular judicial appointees. Hence Vega played a particularly important role at a time when criollos and beneméritos sought to prove their stature and readiness for assuming judicial posts vis-à-vis peninsulares.

“ANTE MI” AND “EN NOMBRE DE”: THE LOWER BRANCHES OF LIMA’S LEGAL PROFESSION

Recognizing the importance of those who worked at the lower rungs of the legal hierarchy, historians are paying closer attention to those who served as legal intermediaries and “fixers”: Andean pettifoggers (tinterillos), public defenders (síndicos procuradores), and the epistolary teams of scribes, scriveners, and notaries. Drawing on the insights of sociolegal scholarship, historians try to understand what these practitioners actually did, and what their clients expected them to do. The focus on the law’s “lower branches” reflects a burgeoning interest not only in the documents as sources. It also reflects our interest in those who laboriously produced the “templates of truth” as Kathryn Burns so nicely puts it, and in the environments through which the documents circulated. Despite the fact that they were professionally subordinate to letrados and magistrates, these intermediaries were the people who administered “justice by paperwork” to many of our petitioners.

Civil cases involving enslaved litigants rarely employed letrados. Anton Bran’s case did not proceed beyond the procuracy stage, suggesting that the two-person team of notary-procurator provided sufficient legal expertise to suit the petitioners’ purposes. Some complaints did not even advance beyond the stage at which a notary recorded the substance of a petitioner’s grievance. Notaries essentially wrote down the “facts” of the legal complaint – fulfilling a critical role in a “lettered city” with low literacy levels. Notaries were also recorders of the agreements that many enslaved litigants sought to enforce. They were present at deathbeds to draft codicils and revise wills, and they witnessed contracts of sale and cartas de libertad – crucial evidentiary documents that preceded the life of the lawsuit. Their presence literally transformed desire into legal action.

Notarial documents, however, were civil documents. The documents belonged to the notary and to the parties whose transactions he memorialized. Unless introduced into evidence (and most of the lawsuits I analyze were brought precisely because of the lack of written evidence), they are not found within the Archbishopric archive. By law, each notary had to organize his documents into a thick hidebound volume (protocolos) at the end of the year. This archival practice reinforced the legal validity and public memory of the transaction. Notaries also sold their practices with their documents, so the protocolos frequently changed hands. Although it is difficult to suture together these archival fragments, notarial documents provide us with a composite picture of slave life in baroque Lima. Indeed, what we know about of the lives of
people like Anton and Ysabel Bran comes from the notarial records of their encounters with Spanish and ecclesiastical law. Not surprisingly for a regulated profession, notarial services were rigorously monitored. According to a 1617 fee chart, notaries could charge 4 reales for personal service, 3 reales for a complaint, 3 reales for the autos de rebeldía, 3 reales for drafting each interrogatory, and 2 reales for each witness examination (3 reales if the witness’s testimony went on for more than a page). A typical case with ten witnesses would encompass thirty pages at the very least. Calculations would run accordingly:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaint</td>
<td>3 reales</td>
</tr>
<tr>
<td>10 Witness statements</td>
<td>30 reales</td>
</tr>
<tr>
<td>3 × Personal service</td>
<td>12 reales</td>
</tr>
<tr>
<td>3 × Autos de rebeldía</td>
<td>9 reales</td>
</tr>
<tr>
<td>Interrogatories</td>
<td>6 reales</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>70 reales</strong></td>
</tr>
</tbody>
</table>

Instigating a routine lawsuit could thus cost a litigant upward of 70 reales (or the equivalent of 9 pesos), if there were ten witnesses. A jornalera slave earned between 10 and 12 pesos per month. More enterprising jornaleras could earn about 16 pesos monthly, but this was at the upper end of the day wage spectrum. Notarial fees thus represented a significant investment from the enslaved litigant.

Procuracy fees were also important to litigation. Procurators were essential to the lower rungs of the legal process: they paid who needed to be paid, drafted interrogatories for witnesses, and were the liaison between letrados and notaries. Procurators did not make legal arguments in court, although many demonstrated a familiarity with legal arguments in the briefs and petitions that they drafted. James Brundage describes procurators as “useful all-purpose agents … who had hands-on experience with the ways that lawsuits were actually conducted and familiarity with the habits and preferences of judges and other court officials with whom they worked.” This kind of practical experience was far more valuable in plebeian lawsuits than sophisticated mastery of canon or Roman law.

Many complaints that end abruptly in the archival record seemed to stall at the point in which a defendant had to name a procurator. This raises the question whether the procuracy stage was a way of distinguishing strong cases from weak ones. Unlike the fictional Sevillano slave owner in Cervantes’s Entremés de los mirones who capitulated at the mere mention of going to court, we do not have evidence that the threat of a petition or the early stage of filing one was enough to cause an owner to accept the litigant’s terms and settle out of court. Unless other archival evidence serendipitously appears, it is unclear whether the parties dropped the case or whether they settled out of court. Because of the expense involved, the procuracy stage also entailed additional
cash outlays, although procurators may have taken cases on a contingency basis. Most procurators asked the court to assign costs to their client’s opponent in their briefs.

PROCURATORS IN ACTION

Let us review two cases regarding the liberty of a child and a mother with similar outcomes that did not advance beyond the procuracy stage. In 1673, María de la Torre presented her notary with a bill of sale that included a clause for her self-purchase. Her previous owner, Jesuit priest Josef de Alamo, sold her to Gaspar Román, a prebendary (racionero) of the Archbishopric, when he was departing for Chile. In the sales contract, María’s self-purchase price was set at 400 pesos. The contract included an explicit agreement that Román would free María once she had the money to purchase herself.

Over the span of two years, María accumulated 400 pesos, but Román refused to accept the payment. When the court ordered Román to honor the agreement, Román claimed that María had given birth to a child in secret eight months earlier. Citing the law of the slave womb, Román denied his obligation to accept the money María offered in exchange for her freedom. Román then portrayed María as disingenuous in concealing her child and also alleged that she was attempting to despoil (despojar) his property. Román appealed to the court to annul the clause and order María to produce her child.

María, however, ignored Román’s claim about her secret pregnancy and doggedly focused on the letter of the agreement. No calls for witnesses were issued, although Román alleged that he learned of María’s pregnancy through others who “saw her give birth to a child” (la vieron parir). The case ends with Román accepting María’s offer of 400 pesos and issuing her a carta de libertad.

In another case brought decades earlier in 1628, a husband sued his wife’s owner to enforce a promise to accept payment for his child. The wife’s owner, the cleric Juan Pacheco, originally agreed to accept 150 pesos from the couple for their daughter’s freedom. When the parents presented Pacheco with the payment, together with the notarized agreement, Pacheco refused to honor the agreement. The child’s father asked the court to issue censuras, claiming breach of contract. Under threat of censuras, Pacheco acquiesced and granted Juanita (the child) her letter of freedom.

Neither of these cases proceeded very far up the judicial ladder. Both were resolved relatively quickly. Of course, this does not diminish the mounting frustration that the parties experienced before bringing their complaints to the court. However, both cases ended with a result favorable to the enslaved litigants. The written record is more generous in María’s case, but we do not have a judicial ruling (hallo or sentencia) in either case issued from the court that provides clues about the outcome.

Román’s subsequent decision to accept María’s offer may have been based on rational calculation. He had the opportunity to accept the 400 pesos that
María offered or fight her and assume the costs of feeding, clothing, and caring for her child, all in the hopes of increasing his estate by at most 100 pesos. Moreover, as clerics, the defendants were susceptible to institutional pressure and disapproval within the ecclesiastical forum. Román was particularly exposed because of his endowed position. The claimants also had written documents that promised the sought-after freedom.\textsuperscript{86} Failure to live up to these promises would have been deemed callous and dishonorable by the religious community. That claimants were able to submit their owners’ professional reputation to judgment by an ecclesiastical panel of peers and superiors largely explains the quick, out-of-court resolution.

In addition, both cases concerned the freedom of a child. If the parent had evidence that proved she had paid toward the child’s freedom, having been assured of the owner’s intent to free the child and the owner having received monies for this purpose (as in the case against Juan Pacheco), there was little room for the court to rule against the parent. In the best-case scenario, the parent could produce written proof: a clause in a sales contract with those terms recorded by a notary and a record of installment payments made for that purpose. The weight of such evidence left little room for the owner to invoke an argument based on property rights. Owners like Román may have attempted to posit their property rights as a defensive posture, but this was not enough to sway the court in light of prevailing evidence. The judicial posture here demonstrates quintessential casuistry: a combination of property, contract, and equity determined the outcome in these cases.

Of course, not all cases were as clear-cut or well endowed with irrefutable evidence. However, it bears mentioning that at least in the cases examined here, owners did not arrive in court with the upper hand nor prevail in their cases by asserting their property rights or an untrammeled right of possession. Not every enslaved litigant prevailed, nor were the courts impervious to the power of their owner’s wealth or social position. However, the qualities of mercy were not strained by owners who flexed their privilege.

