FREE FOR A MOMENT IN FRANCE: HOW ENSLAVED WOMEN AND GIRLS CLAIMED LIBERTY IN THE COURTS OF NEW ORLEANS (1835-1857)

by

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A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Jurisprudence and Social Policy

in the

Graduate Division

of the

University of California, Berkeley

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Fall 2018

Abstract

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An economic institution, slavery depended on a set of laws designed to protect owners of human property (Phillips 1918, Stampp 1956, Genovese 1976). One might expect that those at the bottom of the hierarchy—enslaved women and girls of African descent—would have no hope of lawfully contesting their status. Recent literature demonstrates that there were in fact many legal pathways to freedom (Schafer 1994, Brana-Shute and Sparks 2009, Gross and De la Fuente 2013). Much research has focused on Missouri, a borderland between free and slave states, whence Dred Scott's claim emerged (Vandervelde 2015, Twitty 2016, Kennington 2017).

This project focuses not on borderlands but on the Deep South. In the city with the largest slave market in the United States (Johnson 1999, Rothman 2005), it is surprising that opportunities to contest enslavement existed at all. This dissertation examines a subset of the cases that Judith Schafer (2003) identified in her survey study of New Orleans local court records. Between 1847 and 1850, a flurry of freedom suits descended upon the First District Court of New Orleans. Women and girls were the main legal actors. As domestic servants, they had been taken to France—a country whose legal institutions did not uphold slavery. Upon their return to New Orleans, these women and girls submitted petitions for freedom on this basis. Until 1852, white male judges affirmed their claims as valid under both local and international law.

Inspired by socio-legal history and critical legal theory, several questions emerge. How did claimants develop a legal consciousness? How did they access justice? How did race and gender matter? A detailed focus on a small set of cases allows for an in-depth exploration of these questions. A micro-history set in motion, this project also follows the historical actors to relevant places (Scott and Hébrard 2012). Beginning in New Orleans, it then traces the claimants in French archives. It follows Judge John McHenry (who decided most of these cases at the first-instance) to California, where he moved on the eve of the Civil War.

This project often ventures outside sources of traditional legal history (such as judicial opinions) in order to better understand law (Gordon 1984). In addition to trial records, New Orleans sources include sacramental records, wills, and the records of the city's first African American Catholic congregation. French sources include antislavery literature, Abolitionist periodicals, and diplomatic correspondence. California sources include newspapers and personal letters.

Both an Atlantic history and a legal history from below, this book presents law the way that claimants experienced it (see, *e.g.*, McKinley 2016, Palmer 2016, Welch 2018). Chapter 1 is premised on the socio-legal assumption that all lawsuits begin as social disputes. This chapter reviews the precedent setting cases where the Supreme Court of Louisiana revived the French medieval maxim that "there are no slaves in [metropolitan] France" (Peabody 1996). Chapter 2 demonstrates that in the 1830s-40s, Paris was the center of a growing Abolitionist movement throughout the French Empire. American women and girls traveling there as domestic servants would have experienced deeply racist immigration and criminal laws, but also law's emancipatory potentials. Chapter 3 follows the women and girls back to New Orleans, situating them within a broader network of free people of color. Petitioners did not act in isolation; freedom suits mobilized a community. Chapter 4 examines how legal professionals translated raw desires into legal claims. Professionalization of legal practice, not cause lawyering, explains how litigants accessed representation. Chapter 5 focuses on judgment: simple words that drastically changed litigants' lives.

From a structural point of view, the freeing of individual slaves is an integral part of slave law, serving the interests of the master class. By creating exceptions from some, it solidifies the general rule of slavery (Patterson 1982). But from an individual's point of view, submitting a freedom petition is an act of resistance. Women and girls, not men and boys, emerge as the main legal actors. As members of intimate households, women were better placed than men to initiate legal proceedings. Because of the *partus sequitur ventrem* doctrine, the pay-off of an individual woman's emancipation was higher. This project also responds to a narrative of Louisiana exceptionalism. Within Anglo-America, Louisiana was distinct in ways that mattered for enslaved people, and growing Anglicization of the legal system there shut off pathways to individual emancipation. On a wider international scale, however, Louisiana was not necessarily distinct but in fact well-connected to a French Atlantic network.

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DEDICATION

When I was a child I learned to be silent.

This dissertation is dedicated to Marie-Marguerite, who in 1740 refused to stay silent.

ACKNOWLEDGMENTS

First, to the city of New Orleans: with the mighty Mississippi pulsing through your core and the scent of orange blossoms wafting through the air: thank you for showing me both your grit and your beauty; your pain and your capacity for regrowth.

To Christopher Tomlins, my dissertation chair: thank you for inspiring me to think broadly and deeply about law, slavery, and freedom in American history. I am incredibly grateful to you for your unwavering support of my scholarly plans and aspirations, and for helping me develop and preserve my authorial voice. To my additional committee members Laurent Mayali, Rebecca McLennan, and Dylan Penningroth: thank you for making time, amidst your already busy schedules, to advise me on my dissertation. The final product is richer and fuller thanks to your guidance and generosity. To Catherine Desbarats, my Master's supervisor: thank you for teaching me about a French Atlantic, and for inspiring me to think about the local in global context.

At U.C. Berkeley and beyond, additional faculty members provided valuable mentorship for which I am very grateful. These include Pierre Boulle, Margot Canaday, Emily Epstein, Mark Fernandez, Malcolm Feeley, Ariela Gross, David Lieberman, Ian Haney López, Carla Hesse, Kinch Hoekstra, Stephanie Jones-Rogers, Calvin Morrill, Michelle McKinley, Matthew Mirow, Robin Mitchell, Jennifer Palmer, Sue Peabody, Elena Schneider, Rebecca Scott, Jonathan Simon, John Steele, Randy Sparks, Karen Tani, Kimberly Welch, and John Wertheimer. I am also extremely grateful to Margo Rodriguez for her support, both logistical and emotional.

