

Introduction

IN 1690, HAVANA RESIDENT JUAN JUNCO GONZALEZ ISSUED A notarized receipt declaring that his twenty-year-old slave Juana had asked him to “give her freedom,” and that he had “agreed to do it” in exchange for 300 pesos. Juana had already paid half the price, so now, Gonzalez stated, he was “*obligated by law* to concede her freedom whenever my slave Juana gives me the rest to complete the said 300 pesos.” Although he presented emancipation (also known as manumission) as a master’s concession (“otorgarle la dicha libertad”), the agreement transformed it into a legal obligation that the slaveholder could not evade. Through what was known as *coartación* (from *cortarse*, to cut up in pieces), Juana had acquired the legal right to become free whenever she completed the payment. In practice this meant that Juana, a *coartada*, could be sold, transferred, or mortgaged to someone else only on conditional terms: the new owners could not refuse to free her if she came up with the remaining 150 pesos. The contract also specified that Juana, after paying a portion of her price, now owned a portion of her own labor. Any buyer “must grant her half of the time that belongs to her and discount it from her price.” Nor could Gonzalez go back on the agreement. A notarized contract of *coartación* like Juana’s and Gonzalez’s turned a master’s prerogative into a slave’s right, one that the slave could exercise even against the will of the owner.¹

More than a century after Juana achieved *coartada* status in Cuba, Nanny Pegee made her own claim for freedom in a Virginia chancery court. The basis for her claim, however, did not rest on Iberian contracting arrangements but on her Indian ancestry, as Virginia courts had recently declared that Indians were presumptively free. She brought

Montgomery County to wit, Nanny Pegee, &
 Cecelia Betty Daniel Rachel & Alexander her
 children, complain of John Hook & Zachariah
 Stanley in custody of a plea of ~~free~~ ^{assault}
 assault Battery and false imprisonment
 for this that the said Nanny is a free
 person & in no sort liable to be held as
 a slave, yet the Defend^ts in no wise ignorant
 thereof on the day of ^{ten hundred dollars} ~~one thousand~~ at Montgo-
 mery aforesaid did seize upon the said
 plffs and them forcibly detain & keep
 either by confinement, or threats & menaces
 have restrained the plffs and debarr'd
 them from the said day of
 1787, to the present time
 To the Damage of the plffs one ^{hundred} ~~one~~ ^{pounds}
 & therefore they sue
Hancock 12

1. *Nanny Pegee v. Hook*. In this document, Nanny Pegee, along with her five children, sued for “trespass assault Battery and false imprisonment,” on the ground that “Nanny is a free person & in no sort liable to be held as a slave.” Pegee v. Hook (1808), Franklin County (VA) Judgments (Freedom Suits), Barcode 7573898, LVA.

her suit in 1808, just two years after Virginia’s General Assembly had passed legislation decreeing that freed slaves would have to leave the state after their emancipation, but had rejected more stringent limits on

enslaved people's freedom suits. In depositions taken in Franklin County, where Pegee brought her claim, Pegee's witnesses portrayed her as appearing Indian or white, and described her hair as long and straight, "hanging loose down her neck and about her ears," although some thought it "dark or black" and others "rather fair." Several of her owner's witnesses described her as "mulatto Nan," while others described her as "too white." One who "never considered [her] any other than a slave" connected his belief to her "exceedingly strong scent – especially when the weather was warm." Although Pegee's owner complained to the chancery court of the Western District of Virginia that she was being aided by Quakers "inimical to slavery," who were "unfriendly" to him, and that the trial had been marked by "unblushing partiality" on the part of the judge, the jury awarded 200 pounds to Pegee and set her free. Pegee won at every level of the state court system, with the Virginia Supreme Court finally deciding that the jury had the right to determine her racial identity and thus her status as free or enslaved. Like Juana, Nanny Pegee made use of the law to win freedom for herself and to carve out a place for herself in the local community of free people of color.²