**SPIRITUAL SUBPOENAS: “CENSURAS HASTA ANATEMA”**

In all legal systems, particularly where there are multiple forums, litigants instrumentally bring cases in a court where they believe they will prevail. Enslaved litigants had a far greater chance of prevailing in the ecclesiastical courts than in the *Real Audiencia*. This does not mean that enslaved litigants refrained from using the *Real Audiencia* to lodge their complaints. However, the *Audiencia* heard numerous causes of action from slave owners – more so than from enslaved litigants themselves (see Table 1.2). Moreover, the *Audiencia* wielded jurisdiction over criminal matters and issued harsh disciplinary judgments to slaves, *mulatos*, and freed peoples of African descent whom they deemed responsible for the city’s crime, brigandry (*bandolerismo*), and social unrest. Criminal sanctions were either public execution by garrote or
hard labor in exile for a defined period (generally up to five years).\textsuperscript{87} Other sanctions were nearly as gruesome as the garrote: these included whipping, ear excision, and castration. Even in noncriminal cases, enslaved litigants fared poorly in front of \textit{Audiencia} panels. To circumvent negative rulings or to expedite drawn-out procedures, enslaved litigants appealed to the Archbishopric court to issue \textit{censuras generales}.

According to a seventeenth-century treatise of ecclesiastical procedure, the Tridentine Council authorized priests to summon all parishioners to testify or aid in an active investigation that was either convened in church courts or in the secular forum. This was a singular instance of cooperation between forums that jealously guarded their respective jurisdictions. In fact, the treatise admits that \textit{censuras} were the only means by which the ecclesiastical judge was allowed to assist his secular colleagues. \textit{Censuras} were meant to exhort parishioners to help in recovering stolen goods of modest value and could be read and published during high mass up to three times.\textsuperscript{88} They could also be issued to compel parishioners to disclose secret information or illicit affairs. Failure to respond to these \textit{censuras} was a crime against God and the community of faith.

Priests were instructed by the ecclesiastical court to issue \textit{censuras} each week at high mass (\textit{misa mayor}), which ensured that they would be heard by the maximum number of parishioners.\textsuperscript{89} Spiritual penalties increased with severity upon each exhortation. By the intonation of the third \textit{censura}, those who failed to come forward were condemned to eternal damnation and excommunication. Their wives and children were similarly doomed:

And if three additional days have passed after the first and second threat of excommunication, you will declare the malfeasants permanently excommunicated because of their hardened souls. You will censure and condemn them because their guilt and contumacy has increased. Consequently, their punishment must increase in severity. We order all priests and their assistants to issue the following order at high mass, in all major cathedrals, on each Sunday and feast day. These words must be uttered with a black cloth covering the cross and burning candles held high. You will thus curse the malfeasants:

“Cursed are all who are excommunicated from the fellowship of God and his Holy Mother. Their children will become orphans and their wives widows. The sun will darken their days and the moon will not illuminate their nights. They will walk begging from door to door and find no one to take pity on them. The plagues sent by God to the kingdom of Egypt will strike them. The evil of Sodom and Gomorrah that consumed their people alive for their sins will afflict their families.” Amen.\textsuperscript{90}

The tenor of the \textit{censuras} is steeped in the inquisitorial idioms of medieval and early modern Catholicism. Beleaguered souls could be redeemed only through confession and penitence.

Limeño litigants used \textit{censuras} in two contexts. First, they posited the malfeasance of their opponent as a crime against the faith and a crime against the laws of the church. Almost every case brought in the ecclesiastical forum shows an irate petitioner urging the court to issue \textit{censuras hasta anathema}
that threatened the opposing party with excommunication for failure to respond to a court order. (Litigants in the Real Audiencia did not have recourse to censuras, as they were ecclesiastical tools of admonition.) Second, they used...
censuras after they had been disqualified in the secular forum to compel witnesses to come forward in church to relieve their consciences.

Archivists at Lima’s Archbishopric archive led me to thirty folios of uncatalogued censuras that were issued between 1600 and 1699. I believe the practice of issuing censuras accelerated under Provisor Pedro de Villagómez’s tenure at the court, when they became available in boilerplate. (See Figure 1.7). Each preprinted sheet corresponded to the forms used for the first, second, and third exhortation. On the basis of a rough calculation, we estimate that there are over 9,000 censuras at the archive. Each bound packet of single sheet folios (legajo) contains an average of 300 censuras each. Clearly, this was a widely used method of harnessing the power of the pulpit – together with the threat of bell, book, and candle – to get people to come forth and testify. But for this discovery, I would not have known how widespread the practice was. For years, I had been poring over case folios in which petitioners in active litigation appealed to the church to issue censuras without understanding that it was an independent legal procedure or cause of action.

Common sense suggests that when a procedure is so widespread it loses its effect. Because of the fragmentary nature of the evidence, determinations of efficacy depend on a longitudinal, outcome-driven study in which one matches the censuras to lawsuits, testaments, and notarial cartas de libertad. The evidence is simultaneously overabundant and dispersed. Nevertheless, we can still make reasonable assessments about the efficacy of censuras by examining how parishioners used them when stymied by recalcitrant or inadmissible witness testimonies in their cases. I now turn to three censuras that illustrate how the process worked. Given the nature of the evidence described and analyzed thus
far, readers will anticipate that the cases are deficient in some aspects but merito-
rious and compelling in others. I recount three of these in detail not only to show the dynamics of legal and ecclesiastical institutions but also to under-
score the power of *censuras* as spiritual subpoenas.

In 1661, Margarita de Aguirre brought a case against Cristóbal Sánchez 
Bravo in the Real Audiencia, but all the witnesses in her case were disqualif-
ied because of “tachas”: relationships of blood or servitude that obligated a wit-
ness to lie in favor of a party to the litigation. After sustaining this defeat in 
the Real Audiencia, Margarita went to the ecclesiastical court and appealed to 
Provisor Pedro de Villagómez to issue *censuras* to compel witnesses to testify 
about what they knew in that forum.

Cristóbal Sánchez Bravo was a priest and the trustee and heir to the estate 
of Margarita’s former owners, Antonio López Medina and Catalina Bravo.
According to Margarita and her witnesses, Margarita came to Lima from a 
northern province of Peru, pawned (en empeño) for 260 pesos. Margarita had 
owed her owner 260 pesos to settle the balance due on her purchase price. He 
in turn had an outstanding debt of that equivalent amount with Antonio López 
Medina, and so he sent her to Lima to satisfy that debt. Within two years of 
Margarita’s arrival in Lima, Antonio sent money to her owner in the north to 
settle her purchase price. In Margarita’s calculations – which were allegedly 
endorsed in public on numerous occasions by Antonio and Catalina – her ser-
vices were valued at 200 pesos a year.

Although freed, Margarita continued to work for Antonio and Catalina for 
an additional seven years. Antonio and Catalina had no children of their own, 
but they adopted an orphaned baby (un niño expósito) who had been aban-
donated at the door of the Monasterio de la Santísima Trinidad. Margarita nursed 
this child, as she had milk of her own (Margarita was perhaps working as a wet 
nurse [ama de leche] or she might have been nursing her own child at the time). 
Many of the witnesses insisted that Margarita nursed the child (lo crió de 
pecho) as part of her unpaid domestic duties. Since Margarita was legally freed, 
she claimed that she continued to work for Antonio and Catalina for seven 
years in exchange for the freedom of her daughter and granddaughters. But 
there was no written proof of this compact. After Antonio died, Margarita con-
tinued to work in the household to care for Catalina. Upon Catalina’s death, 
her nephew and heir Cristóbal refused to honor the oral agreement. Instead, 
Cristóbal laid claim to Margarita’s daughter and granddaughters whom he 
inherited as part of his aunt’s estate.

At least thirty witnesses testified in the Real Audiencia in Margarita’s favor. 
The witnesses came from all ends of Lima’s social spectrum. Genteel Spanish 
maidens (doncellas), castas, slaves, nuns, carpenters who formerly worked for 
Antonio, neighbors, friends, merchants, and priests all verified Margarita’s 
story. One of Margarita’s witnesses even included a mulato sacristán (the 
highest ecclesiastical position that could be held by a non-Spaniard). They 
unanimously verified that Margarita had indeed served Antonio and Catalina
with diligence and care. They knew she worked exclusively for Antonio and Catalina and calculated that her excellent service was worth at least 200 pesos each year – which was the going rate for personal domestic services in the seventeenth century. Margarita’s work as a wet nurse increased the calculation of wages for the personal services rendered.

After the first censura was issued at mass, the notarial record of witness testimonies was remitted to the ecclesiastical court from the Real Audiencia as if it were on appeal. We do not have access to the full transcript of the case. Therefore, we are only privy to the witness statements that were sent over for Provisor Villagómez’s review. Cristóbal Sánchez immediately filed a counter-claim resisting Margarita’s call for censuras by noting that the case was being litigated in the Real Audiencia. Sánchez called Villagómez’s attention to the fact that all of Margarita’s witnesses had been disqualified because of tachas. However, technically, that was not the point. As parishioners, they were still obligated to bear witness to what they knew about the matter. Failure to do so would have resulted in their excommunication and eternal damnation. Within a month, Cristóbal capitulated and granted Margarita’s daughter and granddaughter their cartas de libertad.