To my graduate school buddies: especially Andrew Brighten, Angelo Matteo Caglioti, Samantha Groden, Erica Lee, Julia Lewandoski, Tobias Smith, Derek O'Leary, Paul Meyer, Genevieve Painter, Giuliana Peronne, Gabrielle Roy-Chevarier, Renaud Roussel, Matthew Wyman-McCarthy, my cohort in the Jurisprudence and Social Policy Program, and the Berkeley Law Mindfulness Group: thank you for your companionship through thick and thin.

This project would not have been the same without teaching in subject areas like the history of human rights, comparative law, American constitutional and legal history, and property law. Robert B. Brown, Stefan Ludwig-Hoffmann, and Laurent Mayali: thank you for supervising my teaching. To my students in these classes: thank you for your enthusiasm, which in turn inspired me to think about my project in new ways.

During my research process, certain archivists and librarians were especially helpful. These include Béatrice (*Archives nationales d'outre mer*), Christina Bryant (City Archives, New Orleans), Erin and Siva (New Orleans Notarial Archives), Jennifer Dorner (University of California, Berkeley), I-Wei Wang (Berkeley Law Library), Susan Powell (University of California, Berkeley, Earth Sciences and Map Library), and Roy Sturgeon (Tulane Law Library). My archival journeys would not have been the same without fellow travelers, including Mary Grace Albanese, Elizabeth Clark Neidenbach, and Ashley Rose Young. I am grateful to the *Maison d'étudiants canadiens à Paris* for providing me a home in a bustling metropolis. I am also grateful to the New Orleans locals who welcomed me, oriented me, and provided me places to stay while I conducted this research: Tina Antolini, Claire Bangser, Crescent City Historic Tours, Jeff Dubea, and Rachel Gorman. Additionally, I thank Denise Frazier and Rebecca

Snedeker of the Tulane University Center for the Study of the Gulf South, who offered me an intellectual home away from home. I am grateful to Graduate Services at the University of California, Berkeley Doe Library for providing dissertation writers a peaceful room of our own.

This project would not have been possible without the support of several organizations: the American Association of University Women (Dissertation Fellowship), the American Society for Legal History (William Nelson Cromwell Fellowship), the Center for the Study of Law and Society (Berkeley Empirical Legal Studies Fellowship; Philip Selznick Doctoral Fellowship), the Social Sciences and Humanities Research Council (Doctoral Fellowship), the Tulane University New Orleans Center for the Gulf South (Global South Research Grant), the University of California, Bancroft Library (Dorothy and Kenneth Hill Fund), and the University of California, Berkeley Center for Race and Gender (Research Grant). My writing and thinking on this project have also greatly benefitted from participation in the American Society for Legal History Student Research Colloquium, the French Colonial Historical Studies Graduate Student Workshop, and the University of California, Berkeley, Early American History Working Group.

At a crossroads in my life, Bohdan Hawrylyshyn advised me to do what I love in my professional life, to make time for friends and family, and to exercise every day. To my mother Tamara Woroby, my partner Andrew Rastetter, and all my other loved ones and kin—especially Nina Fontana, André Havrylyshyn, Tania Woroby, Katya Woroby and Rick Reeson, Adriana Hafiane, Stephanie Heard, Patricia Shmorhun, Alison Whitney, Nina Kozy, Nadia Woroby, and Peter Woroby—thank you all for your love and support, without which I could not have arrived at this point.

ARCHIVAL ABBREVIATIONS

California

BANC – Bancroft Library, The University of California, Berkeley

France

ADSM – Archives départementales de Seine-Maritime

AN – Paris

AN – Pierrefitte

ANOM – Archives nationales d'outre-mer, Aix-en-Provence

BnF – Bibliothèque nationale de France

MAE-Paris – *Ministère des affaires étrangères, Archives diplomatiques*, Paris, La Corneuve

Louisiana

ANO – Archdiocese of New Orleans

HASCL – Historical Archives of the Supreme Court of Louisiana, Earl K. Long Library, University of New Orleans, digitized at < http://libweb.uno.edu/xmlui/handle/123456789/1>.

HNOC – Historic New Orleans Collection

LRC – Louisiana Research Collection, Tulane University

LSM – Louisiana State Museum

NOCA – New Orleans City Archives

NONA – New Orleans Notarial Archives

Digital Databases

LDL – Louisiana Digital Library

RSPP – Race and Slavery Petitions Project

TABLE OF LEGAL AUTHORITIES

Constitution

Federal Statutes

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<u>Long Form:</u>

<u>Short Form:</u>

Supreme Court of Louisiana Cases Held at the Earl K. Long Library, University of New Orleans

Long Form:

Marie-Louise f.w.c. v. Marie Emilie Marot Ferrière and Louis Lallande Ferrière, Docket No. 2748, 8 Louisiana Reports 475 (Supreme Court of Louisiana 1835), *Historical Archives of the Supreme Court of Louisiana*.

Short Form:

Marie-Louise v. Marot, No. 2748, 8 La. 475 (1835), *HASCL*.

Cases Available Through Legal Databases Like *LexisNexis*

Legal databases like *LexisNexis* hold digital copies of the published opinions of some of the cases I examine in my dissertation. Unlike the *Historic Archives of the Supreme Court of Louisiana*, legal databases like *LexisNexis* publish only judicial holdings. They exclude other documents related to the case such as the petition, answer, and summons. Where I do not refer to an archive such as *HASCL* in a footnote, this indicates that I have consulted the judicial holding through a legal database such as *LexisNexis*.