Nearly four decades after Nanny Pegee won her freedom, Eulalie Oliveau was kidnapped from her home in Pointe Coupée Parish, Louisiana, and sold to slave traders Daniel Long and Zachariah Mabry in New Orleans. In 1852, Eulalie sued Long and Mabry, arguing that she should be free "by prescription," because her owner, the widow Magdelaine Oliveau Porche, had allowed her to leave her plantation forty-five years earlier to marry Madame Porche's mixed-race half-brother, Henri Oliveau, and Eulalie had lived as free ever since. Henri was not taken by the kidnappers, and it was he who secured a lawyer to fight Eulalie's case. According to Eulalie's witnesses, Madame Porche had wanted to set all her slaves free at her death but realized "it was useless for her to make any last will in which all her slaves should be set free, because witness knew, that the police Jury [of Pointe Coupée Parish] would never permit its execution." Eulalie's case went all the way to the Louisiana Supreme Court twice, in 1854 and 1856. When it came before the court the second time, Louisiana's legislature had just passed a law requiring that all freed slaves be sent to Liberia. Nevertheless, Eulalie and her children won their freedom based on an

article of the Louisiana Civil Code providing that a slaveholder who “suffer[ed] a slave to enjoy his liberty for ten years” could not reclaim possession of the slave. The judges in her case disagreed on whether her status was actually that of a free woman, or if the law required only that her owner not be able to recapture her. Either way, Eulalie and her children became free, and they did not leave for Liberia.³

Becoming Free, Becoming Black tells the story of enslaved and free people of color across the Americas who sought and shaped liminal spaces in the law through which they could claim freedom for themselves and their loved ones and create communities that challenged slaveholders’ efforts to align blackness with enslavement. Although “manumission” should be understood as the prerogative of an enslaver with the power to emancipate those he held in bondage, the cases reveal individuals who were not mere passive recipients of a gift of freedom. Instead, they entered into contracts with their owners, and labored and accumulated property to achieve their ends. Not only did they use the legal tools available to them, but their initiatives shaped the laws of slavery and freedom. The Cuban practice of *coartación* had its origins in Iberian custom, but people like Juana expanded it and gave it meaning, using it to carve out spaces of relative autonomy for herself even before she became fully free. Eulalie Oliveau, too, drew on a legal tradition that traced its roots to Roman law but remained part of the local knowledge of enslaved and free people of color in Pointe Coupée, Louisiana, after Louisiana became part of the United States. Nanny Pegée challenged her enslaved status through her racial identity, building on a very recent precedent suggesting that Indians could be presumed free. Thus, enslaved people staked their claims through self-purchase arrangements and other efforts to bargain for freedom, as well as through the lawsuits they brought when such arrangements fell through. Enslaved people who found their way to a notary’s office or a courtroom to claim freedom were exceptional in certain ways. The majority of men and women born in bondage remained enslaved their entire lives. Yet those who became free were key to the construction of race in the Americas.

It was not the law of slavery but the law of freedom that was most crucial for the creation of racial regimes in law. The laws regulating manumission and freedom suits determined whether it was possible to

move from slave to free status, under what circumstances, and whether race would become the primary basis for claims to freedom. Laws regulating the lives and institutions of free people of color created the boundaries between black and white, the rights that would be reserved to white people, and the degradations imposed only on black people. This book challenges traditional perceptions of a contrast between a racially fluid system in Latin America that recognized the slave as a person, and a harsher binary system in the British colonies that saw the slave only as chattel. People like Nanny Pegee, who contested both her racial identity and her enslaved status in the courtroom, give the lie to this comparison, according to which she should never have existed in starkly black-and-white nineteenth-century Virginia. It was not a society's recognition of slaves' humanity, nor its racial fluidity, that marked the differences among Cuba, Virginia, and Louisiana. It was how successfully the elites of that society drew connections between blackness and enslavement, on the one hand, and whiteness, freedom, and citizenship, on the other.