A similar outcome awaited Brígida de Córdoba in her 1669 lawsuit against the heirs of her owner’s estate. Like Margarita, Brígida sued the trustees of her owner in the Real Audiencia for failure to honor a promise to free her and her son Alejandro. Unlike Margarita’s opponent, these trustees were not clerics. There must therefore be another explanation besides vocational pressure from superiors that accounts for the efficacy of censuras.

Brígida also had a convoluted property history with her owner. Brígida was exchanged (trocada) between two sisters, Luisa and Francisca de Córdoba. According to Brígida, doña Francisca – her original owner – agreed to free her and her son after she died. This promise was conveyed to doña Luisa as part of the exchange, who agreed to honor it. Doña Francisca departed Lima for a corregimiento with her sister’s slave Ynez, whom she exchanged for Brígida. Again, there was no written document to prove the compact. By the time Brígida brought her lawsuit, doña Francisca was either dead or faraway in the corregimiento. So Brígida asked the church to summon witnesses through reading censuras.

Ynez de Córdoba, morena libre, responded to the censuras. Ynez testified to a priest from what appeared to be her deathbed. The tenor of her testimony was reminiscent of a confessional – no interrogatories were prepared. Ynez happened to be the slave who went to the corregimiento with doña Francisca. Ynez’s last act corroborated Brígida’s version of events. Since Ynez had been freed by doña Francisca, it was clear that doña Luisa should have followed suit. Subsequently, Brígida also secured a carta de libertad for herself and her son.

When dictating the information to the ecclesiastical notaries or relatores who completed their paperwork, neither petitioner mentioned a procurator. It is likely that the procurators retained by Brígida and Margarita recommended the women ask for censuras to be read when their witnesses were disqualified in the
Real Audiencia. Alternatively, the practice could have been so widespread that every litigant knew they should request censuras — in the same way that everyone who wanted to marry knew they had to file a marriage petition. Because each party to the lawsuit attempted to discredit the other, witness disqualifications were important to prevailing in one’s case. As Tamar Herzog explains, “Social networks between a wide range of people who were connected to one another by ties of family, friendship and personal dependence … produced obligations which were sufficiently strong to justify lying in legal proceedings.” Sometimes witnesses were certified by virtue of their admission to generales: a legal obligation imposed on witnesses to disclose any relationships of blood, alliance, or godparenthood (compadrazgo) with the petitioner. If the opposing party did not object to the testimony of kinfolk or dependents, the testimony became admissible. Parties to a lawsuit shared the same notary, so both sides had ample notice about the individuals who testified in a given case.

Margarita’s and Brígida’s cases share similar characteristics: a complicated property history, geographical relocation, and disputed promises of eventual manumission: “contexts pregnant with the potential for conflict and ambivalence.” Each factor individually could have created a cause of action: when combined, they were potentially devastating to the enslaved person’s lawsuit. The lack of written proof also encumbered the claims. The petitioners attempted to compensate for each of these weaknesses by flooding the proceeding with the oral testimonies of witnesses who could corroborate their version of events. Bringing those witnesses into court through censuras was critical if they were to secure their liberty.

A third censura proceeding brought in 1685 illustrates the confluence of negligent notaries, geographical relocation, installment payments toward a family’s freedom pocketed by an unscrupulous third party, and socially powerful defendants. As in Margarita’s and Brígida’s cases, the censura brought by Margarita Florindes in 1685 alleged conditions that were potentially disastrous to her claim. However, Margarita faced adversaries who were socially prominent and who chose to litigate in a special tribunal in which they were particularly favored. Perhaps because of the social position of her opponents, Margarita’s procurator asked in her name for the censuras to be read during mass to summon witnesses.

Margarita’s mother, Ysabel, was previously owned by a family whose patriarch was a member of the chivalric order of Alcántara. Ysabel asked one of her owner’s friends, don Martín de Zavala, to purchase her and paid him 400 pesos as a down payment toward the purchase price of her daughter Margarita. This agreement was notarized on a blank sheet of paper (en blanco) two days after don Martín received the money from Ysabel. Ysabel worked off the remaining 650 pesos in don Martín’s service. Over the span of two decades, Ysabel had paid over 1,000 pesos for her family’s liberty.

Don Martín de Zavala was an accountant for the order of Santiago and a mayor (alcalde) of Lima. Given his powerful position, he undoubtedly had a number of notaries with whom he conducted business on a frequent basis.
That may have explained his willingness to entrust a notary with a blank signed sheet, which presumably the notary – or his copyist – would have filled out later in the notary’s office. However, no details were ever recorded. Signing sheets in blank without the details of the transaction was a prohibited (and above all negligent) notarial practice. However, it was not uncommon in high-volume notarial offices. Kathryn Burns shows how many of Cuzco’s notaries signed off on blank sheets, despite the royal pronouncements against the practice. (See Figure 1.8).

Figure 1.8. Blank notarial signed sheet in a Protocolo.
Image credit: Kathryn Burns.
As she writes, “Clients perhaps found it convenient, since signing a blank page meant they did not have to wait around while copyists drafted each legalistic word of their business. More importantly for notaries, it was profitable: this practice enabled them to do more business in a given amount of time.”

In brief, Ysabel’s agreement with don Martín, her down payment, and the entire contract went unrecorded by the notary. Whether this was negligence or deliberate oversight, we do not know. When Margarita went to find the paperwork, she not only discovered that the contract was blank, but also found that the notary who had supposedly recorded the original transaction had sold his practice to someone else. Margarita thus protested her sale and continued servitude without having plenary documentary proof that her mother had purchased her. While Ysabel went to work for don Martín twenty-five years earlier, Margarita stayed in the house of Ysabel’s original owners. They either unscrupulously held her in servitude as a child, or don Martín never revealed the pact he made with Ysabel. Don Martín also never disclosed the payment that he received to Margarita’s “owners.” However, since Ysabel had paid 400 pesos in 1657 (twenty-five years previously), that should – at the very least – have satisfied Margarita’s purchase price.

Margarita’s case was litigated in the Tribunal de la Santa Cruzada, which exercised personal jurisdiction over members of the chivalric orders of Alcántara and Santiago. To make matters more complicated, don Martín served a lifetime appointment as the tribunal’s primary accountant. Margarita’s “owners” were also members of the order of Santiago and subject to the jurisdiction of the Santa Cruzada. As Margarita put it, “I have no other recourse but to ask for censuras, since the persons against whom I am litigating are powerful.”

The first witness who appeared after the censuras were read at high mass was doña Francisca de Coya. Doña Francisca was the widow of Ysabel’s previous owner. Doña Francisca verified that don Martín had indeed received 400 pesos from Ysabel that was meant to pay for her child’s freedom. She also verified that Ysabel had her husband’s permission to change owners and transfer the payment arrangement to don Martín. The second witness, doña Francisca’s slave Ignacia, also corroborated the account.

The outcome of Margarita’s case is unknown. However, she showed that the payment that her mother made twenty-five years earlier was made at a time and in an amount intended to purchase her freedom. More importantly, the widow of her opponent’s friend in court verified this payment and its purpose. It is not implausible to conclude that don Martín acquiesced to Margarita’s demands to protect his friendship and professional reputation.

A LITIGIOUS SOCIETY?

The historical record has always led us to believe that colonial Iberoamerica experienced an explosion of litigation, or a “judicial awakening.” These ideas of explosive litigiousness were largely formulated in response to Andean and Spanish patterns. The number of lawsuits brought by slaves in the Real
Audiencia pertaining to wrongful enslavement, for instance (fifteen), is quite modest considering the size of the enslaved population in baroque Lima. Most causas de negros were brought in the Archbishopric court. As reflected in Table 1.2, spousal unity injunctions and ecclesiastical immunity suits were the most numerous forms of legal action in the ecclesiastical forum.104 Were it not for the discovery of censuras, the numbers would remain underwhelming. While all the caveats about archival loss and the fragmentary nature of the evidence are relevant here, the question nevertheless emerges: how litigious were Lima’s slaves?

The view of litigiousness has also been accompanied by a negative portrayal of litigation and a general distaste for the legal process. Even contemporary scholars suggest that people resort to the courts when they have exhausted all other options.105 Marc Galanter famously contends that people “lump” their situation because they would rather not go through the excruciating or arcane legal process.106 Those who “lump it” are potential litigants with legitimate grievances but who lack both the sophistication and financial resources that repeat legal actors possess.

People in early modern Iberia expressed similar distaste for the legal process. Indeed, in an effort to preempt the transfer of Iberian litigiousness to the purity and innocence of the New World, lawyers were banned from sailing to

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**Table 1.2. Litigation Brought by Enslaved Petitioners in the Ecclesiastical Forum, 1593–1699**

<table>
<thead>
<tr>
<th>Type of litigation</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spousal unification</td>
<td>270</td>
</tr>
<tr>
<td>Divorce and annulment</td>
<td>20</td>
</tr>
<tr>
<td>Disputes over day wages, testamentary disposition, contracts</td>
<td>88</td>
</tr>
<tr>
<td>Cruelty, change of ownership</td>
<td>10</td>
</tr>
<tr>
<td>Ecclesiastical immunity</td>
<td>328</td>
</tr>
<tr>
<td>Redhibition</td>
<td>129</td>
</tr>
<tr>
<td>Censuras</td>
<td>1500</td>
</tr>
</tbody>
</table>

**Table 1.3. Litigation Pertaining to Enslaved People in the Real Audiencia, 1600–97**

<table>
<thead>
<tr>
<th>Type of litigation</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testamentary manumission</td>
<td>4</td>
</tr>
<tr>
<td>Redhibition</td>
<td>8</td>
</tr>
<tr>
<td>Wrongful enslavement, property disputes</td>
<td>15</td>
</tr>
<tr>
<td>Liberty</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>32</td>
</tr>
</tbody>
</table>

*Litigating Liberty*
A Litigious Society?