As this example shows, party names are often misspelled on such legal databases. For instance, "Louise" is not the plaintiff's last name; it is the second part of her first name in French, "Marie-Louise." Therefore, the most reliable way to search for cases on these databases is to use the reporter number. Here, "8" refers to the volume number, "La." refers to the court reporter *Louisiana Reports*, and "475" refers to the first page number of the case in this printed report. Following Bluebook convention, I omit the name of the court where the reporter name is present.

Short Form:

Louise v. Marot, 8 La. 475 (1835).

New Orleans District Court Cases, Long Form:

Aimée c.w. v. Mr. and Mrs. Adolphe Pluché and J.B. Bosquet, No. 1650 (1st D. Ct. New Orleans 13 Dec. 1847-25 Aug. 1848), *NOCA* VSA 290.

Ajoie et al. f.p.c. v. Bernard de Marigny, No. 10,443 (4th D. Ct. New Orleans 1 Dec. 1856), *NOCA* VSA 290.

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- Robert Rogers f.c.m. v. Mr. and Mrs. William Guesnard, No. 2362 (1st D. Ct. New Orleans 2? Jan. 1848-29 Nov. 1849), *NOCA* VSA 290.

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Ann Maria Barclay v. Sewell, Curator, Docket No. 4622, 12 La. Ann. 262 (Supreme Court of Louisiana 1857), *HASCL*.

Eugénie Smith f.w.c. v. Rosalba Faure Preval, Gallien Preval, and Fillette Raynal, Docket No. 99, 2 La. Ann. 180 (Supreme Court of Louisiana 1847), *HASCL*.

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- Marie-Louise f.w.c. v. Marie Emilie Marot Ferrière and Louis Lallande Ferrière, Docket No. 2748, 8 La. 475 (Supreme Court of Louisiana 1835), *HASCL*.

- Marie-Louise f.w.c. v. Marie Emilie Marot and Louis Lallande Ferrière, Docket No. 2914, 9 La. 473 (Supreme Court of Louisiana 1836), *HASCL*.
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- Louise v. Marot, 9 La. 473 (1836).

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- Robert Rogers, f.m.c. v. Guesnard et al., Docket No. 1507, Unreported case (Supreme Court of Louisiana 1850), *HASCL*.

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- Priscilla Smith f.w.c. v. Widow Marie Antoinette Rillieux Smith, Docket No. 3314, 13 La. 441 (Supreme Court of Louisiana 1839), *HASCL*.
- Priscilla Smith f.w.c. v. Widow Michael Smith (Supreme Court of Louisiana 1838), *RSPP* Petition Analysis Record Accession #20883742-record incomplete.

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Baker v. Tabor, 7 La. Ann. 556 (1852).

Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

Josèphine's cases:

Marie-Louise v. Marot, No. 2748, 8 La. 475 (1835), *HASCL*.
Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
Louise v. Marot, 8 La. 475 (1835).
Louise v. Marot, 9 La. 473 (1836).

Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (Sup. Ct. of La. 1846), *HASCL*.

United States v. Garonne, 36 U.S. 73 (1837).

International Cases:

Somerset v. Stewart, 98 Eng. Rep. 499 (K.B. 1772).

The Slave, Grace, 2 Hagg. 94 (High Ct. Admiralty 1827).

INTRODUCTION

An economic institution, slavery in the antebellum American South depended upon a set of laws designed to enslave and exploit individuals on the basis of their race. A long line of literature has established this.[1] One might expect that those at the bottom of the hierarchy—enslaved women and girls of African descent—would have no hope of contesting their status. Recent literature demonstrates that there were in fact lawful pathways to freedom for enslaved individuals. One edited volume investigates pathways to freedom in various places in the Atlantic world, including Virginia and Maryland.[2] There were many ways in which enslaved individuals could gain freedom.[3] Free status could be rewarded as compensation for military service (as was the case in Revolutionary Latin America). It could be granted upon a slave owner's death.[4] If executors did not fulfill the decedent's promise to freedom, enslaved people could in some jurisdictions sue for breach of contract.[5] Slaves could petition for freedom on the grounds that they descended from free lineage, or on the grounds that they had touched free soil.[6] A former slave who had lived as if free for a prescribed period (usually about ten years) could petition for official recognition of free status.[7] Particularly in spaces that had been colonized by Spain or Portugal, self-purchase (*coártacion*) had long been practiced.[8]

Manumission is distinct from emancipation, or the institutional dismantling of the entire system of legalized slavery, as exemplified for instance by the passage of the Thirteenth Amendment.[9] From a structural point of view, manumission—the freeing of individual slaves

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[1] Derrick Bell, *Race, Racism, and American Law* (New York, NY: Aspen Publishers, 2004); Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon Books, 1974); Ulrich Bonnell Phillips, *American Negro Slavery: A Survey of the Supply, Employment and Control of Negro Labor as Determined by the Plantation Regime* (Baton Rouge: Louisiana State University Press, 1966); Thomas Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: The University of North Carolina Press, 1996); Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage Books, 1989).

[2] Rosemary Brana-Shute and Randy Sparks, *Paths to Freedom: Manumission in the Atlantic World* (Columbia, S.C.: University of South Carolina Press, 2009).

[3] For an overview, see Brana-Shute and Sparks.

[4] Judith Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994), 222–24; Art. 184 in Edward Livingston, Pierre Derbigny, and Louis Moreau Lislet, eds., *Civil Code of the State of Louisiana* (New Orleans: Printed by J. C. de St. Romes, 1825); Brana-Shute and Sparks, *Paths to Freedom*.

[5] Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 222–24; Art. 184 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*.

[6] Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 15–33.