In all three places, slaveholding elites acted to cement the association between African origin and slavery, linking blackness to social degradation. By the early eighteenth century, the legal regimes in all three jurisdictions constituted blackness as a debased category that was equivalent to enslavement. But despite these similar beginnings, by the mid-nineteenth century the social implications of blackness in each region were fundamentally different. A free man of color in Cuba in the 1850s could marry a white woman, attend public school, and participate in a religious confraternity that gave him opportunities to be part of public life. A free man of color in 1850s Louisiana or Virginia saw his churches and schools being shut down, faced prosecution for marrying across the color line, and ran the risk of being kidnapped, imprisoned and even reenslaved if he remained in the state in which he was born. In Louisiana or Virginia, when a person sought to prove in court that he was not a person of color, he would bring evidence of civic acts, because citizenship and whiteness were so linked in political thought and legal doctrine that it was believed a citizen must be a white man, and only a white man could be a citizen. In Cuba, similar evidence of gentlemanly civic behavior was not necessarily incompatible with blackness.

The key to these divergent trajectories of racial differentiation was the law of freedom. It began with legal traditions: in Cuba, the right to manumission was firmly entrenched in the Iberian law of slavery and was not tied to race, a key difference from the law in both Louisiana and Virginia. But it did not end there. The creation of race through law was a long process with many unpredictable twists and turns, not a linear progression. In some ways a more open society than Cuba in the seventeenth century, Virginia became more inimical to free people of color in the early eighteenth century but then witnessed the creation of new legal avenues for freedom in the Age of Revolution, making Pegee's suit possible. In Louisiana, New Orleans, which had been a mecca for free people of color in the early nineteenth century, was a completely different place by the 1850s. These dramatic shifts in the fortunes of free people of color suggest the power of legal regulation and contestation. What decided Pegee's case had less to do with edicts emanating from the capitol than with a law of freedom created from the bottom up, as families of enslaved people across Virginia learned that they could use the identity of a distant ancestor to emancipate themselves, just as Cuban *coartados* like Juana learned to claim rights that were not formally regulated in any code or statute.

As we explore the effects of local politics and culture, we discover some key differences between Louisiana and Virginia, on the one hand, and Cuba, on the other. The presence of Indians shaped understandings of race, and the legal status of free people of color, in Virginia and Louisiana, whereas in Cuba, indigenous peoples had ceased to be a meaningful presence in early colonial times. In the United States, the "negro race" was defined in contrast to Indian "nations," as lawmakers sought to prevent black-Indian alliances. Furthermore, as growing restrictions were imposed on free blacks, many "negroes" were reclassified as Indian, melting into mixed-race communities that persisted into the nineteenth century and migrating out of Virginia into the Carolinas and beyond.

The divergent trajectories of race in Cuba and the United States were also the result of political and ideological configurations that grew even further apart after U.S. independence. Although racism flourished in all three societies, only in the United States, divided between a North where

slavery was dying out and a South increasingly dependent on it, did a racial defense of slavery become inextricably linked politically to “white man’s democracy.” As slaveholders appealed to nonslaveholders with the promise of broad citizenship rights for all white men, free people of color became increasingly anomalous, and even dangerous, to the polity. To many slaveholders and nonslaveholders alike, the extension of citizenship rights to all white men required the removal of free black people from their midst. That is why colonization efforts that sought to remove free blacks to a distant location in Africa prospered in Virginia and Louisiana but not in Cuba. And that is also why Virginia and Louisiana acted in the nineteenth century, especially in the 1850s, to end the possibility of manumission, self-purchase, or freedom suits.

In the long run, the obstacles that Virginia and Louisiana placed in the way of manumissions, first during the colonial period and again in the antebellum period, produced dramatic results: communities of free people of color attained significant numbers in Cuba, while those in Virginia and Louisiana dwindled. An enslaved person in mid-nineteenth-century Cuba was likely to encounter free people of African descent on a regular basis. Such a prospect was rare in many areas of Virginia and Louisiana. This, in turn, helped to solidify the link between race and enslavement in the United States. Communities of free people of color in Cuba maintained important institutions, such as military units staffed by free black (*moreno*) and mulatto (*pardo*) soldiers and officers, that were important platforms for mobility and social standing. Militias of free men of color never took hold in Virginia and they died out in Louisiana by 1834. Communities of free people of color were also key to the expansion of freedom, as they could provide resources and legal knowledge to enslaved people. Perhaps most important, their members made claims on citizenship that made it difficult to argue that only white people could be citizens.