Peru by royal decree in 1529. Richard Kagan acknowledges a conundrum in his study of sixteenth-century Iberian litigiousness: why would Iberians file so many lawsuits while denouncing legal action and lawyers with such fervor? As Kagan writes, Castilian theologians inveighed against legal action, arguing that the “rancor and passion” of lawsuits were incompatible with the “love and concord amongst Christians.” However, despite the fact that lawsuits were unpleasant procedures, they were increasingly undertaken to resolve complex and minor issues alike.

Ultimately, it is immaterial whether lawsuits were as widely denounced in Lima as they were on the peninsula. Rather, we presume that throughout the centuries, powerless and aggrieved people were among those most motivated to use legal channels to rectify conditions of inequity and unfairness. The critique of “rancor and passion” largely reflected elite anxieties about plebeian litigiousness, false accusations, and commercial grudges, fed also by inquisitorial fear.

Conclusive accounts about rates of litigiousness are predicated on reliable access to litigation records that were filed in a fixed jurisdiction over a defined period of time. Kagan’s much-cited study of Castilian litigation in the sixteenth-century cancillería of Valladolid examines annual caseloads that ranged between 6,000 and 7,000 lawsuits “on the books.” Kagan analyzes well-preserved archival sources, providing us with a history of the cancillería, the practitioners who worked in it, and those who sought its services. No historical study can be attempted without sources, and those lawsuits that survive in the archive (whether in detail or in fragments) are documented in this book. The idiosyncratic nature of each collection explains why this study is unsuited to statistical analytical methods.

What do we know about Lima’s enslaved litigants? No doubt, the majority of Lima’s slaves “lumped it.” It is unthinkable that only ten people experienced cruelty at the hands of their owners in over a hundred years. We conclude that people used extralegal means to resolve their situation – they ran away from cruel masters and hapless marriages, or they changed owners without legal intervention. We presume that most of these personal arrangements went according to plan, since we have no record of them. So many lawsuits described here come before us because relationships and promises based on trust deteriorated or went unheeded by heirs.

Those who were most active in litigation were people who had a meritorious claim with varying levels of proof. Litigants buttressed the merits of their claim with testimonies of numerous reputable witnesses who were prepared to testify under solemn oath. Litigants also expressed confidence that the court could potentially resolve their grievance. As previously noted, most of Lima’s enslaved litigants came from households where they could have had access to legal knowledge, and conveyed this knowledge to others. Moreover, those litigants in servitude of prominent households were most active in court. They did not cower before their owner’s social power or prestige; rather they cleverly used the courts as a public forum to hold their owners accountable. Those who
came to court had a decent chance of prevailing. Often, they in fact did prevail. But even those who lost their cases garnered important victories. For this reason, we need to reformulate how we think of legal efficacy. Moreover, if we posit claims making as a process, the act of asking the church to issue censuras in front of the community of faith is tantamount to a form of plebeian legal mobilization. The fact that these actions forced one’s owners and opponents to defend themselves and their honor in a public forum is an important index of legal efficacy.

It is important to look at litigation from the point of view of enslaved litigants, thereby revisiting the question of legal efficacy from a plaintiff-centered perspective. Legal anthropologists have chided lawyers (and others) for focusing unduly on the “end result” of litigation. In other words, so much of what we deem to be reasonable motivation for embarking on litigation is related to favorable outcome. Social psychologists and anthropologists have given us a deeper appreciation for the noninstrumental, intangible, and emotional reasons why people turn to the law.

The entanglement of slaves and courts is generally viewed within a Gramscian optic of power, legitimacy, and hegemony. These are, of course, heavily freighted ideological terms in sociolegal studies. At some level, legitimacy involves a combination of acquiescence and resistance. Subaltern groups agree to be governed through legal rules that often constrain and place them at a disadvantage yet turn to the law when they believe their rights have been violated. This belief that the law is “just” (derogatorily labeled “false consciousness”) naturalizes inequalities between classes, generations, genders, and castes. In baroque Iberoamerica, legitimacy became more complex when courts – which were themselves embedded in other forms of paternalistic social control and profoundly linked to structures of governance and power – dispensed “justice.” Yet plebeian and enslaved litigants who sought recourse in the ecclesiastical or secular courts must have believed it was possible that such appeals to the law could resolve their problem. In this way, the law served as both an instrument of domination and as a means of resistance to that domination.

Locating the fault lines and fissures of agency, cooptation, and resistance is difficult within this hegemonic frame. Furthermore, to peer into the dark thicket of the resistance-cooptation continuum in search of agency guided by three and a half centuries of hindsight is seldom a productive enterprise. As scholars increasingly argue, to posit legal action within the confines of this continuum is an impoverished way of looking at slave agency.

It is never presumed – rightfully so – that slaves wield power. But it is not true that urban slaves possessed no ability to recruit the courts in their favor through an appeal to the king’s clemency. This ability may have had more to do with larger political struggles between and among elites jockeying for power and using special constituencies to buttress their position. It may also have had to do with the workings of monarchical forms of governance that operated
on personal patronage and with intermittent, spectral violence. Enslaved litigants did not possess conventional sources of political or social power that would have swayed courts. Nonetheless, this book describes a good number of situations in which Limeño slaves were able to prevail against their owners. None of this detracts from the superstructural thesis advanced by Marxist historians of slavery. Neither does it undermine the realist observation that law can be simultaneously wielded as an instrument of liberty and bondage. At the very least, these cases present an opportunity for us to see how enslaved litigants could use laws for very different purposes than their legislators intended. With law’s duality and indeterminacy in mind, and with the tenacity of the foot-dragging legal subject, let us conclude by returning to the case of Anton and Ysabel Bran.

ON BEING AND BECOMING BRAN

In the house of Anton Bran, licensed tailor, a young Indian man named Juan Lima was found working as an apprentice. He was from the pueblo of Santo Domingo, Yauyos. Census of Lima’s Indian population, 1613

We began this chapter with the case of Anton and Ysabel Bran pursuing legal action against a gluttonous priest who refused to pay an agreed price for his meals. In closing, I want to return to Anton Bran as a way to sketch a profile of a “repeat legal actor” within Lima’s enslaved and freed community.

Anton Bran has been the subject of previous historical gazes. As seen from the excerpt, Anton was one of the more than 10,000 negros enumerated in the 1613 city-wide census. Frederick Bowser uses this census, together with notarial purchase documents, to reconstruct the African origins of Peruvian slaves. Anton, Ysabel, and their two apprentices from the tierra Bran would have been part of Bowser’s quantitative study of Upper Guinean slaves who were imported to Peru. Bowser also mentions Anton’s purchase of his wife Ysabel in his chapter on manumission practices in Lima.

While we do not have enough for a biography of Anton and Ysabel, we can glean information about them from three local sources: a lawsuit, a census entry, and a notarial self-purchase agreement. When viewed holistically, they enable us to explore and imagine the ways that this couple and their contemporaries lived their lives in the City of Kings. Anton and Ysabel are not just historical subjects “from below”; they become historiographical subjects through our attention to legal mobilization, gender, diaspora, mixed status, and social identity.

According to Bowser’s calculations, 849 people imported to Lima between 1560 and 1650 were identified as “casta Bran.” Though we are all indebted to Bowser’s careful analysis of notarial slave purchase records, he relied on the ethnonym rather than interrogating the process of “being and becoming”
a member of the Bran nation. The source of this reliance can be traced to how, as Rachel O’Toole notes, slaveholders “labeled captive Africans.” It is also reflected in the categorization undertaken by the Cartagena-based Jesuit priest Alonso Sandoval, who “collapsed the multiplicity of diasporic identity and transatlantic allegiances from the Rivers of Guinea into the casta category of Bran... Bran was many of the casta terms of slave trading and would become an identity for Africans and their descendants in the Americas.”

Unlike many of the litigants examined herein, Anton Bran was not attached to a high-ranked household. On the contrary, Anton was a free African-born slave (bozal). Ysabel was also a bozal from the tierra Bran. At forty years of age, Anton had achieved his freedom relatively early – he seems to have possessed a degree of industriousness and enterprise that no doubt derived from his skills as a tailor. From the lawsuit and the census, we know that Anton had enough resources and work to employ four apprentices: one Andean apprentice, one mestizo, and two others from the tierra Bran. Ysabel was a likely candidate for lifetime manumission: the income she earned from cooking in addition to Anton’s earnings would conceivably have been directed at purchasing her freedom.