[7] Rebecca Scott, "Social Facts, Legal Fictions, and the Attribution of Slave Status: The Puzzle of Prescription," *Law and History Review* 35, no. 01 (2017): 9–30.

[8] Ariela Gross, "Legal Transplants: Slavery and the Civil Law in Louisiana," *USC Law Legal Studies Paper* 9, no. 16 (May 12, 2009); Ariela Gross and Alejandro de la Fuente, "Slaves, Free Blacks, and Race in the Legal Regimes of Cuba, Louisiana, and Virginia: A Comparison," *North Carolina Law Review* 91 (2013): 1699–2244.

[9] U.S. Const. Am. XIII. Of course, the Thirteenth Amendment left an exception: slavery was abolished "except as punishment for a crime." This loophole created an incentive for Southern legislatures to criminalize behavior in ways that targeted former slaves, leading to a system that some historians argue was worse than slavery. See Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black People in America from the Civil War to World War II* (New York: Doubleday, 2008); Ava DuVernay, *13th: From Slave to Criminal with One Amendment*, 2016; David Oshinsky, *"Worse than Slavery": Parchman Farm and the Ordeal of Jim Crow Justice*

while the institution of slavery persists—is an integral part of slave law that serves the interests of the master class. By creating exceptions from some, manumission solidifies the general rule of slavery. Particularly in cases where a former slave owner granted freedom, a power dynamic of bondage remained. Although no longer enslaved, the former slave was understood to be forever indebted to the gift-giver.[10] This has roots in Roman law, with the verb to manumit deriving from the Latin, *manumittere*, to let go by the hand or set free.[11] In Louisiana, a freed person who was proven in court to be ungrateful to a former owner could be reduced again to slavery.[12] The notion that a once-enslaved person must remain obsequious to his or her former owner also derives from Roman law and culture, whereby a freed slave forever owed his master respect (*obsequium*).[13] Louisiana was the only Southern state to codify a respect requirement into its manumission laws.[14]

From an individual's point of view, nevertheless, submitting a freedom petition is an act of resistance.[15] This is particularly so in cases where enslaved people sued their putative owners in direct legal actions. The most widely-known direct legal action by a slave against an owner for freedom is that of Dred Scott, who claimed freedom on the basis of having resided in the free state of Illinois.[16] In this way, his was a free a soil argument. In his majority opinion at the Supreme Court of the United States, however, Chief Justice Roger B. Taney did not even reach the question of whether Scott had become free by residing Illinois. Taney notoriously held that as a descendant of Africans, Scott could never hope to become an American citizen and therefore did not have standing to sue in federal court.[17]

The recent discovery of a sizable set of freedom suits in the Saint Louis Circuit of Missouri has motivated a vibrant discussion of the pre-history of Dred Scott.[18] It has been shown that *Scott v. Sandford* (1857) was not an isolated event—the road to Dred Scott was a long one.[19] In rich detail, Lea VanderVelde reconstructs twelve of these freedom suits (albeit in

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(New York: Free Press Paperbacks published by Simon & Schuster, 1997); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012).

[10] Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 209–39.

[11] On manumission in Ancient Rome, see "Slave Law and Manumission at Rome," in Alan Watson, *Slave Law in the Americas* (Athens: University of Georgia Press, 1989), 22–39; Alan Watson, *Roman Slave Law* (Baltimore: Johns Hopkins University Press, 1987), 23–45.

[12] Morris, *Southern Slavery and the Law, 1619-1860*, 371.

[13] Watson, *Slave Law in the Americas*, 34–35; Watson, *Roman Slave Law*, 39–40.

[14] Morris, *Southern Slavery and the Law, 1619-1860*, 371; 409.

[15] On the exploitation of laws designed to oppress, see E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon Books, 1975), 259–68. On resistance in general, see James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985).

[16] Scott v. Sandford, 60 U.S. 393 (1857); Austin Allen, *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857* (Athens: University of Georgia Press, 2006); Christopher Alan Bracey, Paul Finkelman, and David Konig, *The Dred Scott Case: Historical and Contemporary Perspectives on Race and Law* (Athens, Ohio: Ohio University Press, 2010); Don Edward Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978); Earl Maltz, *Dred Scott and the Politics of Slavery* (Lawrence: University Press of Kansas, 2007).

[17] Scott v. Sandford, 60 U.S. at 407.

[18] *St. Louis Legal Encoding Project*, Institute of Museum and Library Services, Missouri History Museum, and Washington University in St. Louis.

[19] David Konig, "The Long Road to Dred Scott: Personhood and the Rule of Law in the Trial Court Records of St. Louis Slave Freedom Suits," *UMKC Law Review* 75, no. 1 (2006): 53–80.

a somewhat romanticized fashion).[20] Anne Twitty demonstrates that the vast area where the Ohio, Mississippi, and Missouri Rivers converge developed a distinct legal culture where boundaries between slavery and freedom were ambiguous and contestable.[21] Kelly Kennington likewise argues that as a gateway to the American West, St. Louis was an ideal place for enslaved individuals to challenge the legal system that upheld forced servitude.[22] Space is an important concept in all of these accounts, not least because the mobility of African Americans across jurisdictions opened up the possibility to submit a legal claim in the first place.

