

Draft of 8 February. Proposed panel for the American Society of Legal History Meetings, Dallas, November 2009.

Status, Process, Contest:

Emancipation, Enslavement, and Identity under Law in the Age of Atlantic Revolutions

Chair: Jean Allain, School of Law, Queen's University (Belfast)

“Comparing Law and Racial Identity under Slavery in Colonial Cuba, Louisiana and Virginia”

Alejandro de la Fuente, History, University of Pittsburgh, and
Ariela Gross, Law/History, University of Southern California

“Prosecuting Torture: Risk and Revolution in an Eighteenth-Century Slave Colony”

Malick Ghachem, Weil, Gotshal & Manges LLP

“ ‘She. . . refuses to deliver up herself as the slave of your Petitioner’: Émigrés, Enslavement, and the 1808 Louisiana Digest of the Civil Laws”

Rebecca J. Scott, History/Law, University of Michigan

Comment: Walter Johnson, History, Harvard University

This panel brings together a group of scholars whose work proposes new ways of linking the study of slavery and the law. Each author uses the close analysis of case files and trial records to explore the interplay of statutes, codes, and individual strategies in the determination of social, legal, and racial status. Drawing on material from the era of the Haitian Revolution through the beginning of export booms in the nineteenth century, these three papers emphasize the performative and exemplary character of trials of racial determination, slave status, and criminal responsibility, while tracing the pragmatic and instrumental dimensions of litigation of this kind.

Abstracts:

“Comparing Law and Racial Identity under Slavery in Colonial Cuba, Louisiana and Virginia.” Alejandro de la Fuente and Ariela Gross

This paper takes a comparative approach to the study of racial identity and the law in the Spanish colony of Cuba, the British colony of Virginia, and the “mixed legal tradition” of

Louisiana, drawing on statutes as well as trial records of cases involving racial determination. The literature on slavery in the Americas has been heavily influenced by a history of legal comparisons, and an earlier generation of comparative work on race and slavery by Frank Tannenbaum, Herbert Klein, and Carl Degler drew heavily on law to draw contrasts between slavery in the U.S. and in Latin America. Tannenbaum argued that Spanish American slavery was less harsh than that of British America because of the ameliorative influence of the Catholic Church, because Spanish law provided more avenues for emancipation, and because a less restrictive approach to interracial marriage and a less rigid racial system both reflected and yielded less racism in the society as a whole. Revisionists criticized Tannenbaum and Degler for their focus on legislation as providing a top-down history without sufficient attention to the conditions of slavery on the ground. Social historians disproved the mildness of Spanish legal regimes, demonstrating the brutality of sugar plantations, the persistence of racial hierarchy and inequality in Latin America, and the lack of enforcement of paternalist laws about slave treatment. Demographic factors seemed to explain more of the variation in slavery regimes – for example, imbalances in sex ratios to explain higher rates of interracial marriage or sex, and fluctuations in commodity prices to explain changing rates of manumission. Although most historians of slavery subsequently turned away from legal history, recent work has begun to return to law, but from the bottom up, looking at slaves' claims in court, trial-level adjudications, and interactions among ordinary people and low-level government officials. This approach makes it possible to see the way slaves took advantage of the gap between rules and enforcement, and to explore racial meanings at the level of day-to-day interactions rather than formal rules. It has been difficult, however, to put these ground-level explorations into a comparative framework. Our paper compares the adjudication of racial identity in three colonies in an effort to draw preliminary conclusions about what we already know of the similarities and differences across national boundaries and to raise questions for future work. The association between blackness, degradation, and a low social status, byproducts of several centuries of racial slavery, is one of the most enduring legacies of the modern Atlantic system. Yet behind this commonality, some differences persist, particularly with respect to racial mixture and interracial marriage. We explore how these differences manifested themselves in the legal determination of racial identity.

“Prosecuting Torture: Risk and Revolution in an Eighteenth-Century Slave Colony.” Malick W. Ghachem

Abstract: This paper tells the story of the prosecution of a master for the torture of two slaves in Saint-Domingue (Haiti) on the eve of the French and Haitian revolutions. The colonial law of torture in action showcases the strategy of risk management that was at the heart of colonial slave law generally in Saint-Domingue. Participants in the prosecution of Nicolas Lejeune argued that the trial was attended by the risk of a slave revolt on both of two diametrically opposed sides. On the one hand, it was argued, immunizing masters from punishment for the torture of their slaves would send a message to slaves that their only hopes for ameliorating the brutalities of slavery lay in revolt. On the other hand, permitting slaves to seek redress against their masters in the colonial courts would trigger a wave of insubordination culminating in a general uprising. Both arguments were imbued with a strategic anxiety about the consequences of the terror-torture nexus of eighteenth-century

Saint-Domingue. The Lejeune affair highlights the significance of a pragmatic, prudential strand of antislavery critique that must be placed alongside other interpretations of the origins of abolitionism. The trial also points to some troubling resemblances (as well as differences) with the contemporary relationship between terror and torture.

“ ‘She. . . refuses to deliver up herself as the slave of your Petitioner’: Émigrés, Enslavement, and the 1808 Louisiana Digest of the Civil Laws.” Rebecca J. Scott

This essay looks at the way in which multiple layers of legality concerning slavery – the 1808 *Digest of the Civil Laws now in Force in the Territory of Orleans*, the territorial and state statutes, and the residuum of the Spanish *Siete Partidas* – shaped the situation in Louisiana of those who had once been slaves but had become free people during the revolution in Saint-Domingue (Haiti). Using a set of cases concerning the émigrée former slave Adélaïde Métayer, it tracks the web of social solidarities, reciprocities, and deceit within which this legality played out. Louis Moreau Lislet plays three roles in the story: as co-compiler of the 1808 Digest, as the judge presiding over the first suit for damages brought by Adélaïde Métayer, and as attorney in two subsequent cases -- representing the man who sought to enslave her. The essay closes by returning to the Digest’s definitions of the status of persons, reflecting on the strategies that Adélaïde Métayer and others used to try to place themselves out of danger of re-enslavement, and suggesting the dramatic asymmetries and lack of normative clarity in the legal definition of slave status.