Gender played a critical role in the demography as well as the politics of racial differentiation. All jurisdictions endorsed the widely observed principle of *partus sequitur ventrem*, which tied the status of children to that of their mother, regardless of the social and racial background of the father. Because of that principle, women were key to the reproduction of slavery, and of freedom. As the case of Nanny Pegee shows, the racial

identity of a female ancestor constituted a potent basis for a freedom claim. Manumissions were also gendered, as women were able to obtain freedom at much higher rates than men. And when they did, it meant that their progeny, indeed all their descendants, would be forever free. The predominance of women in manumissions was thus a key factor in the growth of the communities of free people of color across time. Finally, gender and sexuality played a key role in the creation of a racial order, because much of the policing of racial boundaries involved legal prohibitions against interracial marriage and even sex, particularly targeting the sexuality of white women. Numerous bastardy cases in eighteenth-century Virginia involved white female indentured servants who engaged in sexual relations across color lines. In nineteenth-century Cuba, although interracial marriage remained legal, even destitute white women seeking to marry a man of color frequently encountered the opposition of family members and authorities. In all of these ways, the policing of sexuality, and especially the differing treatment of white woman/black man and white man/black woman dyads, contributed to the construction of legal regimes of race.

The history we tell here builds on decades of important work on slavery and race in the Americas. Mid-twentieth-century comparative historians first traced the contrast between a “Latin” American “slave system” based on a well-established body of Iberian law, with Roman and canonical roots, that conferred legal and moral personality on slaves, and an Anglo-American system in which planters were free to treat slaves as chattel.⁴ Revisionist historians challenged the sharp contrast between British and Spanish America by deemphasizing the influence of law and religion in favor of demographics and economics. They demonstrated the brutality of Latin American sugar plantations, the persistence of racial hierarchies and inequality in Latin America after emancipation, and the lack of enforcement of paternalist laws about humane treatment of slaves.⁵ Finally, a new generation of cultural-legal historians has brought law back to the center of inquiry, but working from the ground up, and in microhistories that traverse jurisdictional lines.⁶

This book returns to early comparativists’ broad questions about the development of regimes of race and slavery. But we bring to bear on

those questions the tools and approaches of cultural-legal history close to the ground. Instead of starting with static legal traditions to trace their effects in law, we look at the way legal practices, emerging not only from doctrines and traditions but also from participants' own strategies, shaped institutional change. We define "law" broadly, including the codes and royal edicts emanating from the metropole as well as local statutes, trials, and adjudications in which different social actors, including slaves, articulated competing notions of rights. While major codes and royal edicts were steeped in imperial tradition, slaveholders had a hand in drafting local statutes, and multiple local players shaped the outcomes of local adjudications. Slaveholders' interests were often shared across jurisdictions, different legal traditions notwithstanding, although they were also influenced by different political imperatives, such as the need to appeal to nonslaveholding whites. Our approach assumes the "mutual constitutiveness" of law and culture: legal traditions shape society, as local politics and culture, and the actions of ordinary people, in turn shape the operation of the law.

We have chosen three plantation societies for our study: Cuba, Virginia, and Louisiana. Historians have often paired Cuba and Virginia as exemplars of the Spanish and British colonial systems, respectively; we add a third point of comparison, the hybrid legal system of Louisiana, where we examine how slaves took advantage of shifting legal regimes during the eighteenth and nineteenth centuries to obtain their freedom. By the mid-nineteenth century all three locations were mature Atlantic plantation societies based on slave labor. In each of them, race was a key category of difference, stratification, and social worth; white people widely perceived black people to be degraded and inferior, a perception that had solid foundations in local law. Furthermore, all three locations were interconnected through Atlantic networks of trade, culture, and finance. Virginia was a major exporter of slaves to New Orleans, the largest slave market in the American South. Cuba and Louisiana were under shared Spanish control for several decades and intense communication between Havana and New Orleans continued well into the nineteenth century. Many of the free people of color of Louisiana could claim ancestors who, escaping from the violence of revolutionary Saint-Domingue, arrived in New

Orleans by way of Cuba. The ripples of Saint-Domingue, in turn, reached all three societies, where whites constantly feared that a similar insurrection would put an end to their lives and fortunes. Because of these similarities and linkages, comparing the three societies allows us to see the difference that the developing law of freedom made in their divergent trajectories of race.