This project focuses not on borderlands but on the Deep South—in global context. The city of New Orleans was home to the largest slave market in the antebellum United States.[23] Today, the luxurious Omni Hotel in New Orleans bears the trace of a brutal past where humans were sold as forced laborers. The letters "change" are still visible on what was once the slave exchange building (Figure 1). Wherever it existed, slavery was no doubt a brutal regime that monetized human bodies and capitalized on their labor, including their reproductive labor.[24] New literature has revised the common view of slavery as a remote agrarian establishment. It instead shows the ways in which the trade in human property was part of a capitalistic regime and worldwide network**.**[25] Rashauna Johnnson, for one, argues that daily experiences of slavery were global and interconnected.[26]

Specifically, this dissertation examines a subset of the cases that Judith Schafer identified in her survey study of court records on slavery and freedom in antebellum New Orleans. The first chapter of *Becoming Free, Remaining Free* is titled, "Suing for Freedom: Slaves in Transit." This title highlights the central concept of inter-jurisdictional mobility. In the chapter, Schafer describes twenty-seven cases where once-enslaved people sued their owners in direct legal actions on the basis of having been to a state, territory, or nation whose laws did not recognize slavery. In other words, these

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[20] Lea VanderVelde, *Redemption Songs: Suing for Freedom before Dred Scott* (New York: Oxford University Press, 2015). This account of freedom suits is romanticized in that the redemption metaphor (evoking Bob Marley's 1979 classic) is not the most appropriate for a study on nineteenth century freedom suits. In at least two types of cases which VanderVelde examines: those where slaves claimed that their mastered had breached contracts promising freedom, and those where slaves claimed freedom because they or an ancestor had resided on free soil, plaintiffs conceded in their legal argument that they had originally been slaves. In this way, they were not redeeming freedom; they were gaining it for the first time. Dwelling on this metaphor, as the book does, distracts from the book's major strength as a meticulously research local legal history.

[21] Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence* (New York: Cambridge University Press, 2016).

[22] Kelly Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens: University of Georgia Press, 2017).

[23] Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999), 4–6; Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*, 2013, 2; Adam Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge: Harvard University Press, 2005), 73–84.

[24] Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004).

[25] Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism*, 2014; Johnson, *River of Dark Dreams*; Sven Beckert, *Empire of Cotton: A Global History* (New York: Alfred A. Knopf, 2014); Sven Beckert and Seth Rockman, eds., *Slavery's Capitalism: A New History of American Economic Development* (Philadelphia: University of Pennsylvania Press, 2016).

[26] Rashauna Johnson, *Slavery's Metropolis: Unfree Labor in New Orleans during the Age of Revolutions* (New York: Cambridge University Press, 2016).

were free soil claims. The free soil jurisdictions in this chapter include the Bahamas, England, France, and Ohio.[27] Recent studies show that even after the Middle Passage era, black mobility across international borders was more common than has previously been acknowledged.[28]

The central legal claims examined in this dissertation were possible because of a voyage to France. The records of New Orleans municipal courts demonstrate that twenty women and girls brought suit on the basis of having traveled to France.[29] They are no doubt only a fraction of the number of enslaved women and girls who were taken as domestic servants to spaces where slavery was illegal. As a long line of literature shows, legal records are hardly the only available window into social and cultural life, but they are often among the best documented.[30] Until 1852, white male judges generally affirmed free soil claims as valid under both local and international law.[31]

Methodologically, Schafer explains that her study is "not a social history of slaves, slaveowners, and free people of color, although the cases reveal much about all three."[32] Her primary source focus is on judicial decisions.[33] Opinions written by judges are the sources of traditional legal history, which relies heavily on sources produced by top-level officials.[34]

Inspired by both critical legal history and socio-legal history, several questions arise of these cases that by design were not fully answered in Schafer's text. How did plaintiffs develop a legal consciousness, or awareness that one has a claim that can be defended in a formal legal institution?[35] How did plaintiffs access justice? How did race

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[27] Judith Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University, 2003), 15–33.

[28] Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge: Harvard University Press, 1993) (an important precursor that opened up conceptual lines of inquiry); Johnson, *Slavery's Metropolis*; Paul Lachance, "Repercussions of the Haitian Revolution in Louisiana," in *The Impact of the Haitian Revolution in the Atlantic World*, ed. David Geggus (Columbia: University of South Carolina, 2001), 209–30.

[29] Schafer, *Becoming Free, Remaining Free*, 15–33.

[30] William Felstiner, Richard Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .," *Law & Society Review* 15, no. 3–4 (1980): 631–54; Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (New York: Oxford University Press, 2009), 26; Thomas Kuehn, *Law, Family & Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago: University of Chicago Press, 1994).

[31] Schafer, *Becoming Free, Remaining Free*, 15–33.

[32] Schafer, xxii.

[33] Schafer, xxii.

[34] For helpful reviews of approaches to legal history that preceded critical legal history, see Robert W. Gordon, "Critical Legal Histories," *Stanford Law Review* 36 (1984): 57–126; Christopher Tomlins, "After Critical Legal History: Scope, Scale, Structure," *Annual Review of Law and Social Science* 8 (2012): 31–68; Christopher Tomlins, "What Is Left of the Law and Society Paradigm after Critique? Revisiting Gordon's 'Critical Legal Histories,'" *LSI Law & Social Inquiry* 37, no. 1 (2012): 155–66.

[35] An argument for understanding the emergence of legal consciousness by describing it in narrative form is developed in Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998).

and gender matter? Race and gender, in turn, are socio-cultural constructions whose meanings change over time and space.[36]

The emphasis in critical history is not on mandarins, but on those at the bottom of the social hierarchy; not on progressive narratives, but on plural histories; not on path dependency, but on contingency.[37] Law is reconceived not as narrowly defined doctrine, but as more encompassing legality.[38] Its agents are not necessarily those who "won" the struggles of the past, but those who struggled and "lost."[39] Primary sources are critically analyzed on the basis of who produced them. As Michel Rolph-Trouillot argues, those who had power during a given historical period produce the sources subsequently available to historians, thereby constructing a collective memory that in many ways silences the past. This does not mean that history from below is impossible to write, but it does mean that sources need to be used in creative ways, for instance borrowing the tools of geography and anthropology.[40]