Guided by Bowser’s cryptic footnote 33, I retraced Anton’s steps to his notary’s records, which thankfully survived. In 1615 (one year before Anton filed his complaint against Barcala), the couple arranged with Ysabel's owners to purchase her freedom for the astounding price of 1,000 pesos. According to the notary who drafted Ysabel’s manumission agreement, Anton Bran was a free bozal “ropero.” One year later in his complaint to the ecclesiastical court, Anton would refer to himself as an oficial de sastre, suggesting upward occupational mobility in becoming a royally licensed tailor. In the manumission agreement, Ysabel was referred to as Ysabel Bran, or Ysabel de Guadalupe. Anton paid Ysabel’s owners 500 pesos in cash, and secured 300 pesos on credit, payments that he amortized over three years. Ysabel’s owners agreed to apply two years of her jornales (200 pesos) to her purchase price. When we calculate the timing of the couple’s dispute with Barcala, it becomes evident that it unfolded in the midst of the installment plan with Ysabel’s owners. It thus explains the strengthened resolve of the couple to make a claim for the breach of payment.

A nagging question remains: why would Anton pay so much for Ysabel’s freedom? From the terms of the letter and his lawsuit, Ysabel already lived a semiautonomous life. It appeared that the couple lived together but that they had no children of their own. Ysabel’s owners did not oppose her side ventures in cooking for others. Indeed, they profited from her labor in the form of the installment agreement and their application of her wages to an already inflated purchase price. Perhaps the answer lies in prestige. Purchasing Ysabel’s freedom enabled Anton to become a prominent member of his ethnic community and serve as a benefactor of the city’s enslaved population. Marriage not only gave Anton and Ysabel the capacity to pool financial resources but also
structurally enabled them to incorporate new enslaved arrivals from the *tierra Bran*. As apprentices, the new recruits then worked for and learned skills from Anton and Ysabel. Given Anton’s refusal to “lump it,” it is not implausible that litigiousness was among the skillset the new recruits acquired.

**CONCLUSION**

This chapter has painted a picture of legal practitioners, court society, and the litigants within to give readers a sense of the composition of the city, and highlight the importance of legal forums in baroque governance. My method here has been more ethnographic than historical because my aim is to provide the reader with a day-to-day account of the ecclesiastical legal system during the century of unparalleled church power. I have tried to situate readers within the entrails and sinews of a living organism rather than describe its incubation, maturation, or demise. That work has already been ably done by many other historians.

I have argued that enslaved litigants fared best in court when their case was fortified with irrefutable evidence, as that provided them with an equitable basis on which they could substantiate their claim to liberty, and accompanied by witnesses of social stature. This is by no means a grand claim about the civil law’s commitment to upholding the slave’s legal personality. It is rather a more contextual argument about equity in first instance courts that resulted in small or partial victories. Although these victories did not undermine prevailing power structures, they nonetheless represented accretions of custom that led to shifts in legal practice.

As we will see, cases were decided mostly by split decisions. Legal action was part of a lengthy, protracted process in the fight for liberty that was mostly waged outside of court. The next set of chapters chart the course of an enslaved person’s life through the rites and stages of baptism, childhood, marriage, death, inheritance, and resale, as people struggled to accrue fractions of freedom in the Hispanic baroque.

**NOTES**

1. AAL, Causas de negros, leg. 3, exp. 4, año 1616.
2. On the small claims court “revolution” and working-class litigiousness, see Merry, *Getting Justice and Getting Even*.
4. The composition of baroque Lima’s population complicates an already problematic distinction between a society with slaves and a slave society. The mathematic problem emerges because a slave society is one in which bonded labor is essential to the modes of production, typically those in plantation or mining societies. The original formulation outlined by Moses Finley estimates that a slave society was one in which more
than 30 percent of its population was enslaved. See Berlin, *Many Thousands Gone*, for the formulation in the United States. Baroque Lima had a 50 percent African presence. However, Lima’s slaves were overwhelmingly urban and domestic, even though the ratio of its enslaved population to its free population puts it squarely within the classification as a slave society. The equation is cumbersome because the legal activism and customary practices that Lima’s slaves developed were more commonly found in a less rigid “society with slaves.” Alejandro de la Fuente makes this argument for Cuban slaves’ court use in the nineteenth century. See his “Coartación and Papel.” Though with reference to North America, Chris Tomlins has usefully proposed that we abandon the distinction in favor of “societies with slavery.” Tomlins writes, “Virtually every mainland colony became a society with slaves; not all made the further and final move to become slave societies” (*Freedom Bound*, 417).

The dichotomy between resistance and accommodation became particularly salient in the 1980s and was strengthened by James Scott’s work on everyday forms of resistance. Scott unmask covert forms of resistance (pilfering, deliberate laziness, work slowdowns, and deliberate tool breaking), and his formulation was helpful to slavery scholars at the time who were struggling to find agency in what was seen as the totalizing institution of slavery. Earlier gender-focused studies examining enslaved women’s experience of subordination and double exploitation were also enhanced by the concepts of everyday resistance and hidden transcripts. For a representative anthology, see Clark Hine, *Black Women in American History*. For an intriguing analysis of the dichotomy of accommodation/resistance in reference to a slave-authored peace treaty, see Schwartz, “Resistance and Accommodation in Eighteenth-Century Brazil.”

“Cualquier litigio permite observar el comportamiento de las partes y los intereses en juego, siempre y cuando desechemos imágenes simplistas que piensan al derecho solo como una imposición de la clase dominante; se trata mas bien de un terreno de confrontación, donde por eso mismo tienen que salir a relucir los intereses y propósitos de los sectores populares: aunque sean más frecuentes los fallos en contra, el funcionamiento del sistema exige que ellos puedan obtener algunas victorias y alcanzar ciertas reivindicaciones, a pesar de ser negros y esclavos” (Flores Galindo, *Aristocracia y plebe*, 18, my emphasis).

In an effort to centralize imports, collect tax and excise duties, and diminish contraband, the crown channeled all silver exports through the port of Callao. Biannual fairs (*ferias*) were held in Portobelo, Panama, where European commercial goods were traded for silver bullion as the Spanish Armada sailed from Callao to Seville. Despite the crown’s centralizing efforts, contraband accounted for much of the trade in and out of the city.

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9 Van Deusen, *Between the Sacred and the Worldly*.

10 Peoples of Castilian descent and those born on the peninsula were referred to as Spaniards (*españoles*). Even though African-descent peoples were referred to as negros, white (*blanco*) was not a racial category of the period.

11 Recent scholarship disputes the low numbers of mestizos and Andeans in the 1613 census. See Graubart, “Hybrid Thinking,” for a thorough discussion of the inability to enumerate or understand urban Andeans.

12 Altman, *Emigrants and Society*. 
Notes


14 Slaves who disembarked in Brazilian ports, as well as those who were destined for Mexico, have been separately accounted for in the transatlantic database, giving us a clearer idea of the African-descent population in Peru. Cartagena was of course not the only port of origin for Peru, although it was the major transit point for Lima. See Newson and Minchin, From Capture to Sale, on early seventeenth-century slave transfers between Cartagena and Lima. Nicholas Cushner notes that Jesuits purchased slaves directly through their own agent in Panama. He also writes that Jesuits participated in the internal resale market through conventional sources: “through local slave markets offering blacks brought from Buenos Aires and Córdoba, the official asentista who unloaded his cargo in Callao, from adjacent haciendas which put up for sale slaves unwanted for one reason or another” (“Slave Mortality and Reproduction,” 179). Jane Mangan notes that slaves destined for the mines of Potosí – though fewer in number than those headed for the coastal haciendas – came via Brazil through Buenos Aires and then overland to Potosí (Trading Roles, 41).


16 Sandoval, Treatise on Slavery. We should also remember that sixteenth-century theologians focused their debates on the illegitimacy of indigenous slavery, given that Iberian conquistadors believed they had a locally available – and free – labor pool of indigenous people.

17 Fredrickson, Racism: A Short History, 38.

18 Eltis and Richardson, Atlas of the Transatlantic Slave Trade, 30.

19 Ibid., 30. After 1630, the Dutch moved their operations to Pernambuco.

20 Vega Franco, El tráfico de esclavos. The crown viewed the Genoese as “royal subjects,” on par with their erstwhile Portuguese and Dutch counterparts.

21 Rupert, Creolization and Contraband. As Rupert notes, Curaçao’s strategic location, the long-standing patterns of smuggling unregistered slaves in as part of recorded and taxed voyages, and the increasing demand for slave labor rendered contraband feasible, pragmatic, and desirable.

22 Enriqueta Vila Villar (“Los asientos Portugueses y el contraband de negros”) contends that the primary agents of contraband were the asentistas (royal license holders) themselves because they had both the incentive and the opportunity to underreport the human cargo they had aboard.


24 Bowser, “Colonial Spanish America.”

25 According to the recent survey by Borucki, Eltis, and Wheat, “Africans arriving in any Spanish colony [after the mid-seventeenth century] were surrounded by criollos, their mestizo progeny, and a growing creole population of full and mixed African ancestry” (“Atlantic History and the Slave Trade to Spanish America,” 458).

26 Historians in the quantitative tradition have both attempted to situate the slave trade numerically (as exemplified by Philip Curtin and Herbert Klein) and also account for the undeniable presence of peoples of African descent in Latin America.
Those scholars have had to battle against the prevailing declaration that there were no blacks to be found here (no hay negros aquí), and at the same time substantiate their assertions and research claims with qualitative evidence.