The first two chapters of the book explore the early colonial period, beginning with the settlement of Cuba in the sixteenth century, then Virginia in the seventeenth, and Louisiana in the eighteenth. Chapter 1 demonstrates that legal and social precedents mattered deeply to the development of these new slave societies, but not in the way traditional comparisons among the competing empires might lead one to believe. By the time Iberians arrived in the New World, they were familiar with the enslavement of sub-Saharan Africans and set about immediately to establish a racially based society in Cuba. In Virginia, by contrast, distinctions of race were not systematized in law until slave status was set in stone decades after the colony's settlement. The French arrived in Louisiana at a much later point in the development of their empire, and they had already written a code for slaves and "noirs." Across all three regions, colonial legislators established a degraded status for people of African descent, but they did so much more quickly in Cuba and Louisiana.

Chapter 2 looks more closely at two aspects of legal regulation in which Cuba diverged from both Virginia and Louisiana: laws regarding manumission, and the regulation of interracial marriage. Although seventeenth-century Virginians set no restrictions on the ability of a person of color to become free, or to marry a white person, that began to change toward the end of the century. By the early eighteenth century, manumission and interracial sex and marriage were restricted in both Virginia and Louisiana, unlike in Cuba. This chapter explores that shift, as well as the important effects of this divergence.

Our long view puts the Age of Revolution, the subject of Chapter 3, in a new perspective. Across the Americas, the chaos of war, ideologies of equality and liberty, and, above all, the specter of slave rebellion in Haiti inspired legal claims-making and created new opportunities for

emancipation. Historians have highlighted the ways in which slaves and free people of color seized the moment of upheaval to claim freedom in urban areas as distant from each other (and Haiti) as Baltimore and Rio de Janeiro.⁷ Yet what made freedom possible was often the unintended consequence of retrenchment and reform, rather than revolution. Louisiana changed hands from France to Spain. Reforms put in place by the Spanish Bourbons, as well by Virginia legislators, to shore up existing institutions to withstand revolutionary challenges ended up creating openings for enslaved people to make stronger claims. The expansion and legal solidification of customary self-purchase practices, such as *coartación*, in both Havana and Louisiana were not the products of revolution. Instead, they reflected efforts by Bourbon reformers seeking to shore up the monarchy and raise revenue. In Virginia, two kinds of freedom suits became most important: claims of illegal importation and claims based on Indian ancestry. The claims about Indian identity highlight the central irony of the American Revolution: the nation's new Constitution and its language of equality and liberty coincided with the massive expansion of plantation slavery and an increasing emphasis on race as the basis of citizenship and freedom. Thus, some enslaved people became free, but only by claiming they were not "negro." Claims to freedom based on an Indian foremother signaled the salience of race as a marker of legal status.

In Chapters 4 and 5 we explore the growing restrictions on manumission and free people of color in Louisiana and Virginia in the second half of the antebellum era, which stand in contrast to the significant but less successful efforts of Cuban slaveholders to limit the rights of freed people. Chapter 4 compares "colonization" campaigns to "remove" free people of color in all three jurisdictions, as well as the differing trajectories of manumission and freedom suits. Chapter 5 looks most closely at the 1850s, when slaveholders in Louisiana and Virginia sought to shut down the leading institutions of communities of color, churches and schools, and compares trials of racial identity and cases of interracial marriage, in which U.S. courts drew tight connections between whiteness and the possibility of citizenship, whereas Cuban courts held out the possibility that a person of color could also be a respectable gentleman and could marry across the color line.

Like their counterparts in Louisiana and Virginia, Cuban slaveholders sought total dominion over slaves and reduced rights for free people of color. Since early colonial times, they had shared a contempt for people of African descent. But as colonial authorities argued in mid-nineteenth-century Havana, any attempt to curtail African-descended people's "rights or concessions sanctioned by law" was dangerous and politically inadvisable. Such "rights" and "concessions" had deep colonial roots and owed much to the initiatives of enslaved people themselves. In the pages that follow, we will explore those initiatives.