The central claims of this dissertation are two-fold. First, enslaved plaintiffs of African descent did not develop their legal consciousness in isolation. As the first three chapters of this dissertation show, connections to free black people—not only in New Orleans but also transnationally—explain a great deal about the transformation of social disputes into legal claims. Furthermore, white lawyers had a financial interest in advancing their claims, as the fourth chapter shows. It therefore becomes less surprising that of all places, the city with the country's largest slave market should be a site of active resistance against individual enslavement. Second, Louisiana's civil law inheritances mattered for enslaved people, opening pathways to individual emancipation. As late as the 1830s, Louisiana Supreme Court justices still embraced the Roman legal principle of *in favorem libertatis*—that statutes should be interpreted so as to favor liberty.[41] However, as the state Anglicized, this principle gradually narrowed before it was finally rejected on the eve of the Civil War.[42] The dissertation as a whole demonstrates how this decline unfolded, both in the realm of law in action and in the realm of official law.

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[36] Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008), 8; Ian Haney López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 2006), 14.

[37] To the surprise of some, Gordon concluded in "Critical Legal Histories" that mandarin sources were fine sources with which to write critical legal history. But calls have been made to move away from mandarin sources. See Susanna Blumenthal, "Of Mandarins, Legal Consciousness, and the Cultural Turn in US Legal History," *Law & Social Inquiry* 37, no. 1 (2012): 167–86.

[38] Christopher Tomlins, "Introduction: Many Legalities of Colonization: A Manifesto of Destiny for Early American Legal History," in *The Many Legalities of Early America*, ed. Bruce Mann and Christopher Tomlins (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 2001).

[39] Scott, *Weapons of the Weak*; Hendrik Hartog, "The Constitution of Aspiration and 'The Rights That Belong to Us All,'" *The Journal of American History* 74, no. 3 (1987): 1013; William Forbath, Hendrik Hartog, and Martha Minow, "Introduction: Legal Histories from Below," *Wisconsin Law Review* 1985, no. 4 (1985): 759–66.

[40] Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995).

[41] Marie-Louise v. Marot, 8 La 475, 478 (1835); Robert Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), 62; Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981), 187–90.

[42] Cover, *Justice Accused*, 62; Finkelman, *An Imperfect Union*, 206–16.

Both an Atlantic history and a legal history from below, this dissertation presents law the way that claimants experienced it.[43] Chapter 1 is premised on the socio-legal assumption that all lawsuits begin as social disputes. It describes the social circumstances leading to litigation before reviewing the precedent setting cases where the Supreme Court of Louisiana revived the French medieval maxim that "there are no slaves in [metropolitan] France."[44] Chapter 2 demonstrates that in the 1830s-40s, Paris was the center of a growing Abolitionist movement throughout the French Empire. American women and girls traveling there as domestic servants would have experienced deeply racist immigration and criminal laws, but also law's emancipatory potentials. Chapter 3 follows the women and girls back to New Orleans, situating them within a broader network of free people of color. Freedom suits mobilized a community. Chapter 4 examines how legal professionals translated raw desires into legal claims. Chapter 5 focuses on judgment: words that drastically changed litigants' lives. Judgment—the traditional source of legal history—comes only at the end of what was for litigants a long, arduous process.

The claim here is not that manumission was widespread, nor that its existence in New Orleans somehow made slavery better. Enslavement of human beings should everywhere be condemned, including in its present forms.[45] Instead, the claim is that opportunities to exit slavery existed at all is surprising, and that those instances—even if miniscule in number—are worth investigating.[46] Much research in the social sciences is focused on representative cases. But from a humanistic point of view, exceptional cases are also worth studying, because of their significance to an individual human being.[47] Studying abnormal cases also leads to a better definition and understanding of the norm, as the entire field of criminology attests.[48]

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[43] For monographs whose structures reflect the transatlantic itineraries of their historical protagonists, see, e.g., Jennifer Palmer, *Intimate Bonds: Family and Slavery in the French Atlantic* (Philadelphia: University of Pennsylvania Press, 2016); Rebecca Scott and Jean Hébrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge: Harvard University Press, 2012). A foundational text for legal history from below is Thompson, *Whigs and Hunters*, which makes an argument for presenting law the way litigants experienced it, not the way judges wrote it. Recent examples of legal histories from below include Michelle McKinley, *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600-1700* (New York: Cambridge University Press, 2016); Kimberly Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: University of North Carolina Press, 2018); Bianca Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire* (New York: Oxford University Press, 2017).

[44] On the origins of this maxim, see Sue Peabody, *There Are No Slaves in France: The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996).

[45] On modern slavery, see, e.g., Rebecca Scott, Leonardo Barbosa, and Carlos Haddad, "How Does the Law Put a Historical Analogy to Work?: Defining the Imposition of a 'Condition Analogous to that of a Slave' in Modern Brazil," *Duke Journal of Constitutional Law & Public Policy* 13, no. 1 (2017): 1–46.

[46] This is also the methodological focus of Gross and De La Fuente's comparative study on manumission in Cuba, Viriginia, and Louisiana Alejandro de la Fuente, "Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited," *Law and History Review* 22, no. 2 (2004): 339.

[47] Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005) (arguing that states of exception can become normal paradigms for governance); Scott and Hébrard, *Freedom Papers*, 5 (for an argument on the worthiness of studying non-representative cases); Randy Sparks, *Africans in the Old South: Mapping Exceptional Lives across the Atlantic World* (Cambridge: Harvard University Press, 2016) (another exemplary monograph on exceptional cases).

[48] See the foundational text, Émile Durkheim, "The Normality of Crime," in *Classic Readings in Sociology*, ed. Eve Howard (Belmont, CA: Thomson Higher Education, 2007).