27 Vargas Ugarte, Historia del Perú, Virreinato siglo XVII, 139–41. The viceroy concluded his reign with the death of King Philip in 1621. Ibid., 189–90.
28 Ibid., 197. Esquilache was succeeded by the marqués de Guadalcazar in 1620, who had held a previous appointment as viceroy of New Spain.
29 Although the sale of public offices was vigorously debated, the commodification of some posts did not generate much public uproar. Notaries, for instance, were obligated to purchase their office and would do so pending their qualification, since they would be able to recuperate much of their capital investment in purchasing their office through the fees they charged for their services. Indeed, the sale of notarial offices (escribanías) had been a feature of life in the New World since Columbus set sail from Seville. See Tomás y Valiente, La venta de oficios en Indias. Those responsible for public order and public services – bailiffs, sheriffs, postmaster generals, tax assessors – also purchased their office without much controversy. The sale of judicial offices, however, was extremely controversial, as it “violated the most firmly accepted principles of government.” See Parry, The Sale of Public Office in the Spanish Indies under the Hapsburgs, 49.
30 Elliott, Spain, Europe and the Wider World, 280.
31 See, for example, the writings of the celebrated jurist Juan de Solórzano Pereira, who served as a long-standing oidor in Lima’s Real Audiencia from 1609 to 1625. After Solórzano returned to Spain, he was appointed to the Council of the Indies, in which capacity he cautioned strongly against appointing native sons to the Audiencia: “Pero en las Audiencias de las Indias, como son menos y su poder se ejerce también entre menos súbditos y vecinos y el estrecharse con algunos de ellos, ya por parentesco, ya por amistad puede producir tan peligrosos efectos, se ha cuidado y se debe cuidar siempre mucho que ninguno vaya a ejercer semejantes cargos a su patria, ni aun a la Provincia de donde es natural” (Política indiana, bk. 5, ch. 4, no. 29, my emphasis).
33 Philip III’s admonition of his viceroy for his dispensation of favors to his retainers and favored advisers must have fallen on deaf ears. By the time he wrote these cautionary missives, the weak and profligate king had fallen under the notorious influence of the Duke of Lerma, who was appointed as the first “minister-favorite” to the Spanish court. The duke used this position to amass spectacular personal wealth and to exercise royal powers of patronage. On the influence wielded by the Duke of Lerma and the office of “the minister-favourite,” see Williams, The Great Favourite.
34 In 1618, King Philip wrote the following lengthy remonstrance to Viceroy Borja: “El Rey Príncipe de Esquilache, primo, mi Virrey, por diversas relaciones que se me han enviado de esas provincias y por lo que algunas personas celosas de mi servicio me han escrito, he entendido el gran desconsuelo que hay en ellas entre las personas beneméritas y que me han servido por verse sin ninguna esperanza de premio de sus servicios respecto de que siendo el mas propio y ajustado a
ellos que los Virreyes que gobiernan en mi nombre les provean y ocupen los cargos militares, de gobierno y hacienda, no se hace así sino que los dan y proveen todos en sus criados, parientes y allegados de su casa y de los oidores y ministros de esa Audiencia, a que no se debería haber dado lugar así por los efectos referidos ... y que para remedio de todo convendría limitar el número de criados que los Virreyes de esas provincias han de ocupar en oficios ... dando los demás a gente benemérita de esa tierra ... por lo mucho que conviene que estas plazas se den a personas naturales... Y habiendo visto en mi Consejo Real de las Indias, he acordado ordenaros y mandaros, como lo hago, que en cuanto a los parientes, deudos o criados de los oidores y demás ministros de esa Audiencia hágais averiguación citada la parte de mi fiscal, quiénes y cuántos son los que de ellos están proveídos en oficios contra lo dispuesto por cédulas y ordenanzas ... los removeréis y nombraréis en su lugar otras personas ... y de las que me han servido en esa tierra y tienen su origen de los pobladores y descubridores de ella ... y en lo que toca a los criados y allegados vuestros que tuviéredes ocupados, me avisaréis ... os encargo así lo hágais inviolablemente, y por excusar la mala consecuencia y pernicioiso ejemplo que trae el nombrar semejantes oficios en deudos o criados vuestros” (cited in Konetzke, Colección de documentos, R.C. 133, 26 de abril de 1618, 198–99).

35 Eduardo Torres Arancivia, for instance, argues in his Corte de virreyes that criollo agitation against the viceregal practice of naming favorites and relatives represented an incipient criollo republicanism. My sense is that it promoted factionalism and competition for the viceroy’s bestowal of favors on beneméritos and aristocratic criollos, not an undermining of the system of dispensation.

36 Securing an appointment in the Indies involved waiting in the king’s court for decades or serving as a page or vassal in the household of one of the king’s close advisors or family members. This was for the most part impossible for criollos located in the Americas. Criollos who did achieve a royal post spent considerable time on the peninsula advocating for their appointment. See Burkholder’s description of don Alonso Bravo de Sarabia’s appointment to the Audiencia, in Spaniards in the Colonial Empire, 79.

37 See de la Puente Brunke, “Los ministros de la Audiencia y la administración de justicia en Lima,” describing the intervention of Viceroy Montesclaros on behalf of Alberto de Acuña to secure his appointment to the Real Audiencia.

38 Luis Martín details the Jesuits’ disgust at the Viceroy Alba de Liste’s machinations on behalf of his local favorites (Intellectual Conquest of Peru, 72).

39 Jorge Basadre Grohman’s account of the magistrate Bernardo de Itrurizarra illustrates how judicial fairness and treatment of others played into one’s professional reputation: “Al oidor Itrurizarra murmuraba que le quitaba el agua a los vecinos, que trataba mal a los litigantes, mantenía trato indecente con algunas mujeres” (El conde de Lemos y su tiempo, 224, my emphasis).

40 “A los oidores, alcaldes, y fiscales, se les prohibía también que poseyeran casas, chacras, estancias, huertas ni tierras en las ciudades donde residieran, ni fueran del las ni en otra parte en todo el distrito de la Audiencia. Estas prohibiciones se hacían extensivas a sus mujeres e hijos” (Ots Capdequí, Estudios de historia del derecho español en las Indias, 83). As José de la Puente points out repeatedly, these royal prohibitions aimed at preventing conflicts of interest were mostly aspirational and never applied in practice.
Both Tamar Herzog and José de la Puente encapsulate the essence of these judicial networks as *ius amicitiae*; networks that traversed the boundaries between friendship and politics. See Herzog, *Upholding Justice*, 146, for a detailed study of judicial social networks in Quito.

As Nicole von Germeten notes, “Private lives and colonial courts intersected via the rhetoric of honor and the hazy, disputed boundary between licit and illicit sex” (*Violent Delights*, 85).

The existence of these officials did not preclude Andeans from approaching the ecclesiastical court or the royal court to file a grievance. This did entail traveling into Lima, but historians of Andean litigation point out that such travel was frequently undertaken. See Charles, *Allies at Odds*, 52–53, and de la Puente Luna, “The Many Tongues of the King.”

On the *protectores de naturales*, see Dueñas, *Indians and Mestizos in the ‘Lettered City’.*

See, for example, AAL, Causas de negros, leg. 4, exp. 2, año 1619 (“Autos seguidos por María Zape, morena libre sobre que le restituya los 60 pesos por los jornales que le debe a su marido”). See also, *Partida* 3, Title 5, law 5, 587, “We declare that a woman can act as an attorney to liberate her relatives from slavery.”

Lira González, *El amparo colonial.*

See McKinley, “Standing on Shaky Ground.”

According to the Franciscan chronicler Córdoba y Salinas, “Tiene el Arzobispo un provisor, un promotor fiscal, y dos notarios públicos que acuden al expediente ordinario de las causas eclesiásticas, sus receptores y otros ministros menores. Tiene su cárcel con su alcalde, alguacil y ministros que sirve de casa de disciplina” (*Teatro de la Santa Iglesia Metropolitana*, 26). The *alguacil eclesiástico* investigated accusations of concubinage and arrested iniquitous couples while the charges against them were investigated. See Chapter 4 for the investigation of the cleric Sebastián de Loyola’s nocturnal trysts.

See Córdoba y Salinas for biographies of Archbishops Arias de Ugarte, Villagómez, and Liñán Cisneros, who held doctorates from Salamanca, Alcalá, and Seville, respectively (*Teatro de la Santa Iglesia Metropolitana*, 61–74). Lima’s third Archbishop, Bartolomé Lobo Guerrero (1609–22), studied canon law at the University of Salamanca and the University of Seville, where he earned his doctorate and held a chaired position. During his lengthy tenure as Archbishop, Lobo Guerrero was present at almost all ecclesiastical panels and cosigned many *autos* with Provisor Vega.