Particularly when seeking to highlight the humanity of the historical actors here, I prefer the construction "enslaved people" to "slaves." Similarly, I prefer the gender-neutral "owners" over "masters," except where the primary source refers to a "master," or where the owner in question actually was a man. The word choice "master" promotes the misperception that only men could own human property in the antebellum South. Under the Anglo-American legal doctrine of coverture, a woman was legally covered by either her father, her husband, or (should her husband die) again her father.[49] New literature shows that although coverture was certainly an ideal promoted by William Blackstone it was never fully achieved. Throughout the antebellum South, Stephanie Jones-Rogers reveals, white women could and did claim separate ownership in slaves.[50] A mixed English common law/Latin civil law jurisdiction, Louisiana had inherited relatively less restrictive marital property laws that derived from the Visigoths.[51]

Comparative studies of gender in post-emancipation settings have shown that when emancipation was won in a state of war, and soldiering was conceived as a masculine enterprise, emancipation created more opportunities for men than for women, particularly in the political sphere.[52] The Haitian Constitution (1805), for instance, declared that "no one is worthy of being Haitian if he is not a good father, a good son, and above all a good soldier."[53] That the widescale freeing of slaves tended to benefit men more than women makes it all the more important to study manumission, or the freeing of individual slaves, and its effects on the lives of women and girls.

A detailed focus on a much smaller number of cases allows for a full exploration of these questions.[54] The microhistorical method is an innovation on the anthropological method of saturation, whereby the researcher immerses herself in one specific locale so as to gain a deep understanding of a given culture.[55] Here, litigants are situated within the rich and growing history of the city of New Orleans, with a particular focus on the community of free people of color.[56] A local history, this project focuses on urban

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[49] "Of Husband and Wife," in William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1765), 421–33.
[50] Stephanie-Jones Rogers, *Mistresses of the Market: White Women and the Economy of American Slavery* (forthcoming, New Haven: Yale University Press, 2019).
[51] Laurent Mayali, "The California Wife and the Visigoth: Comparative Legal History and Modern Social Reality" (May 24, 2006). On women's property rights in another North American civil law jurisdiction, see Bettina Bradbury, *Wife to Widow: Lives, Laws, and Politics in Nineteenth-Century Montreal* (Vancouver: University of British Columbia Press, 2011).
[52] Sue Peabody, "Négresse, Mulâtresse, Citoyenne: Gender and Emancipation in the French Caribbean, 1650-1848," in *Gender and Slave Emancipation in the Atlantic World*, ed. Pamela Scully and Diana Paton (Durham: Duke University Press, 2005), 66.
[53] Qtd. in Pamela Scully and Diana Paton, eds., *Gender and Slave Emancipation in the Atlantic World* (Durham: Duke University Press, 2005), 11.
[54] Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (New York: Basic Books, 1984); Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987); Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller* (Baltimore: Johns Hopkins University Press, 2013).
[55] Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983).
[56] See, e.g., Kenneth Aslakson, *Making Race in the Courtroom: The Legal Construction of Three Races in New Orleans* (New York: New York University Press, 2014); Mary Gehman, *The Free People of Color of New Orleans: An Introduction* (New Orleans: Margaret Media, 1994); Kimberly Hanger, *Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans, 1769-1803* (Durham: Duke University Press, 1997); Gwendolyn Midlo Hall, *Africans in Colonial Louisiana: The Development of Afro-Creole Culture in the Eighteenth Century* (Baton

slavery over rural slavery.[57] Nevertheless, there are methodological similarities to recent legal histories that rely not on more easily accessible printed judicial opinions and federal courts, but on the handwritten trial transcripts of local county and municipal courts. Changing the level from which sources are drawn also at times calls for a revision on received wisdom in American legal history.[58]

This project is also a "microhistory set in motion."[59] Beginning in New Orleans, it then follows enslaved women and girls across the Atlantic Ocean to France. It traces the itinerary of Judge John McHenry (who decided most of these cases at the first-instance) to California, where he moved on the eve of the Civil War. In addition to trial records, New Orleans sources include sacramental records, wills, and the records of the city's first African American Catholic congregation. French sources include antislavery literature, Abolitionist periodicals, and diplomatic correspondence. California sources include newspapers and personal letters.

Atlantic literature urges us to think more broadly than the state or nation-state. It encourages us to think outside today's political boundaries by focusing on yesterday's political boundaries. The most important element in defining those boundaries were not "landways" but waterways. Water was the conduit that carried people, goods, and ideas.[60] The theories and methods developed by Lauren Benton have had particular influence on legal history. Sovereignty, Benton argues, builds up along waterways, which facilitate the exchange of legal culture, knowledge and practice. Geography in this theory impacts how law is mediated and practiced through space.[61] The advantage of privileging water over land as an organizing feature is that it allows us to transcend the present-day political boundaries written into North America's landscape and appreciate better how the people of the time understood (and contested) the political boundaries of empire (and its afterlives).[62] In this newer literature, although the historian's focus may be on one place, connections are drawn to the broader world within which

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Rouge: Louisiana State University Press, 1992); Jennifer Spear, *Race, Sex, and Social Order in Early New Orleans* (Baltimore: Johns Hopkins University Press, 2009).

[57] For another example of a study on freedom litigation in a given urban setting, see McKinley, *Fractional Freedoms*.

[58] Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009); Ariela Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton: Princeton University Press, 2000); Dylan Penningroth, *The Claims of Kinfolk : African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003); Welch, *Black Litigants in the Antebellum American South*.

[59] Scott and Hébrard, *Freedom Papers*, 4.