*Alcaldes del crimen* were *letrados* who presided over criminal cases of first instance. They often used the appointment as a stepping stone to the post of magistrate (which was also purchased) or *corregidor*. Ernesto Schäfer’s catalog of ninety-seven *oidores* who served on the *Real Audiencia* from 1600 to 1700 shows that one-third of those were promoted from *alcaldes* to *oidores*. Many *alcaldes* were also appointed to official posts within the viceregal administration in other sites in the Americas. See Schäfer, *El consejo real y supremo de las Indias*, 2:418–21.
In Charles Cutter’s account of judicial hearings in northern New Spain, oidores convened daily sessions that lasted for three hours and delivered their judgments that same afternoon (Legal Culture of Northern New Spain, 52).

Seventeenth-century chronicles show the pervasiveness of ceremonial life in Lima’s religious processions, liturgical rituals, inaugurations, weddings, entries into religious orders, and funerals. For a daily listing of ceremonial events, see Suardo, Diario de Lima, 1629–1639, Mugaburu, Chronicle of Colonial Lima, and Cobo, Historia de la fundación de Lima.

It took nearly seven weeks from Ana’s initial complaint for Pedro to be personally served. According to the notary, on his first attempt, Pedro’s mother answered the door. On the second attempt, one of his slaves answered but said he was indisposed. Undeterred, the notary watched the house over a period of weeks to see when Pedro’s slaves left for the market to gauge the time when Pedro would be alone. The notary timed his service perfectly: Pedro opened the inner door to his house, at which point he was personally served.

Crown-appointed procurators received a modest salary of 100 pesos annually. It was impossible for them to exist on their appointed salary alone. As a point of comparison, procurators for Andeans (procurador de naturales) received an annual salary of 1,000 pesos, and the abogado de indios received 800 pesos annually. See Cobo, Historia de la fundación de Lima, 106–7.

Enslaved litigants’ infrequent use of the free services provided by procuradores de pobres suggests that these officials were either ineffective or overworked – probably a combination of both.

The question of legal fees and churchmen had a lengthy history, particularly with regard to the crime of simony. Ecclesiastical personnel who were salaried could not charge for legal services. According to James Brundage, many decretalists condemned those advocates who received payment for their services from the poor but permitted payment by wealthier clients and patrons of the church (Medieval Origins of the Legal Profession, 190–201).

Alonso de Arcos, for example, appeared as procurator in the name of slave owners in religious establishments. Arcos also represented many enslaved litigants fighting those orders. Arcos may have built up a reputation as someone who knew the delaying strategies of the orders – the better to orchestrate or evade those delays.

With reference to medieval European courts, Brundage states that, “the maximum number of authorized proctors was seldom very large” (Medieval Origins of the Legal Profession, 357). According to Father Cobo’s account, the Real Audiencia set a limit of four procurators (“El 5 de julio, se nombraron cuatro procuradores y en 9 estando en acuerdo, ordenó la Real Audiencia que los procuradores fuesen sin que pudiesen acrecentar más, y que hubiese procurador de pobres” [Historia de la fundación de Lima, 102]).


In the study of protracted lawsuits in Buenos Aires, Lyman Johnson points out that legal fees could bankrupt an enslaved client – rendering the process negligible in terms of the freedom that was secured as a result of litigation (“A Lack of Legitimate Obedience and Respect,” 648).

As Tamar Herzog notes with reference to *letrados* in Quito, “Most lawyers graduated in both laws (Roman and canon). Those who chose a single career usually chose to study canon law, which enabled them to occupy offices in the ecclesiastical hierarchy” (*Upholding Justice*, 22).

Legal studies in sixteenth-century Europe were hugely popular. The law faculties at two universities – Salamanca and Valladolid – attracted students from all over the peninsula and Europe. As Richard Kagan writes, “By the 1580s, law students at Salamanca numbered just over thirty-eight hundred, a figure that accounted for three-fourths of its total enrollment” (*Lawsuits and Litigants*, 142). Similar trends were reflected in thirteenth-century enrollments at the University of Bologna, the seat of the “Roman law revival” in southern Europe. See Brundage, *Medieval Origins of the Legal Profession*, 268–69. Two further considerations may explain the appeal of legal studies. In southern Europe, law was an open profession, which did not require proof of Old Christian blood to practice. The civilian legal traditions were also portable within Europe and throughout the Spanish Empire. As Brundage reminds us, canon law in particular had always functioned as the *ius commune* of Latin Christendom with jurisdiction that transcended political boundaries. Having both civil and canon law training along with a solid foundation in Roman law supplied a student with skills and trades that could be plied “in Riga, and Rouen, as at Rome” (*Medieval Origins of the Legal Profession*, 5).


Martin, *Intellectual Conquest of Peru*, ch. 2. Unlike the judicial biographical traditions of prominent common law jurists, the judgments or instructions handed down by ecclesiastical or secular judges have never been viewed as a source of their scholarly corpus.

Notwithstanding the professoriate’s unanimous support for Vega, the selection process for chaired professorships was fraught with heated rivalries between secular candidates and those who belonged to the religious orders. Religious orders formed an insuperable voting bloc, resolutely disqualifying secular candidates who were nominated by the viceroy and *Audiencia* to hold professorships in canon law, civil law, Quechua, and theology. The appointment process resulted in a checkmate between candidates supported by the religious orders and any secular candidate nominated by the viceroy to hold chairs in those disciplines. Other endowed positions in mathematics, art, and medicine were not contested by the orders. On the appointments process at San Marcos, see Glave, “Las redes de poder y la necesidad del saber.”

After serving as provisor of Lima’s Archbishopric court, Feliciano de Vega held two positions as bishop of Popayán and La Paz. He was named Archbishop of Mexico prior to his death in 1639. Vega has been prolifically studied by Lima’s historians and biographers. Lincoln Draper portrays Vega as a quintessential bureaucrat: efficient, professional, aristocratic, and ambitious. This skillset served him well, as Vega ascended up the ecclesiastical ranks until he was appointed Archbishop of New Spain – a post recognizing his talents and intelligence. My examination of Vega’s rulings as provisor reveals that it was physically impossible for him to be in Lima and in Popayán. I conclude that Vega never assumed his bishopric there although
he continued to use the title in his writings. For an interesting review of Vega’s tenure as bishop of La Paz, see Draper, Arzobispos, canónigos, y sacerdotes, 27–54.

71 Tinterillos were common nineteenth-century legal intermediaries who served as legal practitioners to Andean plebeians. I have only seen the term “tinterillo” applied to one practitioner in the seventeenth-century records, and the use of the term was largely derogatory in connotation. On tinterillos, see Aguirre, “Tinterillos, Indians, and the State,” 119–51. On notaries, see Burns, Into the Archive. On procurators, see Honores, “Legal Polyphony in the Colonial Andes.” On scribes in criminal court, see Scardaville, “Justice by Paperwork.”

72 See Burns, Into the Archive, 37, and Brundage, Medieval Origins of the Legal Profession. In a similar vein, Melissa Macauley characterizes the legal document as “that god-force of bureaucratic narrative reality that could harness distant state power to resolve plebeian disputes with elites and regional authorities” (Social Power and Legal Culture, 3). See also Dueñas, Indians and Mestizos in the “Lettered City,” and de la Puente Luna, “The Many Tongues of the King.” As Dueñas points out, this epistolary activism built on the earlier sixteenth-century tradition of Andean chroniclers and activist priests who protested abuses and injustice by denunciation and appeals to the Catholic kings.

73 Scardaville, “Justice by Paperwork.”

74 Burns, Into the Archive, 71. For Europe, see Brundage, Medieval Origins of the Legal Profession. The documents are stored in thick hidebound folios in (somewhat) chronological order and are housed in the Peruvian National Archive. It is often difficult to find the documents needed to complete the evidence in one lawsuit, since those documents could have been located in the protocolos or filed by a different notary than the one bringing the case forward. There is no index for the documentary subject matter bound in the folio. Archival investigation thus requires a painstaking page-by-page review of the entire set of documents produced during the notary’s career.

75 Herzog, Mediación, archivos y ejercicio, 22–23. Herzog describes the peninsular development of public municipal archives that emerged at the beginning of the seventeenth century. In theory, this bureaucratic practice was adopted in the municipalities and cities of the Americas. Documents should have been collected according to the jurisdiction and locale, catalogued, and maintained by trained personnel (ibid., 19). However, as Herzog points out, the crown devoted no resources to maintaining archives in the Americas. Moreover, litigants and their advocates held onto notarial documents to ensure payment for legal services. Herzog traces the use of censuras in Quito as a way to obligate notaries and litigants to return documents, but the issuance of censuras depended on the bishop’s goodwill. This could explain the popularity behind the practice of censuras in the Archbishopric of Lima – the dates coincide with the phenomena Herzog describes in Quito. Mediación, 26.

76 On notarial records as “fragments in the mosaic” of the lives of urban slaves and freed people, see Bowser, “The Free Person of Color in Mexico City,” 331.

77 See Ribera and de Olmedilla, Primera [segunda y tercera] parte de escrituras, 105–11v. See also Moscoso y Peralta, Aranzel de derechos eclesiásticos parroquiales, de hospitales, curia eclesiástica, y Secretaría de Cámara del Obispado del Cuzco. Although writing in 1860, Manuel Atanasio Fuentes recorded virtually the same prices for notarial fees in Lima. See Porcari Coloma, La ciudad de los reyes, 70–72.
Currency conversion for reales into pesos were listed at 8 reales to 1 peso. See Cobo, Historia de la fundación de Lima, 108.

Like notaries, procurators were also embroiled in high-volume paperwork, and they also purchased their office. According to Father Cobo’s calculations, the office of procurator was valued at 1,600 pesos. See Historia de la fundación de Lima, 124. We are not clear how much controversy the sale of procurator’s offices engendered. Presumably, commodification of higher-level judicial offices was more controversial than the sale of what elites largely derided as paper pushers who merely operationalized rather than embodied the king’s justice. See Scardaville “Justice by Paperwork.”


Lima’s Archbishopric had six racioneros, all of whom enjoyed a stipend for their services. See Cobo, Historia de la fundación de Lima, 161.

“María de la Torre, parda esclava del Lic. Gaspar Román digo que como consta de la escritura que presento con la solemnidad necesaria, el dicho Lic. me compró del Josef de Alamo, religioso de la Compañía de Jesús con condición y cláusula que diese yo u otra persona por mí los cuatrocientos pesos de desembolso el dicho Lic. había de ser obligado a recibirlos y otorgarme carta de libertad, conforme y porque al presente tengo los cuatrocientos pesos y quiero conseguir mi libertad. A Vmd. pido y suplico que se sirve de mandar que el dicho Lic. Gaspar Román reciba los dichos cuatrocientos pesos y en fuerza desta cláusula de la escritura me otorgue carta de libertad” (AAL, Causas de negros, leg. 17, exp. 19, año 1673).

In other words, the court never deliberated or issued a finding that María or Juan failed to prove their cases. Neither case can be explained by administrative uniformity – María’s case was brought in front of Provisor Villagómez, and Juan’s case went before Provisor Vega.

For those who were already enslaved in arduous labor conditions, “hard labor” was considered a punishment when it was imposed in conjunction with banishment, effectively cutting enslaved people off from their community. As the records demonstrate, enslaved men and women often fought against exile by contracting marriage. See Chapter 2.

Tercera Carta:

Y si pasados otros tres días después de haber sido así declarados por tales excomulgados, con ánimos endurecidos. . .os dejareis estar en la excomunión y censuras y porque creciente la culpa y contumacia, debe crecer la pena, mandamos a los curas y sus tenientes que en sus iglesias a las misas mayores, los domingos y fiestas de guardar teniendo una cruz cubierta con un velo negro y candelas encendidas os anatematicen y maldigan con las maldiciones siguientes:

Malditos sean los dichos excomulgados de Dios y de su bendita madre.
Huérfanos se vean los hijos y sus mujeres viudas.
El sol se les oscurezca de día y la luna de noche.
Mendigando anden de puerta en puerta y no hallen quien bien les haga.
Las plagas que envió Dios sobre el reino de Egipto vengan sobre ellos. La maldición de Sodoma, Gomorra, Datan y Aviron que por sus pecados los tragó vivos vengan sobre ellos. Amen.


89 If a petitioner wanted to reach someone within the cloisters, *censuras* were also read within the monasteries’ chapels. *Censuras* were also read in other dioceses outside of Lima. The records show witness responses in Arica, Popayán, Panama City, and Tierra Firme. See Chapter 2.


91 Herzog, *Upholding Justice*, 146–47; Muñoz, *Practica para procuradores*. Muñoz lists several categories of persons who were affected by *tachas*, including the excommunicated, hermaphrodites, rapists, abortionists, heretics, or other persons whom he deemed of dubious moral character (44–46). It is not clear why Margarita brought her case initially in the *Real Audiencia*, especially given the fact that Cristóbal Sánchez was a priest.

92 This suggests that the notary who took the original witness statements cooperated with Margarita in sending over the statements, since the witnesses should have come forth to give their own testimonies separately to the ecclesiastical court.

93 “Brígida de Córdoba por sí y en nombre de su hijo, Alejo de Córdoba, por su libertad, Censura, 7 noviembre 1669.”

94 *Corregimientos* were administrative districts granted to peninsular nobles and criollo elites for a limited term and were highly prized positions for their rent-bearing potential. The larger and more populous the *corregimiento*, the greater its tributary payout. In 1666, according to an inspection ordered by Archbishop Villagómez, the *corregimiento* of Chachapoyas held 7,500 *naturales*. See Vargas Ugarte, *Historia de la iglesia en Perú*, 3:165.

95 “2 de marzo 1670, Ynez de Córdoba, morena libre, estando enferma en cama como a mas de diez oras de la noche, y dixo que a su noticia a llegado como de pedimento de Brígida de Córdoba parda se an leydo y publicado censuras sobre un trueque y cambio que hizo doña Francisca de Córdoba con doña Luisa de Córdoba su hermana, y lo que ella sabe es que la dicha doña Francisca queriendo irse a un corregimiento le dio a la dicha doña Luisa la dicha Brígida por trueque y tomándose por si a la dicha Ynez, y no sabe si ubo escritura o no hasta ahora cuatro años oyó decir en diferentes ocasiones a la dicha doña Francisca que avía hecho trueque con la dicha doña Luisa de la dicha Brígida por esta declarante.” Censura, Brígida de Cordova y su libertad.

96 Later *censuras* were brought by procurators “en nombre de” (on behalf of) their clients. However, the early wave of *censuras* issued in the boilerplate 1660s forms were self-petitioned.

97 In lawsuits brought by enslaved litigants or suits that relied on slave testimony, defendants often cast aspersions as to the *calidad* of the people testifying or pointed to relationships of dependence and servitude linking the witnesses with the petitioner that obligated them to lie.


According to Lohmann’s entry, Zavala also served as mayor (alcalde) of Lima in 1670.

The orders of Santiago and Alcántara were militaristic religious orders that played a principal role in the holy wars against Muslims on the Iberian Peninsula. Their tribunal, the Santa Cruzada, was authorized by a series of papal bulls, and in 1615 the tribunal was transferred to the New World. On the history of the Santa Cruzada Tribunal in the Americas, see Benito, “Historia de la bula de la Cruzada en Indias.” In the Americas, the Santa Cruzada was established as a subsidiary body of the Council of the Indies, the Holy Tribunal, and the Archbishoprics. Members of the orders were granted special dispensation to collect taxes and tribute from indigenous villages on the basis of their past history as soldiers of holy wars. This arrangement meant that their salaries were paid by naturales, from whom they collected tax and tribute, rather than the community of Catholics. Reminding us of Zavala’s power as accountant (contador), Benito notes that “la pieza clave de todo el organigrama del Tribunal eran los contadores y tesoreros.” Ibid., 73.

I explain the reasons behind the numbers of spousal unity suits in Chapter 2.

Neal Milner graphically likens popular approaches to litigation as “root canal work” writing that, “litigation, like root canal repair, is a painful process and most people are averse to it” (“The Intrigue of Rights, Resistance, and Accommodation,” 320).

On complainants who “lump it” (as opposed to those who “like it”), see Galanter, “Why the Haves Come Out Ahead.”

Lockhart, Spanish Peru, 61–62. Like many decrees, this was pointedly ignored. By the time the Real Audiencia was established in 1544, Lima, Cuzco, and Potosí housed a sizable legal community. See Honores, “Legal Polyphony.”


Ibid. According to Kagan, “Out of 6,000–7,000 cases each year, only 400 ejecutorias (judgments) were reached. Ninety percent of the lawsuits never obtained a final writ. Most were withdrawn or forgotten, because litigants ran out of money (frequently) or because an out of court settlement was reached” (93).

See Comaroff, “Colonialism, Culture and the Law,” which sets out the foundations for nuanced inquiries of colonial law that avoid the bipolarities of law as domination versus law as salvation. For popular perceptions of due process and procedural fairness in Bourbon New Spain, see Scardaville, “Justice by Paperwork.”

Bryant, “Enslaved Rebels, Fugitives, and Litigants”; Lane, “Captivity and Redemption.”

On the baroque “theater-state,” see Cañeque, The King’s Living Image; Bennett, Africans in Colonial Mexico; and Osorio, “The King in Lima.”


O’Toole, “As Historical Subjects.”

O’Toole, Bound Lives, 47.
Notes

117 AGN, Cristóbal Aguilar Mendieta, Protocolo no. 54, años 1614–15, ff. 299–310v.

118 Ysabel assumed the surname of her owners, Joana de Aguilar and Joan Bautista de Guadalupe. The Hispanicized spelling of their names suggests they were Spaniards.

119 Such details of archival minutiae are important markers of social ascendancy and self-perception. In any official interaction, Anton was classified as a ropero (cloth seller), but when he presented himself to the court, he assumed the title of a royally licensed professional tailor (oficial de sastre).

120 AGN, Cristóbal Aguilar Mendieta, Protocolo no. 54, años 1614–15, ff. 299–301v. See also Bowser, The African Slave in Colonial Peru, 278. Bowser observes that Ysabel’s price was inflated for the time. In his careful review of slave prices, he notes that other slaves paid 450–500 pesos for their freedom in 1615. Ibid., appendix B, 342. My review of slave prices also reveals that prices escalated after 1640, although rarely did they reach the 1,000 peso mark – even for females of reproductive age. See Chapter 6.

121 See Serra Silva, “María de Terranova,” for the same observation about María de Terranova’s liberty suit.