[60] David Armitage and M. J. Braddick, *The British Atlantic World, 1500-1800* (New York: Palgrave Macmillan, 2002); Bernard Bailyn, *Atlantic History: Concept and Contours* (Cambridge: Harvard University Press, 2005); Nicholas Canny and Philip Morgan, *The Oxford Handbook of the Atlantic World, c.1450-c.1850* (New York: Oxford University Press, 2011); Allison Games, "Atlantic History: Definitions, Challenges, and Opportunities," *American Historical Review* 111, no. 3 (2006): 741–57; Jack Greene and Philip Morgan, *Atlantic History: A Critical Appraisal* (New York: Oxford University Press, 2009).

[61] Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400--1900* (New York: Cambridge University Press, 2010).

[62] An important precursor to this work is Donna Merwick, *Possessing Albany, 1630-1710: The Dutch and English Experiences* (New York: Cambridge University Press, 1990).

historical actors circulated. In the same vein, calls have been made for moving toward a more integrated North American legal history, which implies the relevance of an Atlantic approach.[63]

The Saint Lawrence River Valley, the Great Lakes Region, the Mississippi River Valley, Louisiana, the French Caribbean (French Guiana, Guadeloupe, Martinique, Saint Domingue, Saint Lucie, Saint Martin), and France have all been the focus of French Atlantic histories in recent years.[64] New Orleans, in particular, became home to many refugees from Saint Domingue. By 1810, free and enslaved people of African descent together made up nearly two-thirds of the population of New Orleans.[65] This is one example of the many ways in which the city served both as a global metropolis and as a crossroads of the French Atlantic world.[66]

The transnational perspective also raises the question of Louisiana exceptionalism. Louisiana legal history in many ways still promotes or reacts to the idea that Louisiana is distinct from the rest of the United States. The exceptionalism narrative can trace its roots as far back as 1803, when Louisiana was acquired from France by the Jefferson administration. At this time, the nascent American federal government conceived of Louisianans as fundamentally distinct from other Americans, for they had never had a British colonial experience.[67]

The most influential historiographical account of Louisiana exceptionalism is George Dargo's *Jefferson's Louisiana* (1975).[68] In this clash of legal cultures thesis, Louisiana's legal history was presented as a tug of war between the English common law tradition and the Latin civil law tradition. According to this account, Jefferson had specifically instructed Governor William Claiborne in 1803 to prepare the residents of the territory of Louisiana for assimilation into the United States by institutionalizing Anglo-American law. Faced by an "ancienne population" that clung to its linguistic and legal traditions, Claiborne realized by 1806 that the civil law system would be too strong to dismantle.[69] That year he commissioned a committee to

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[63] Philip Girard, "Disorienting: Towards a Legal History of North America," Plenary Lecture at the American Society for Legal History Meeting in Denver (Nov. 2014). While the content of Girard's lecture implied a comparative approach, my approach here is transnational.

[64] Pierre Boulle, *Race et esclavage dans la France de l'Ancien Régime* (Paris: Perrin, 2007); Laurent Dubois, *Avengers of the New World: The Story of the Haitian Revolution*, 2004; Laurent Dubois, *A Colony of Citizens: Revolution and Slave Emancipation in the French Caribbean, 1787-1804* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 2004); Brett Rushforth, *Bonds of Alliance: Indigenous and Atlantic Slaveries in New France* (Chapel Hill: University of North Carolina Press: Published for the Omohundro Institute of Early American History and Culture, 2012); Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent* (Philadelphia: University of Pennsylvania Press, 2006); Sue Peabody and Keila Grinberg, eds., *Free Soil in the Atlantic World* (New York: Routledge (originally published in *Slavery & Abolition*, 2011), 2015); Cécile Vidal, *Louisiana: Crossroads of the Atlantic World* (Philadelphia: University of Pennsylvania Press, 2014).

[65] Caryn Cossé Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868* (Baton Rouge: Louisiana State University Press, 1997), 42; 46; 206. See also Lachance, "Repercussions of the Haitian Revolution in Louisiana." On the Haitian Revolution in global context, see David Armitage, *The Declaration of Independence: A Global History* (Cambridge, Mass.: Harvard University Press, 2007); Julia Gaffield, *The Haitian Declaration of Independence: Creation, Context, and Legacy*, 2016.

[66] Vidal, *Louisiana: Crossroads of the Atlantic World*; Johnson, *Slavery's Metropolis*.

[67] Mark Fernandez, "Introduction," in *A Law unto Itself?: Essays in the New Louisiana Legal History*, ed. Warren Billings and Mark Fernandez (Baton Rouge: Louisiana State University Press, 2001).

[68] George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions* (Cambridge: Harvard University Press, 1975).

[69] On the persistence of French cultural, linguistic, and legal traditions despite top-down directives to the contrary, see Henry Plauché Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part I)," *American Bar*

draft a *Digest of the Civil Laws Now in Force in the Territory of Orleans*.[70] This was followed in 1825 by the publication of the *Civil Code of the State of Louisiana* (hereafter the *Civil Code of Louisiana*).[71] In this narrative, a clash of legal cultures culminated in a workable compromise that Jefferson accepted. The present-day mixed jurisdiction of Louisiana is thus explained.[72]

The exceptionalism narrative continues in newer literature on Louisiana law. Edward Haas observes that, "in Louisiana, the cultural milieu has a distinctly Latin flavor. So, too, does the law."[73] He describes Louisiana as the "sole solid enclave of civil law in the United States."[74] Billings and Haas, similarly, explain Louisiana's preponderance of state constitutions (ten; more than any other state) as a result of "the impact of Anglo-American traditions of self-government upon a Latin culture."[75]

More recently, a group of scholars including Warren Billings, Mark Fernandez, Richard Kilbourne, Kathryn Page, Judith Schafer, and their students have identified themselves as part of the "new school" of Louisiana legal history.[76] What unites these scholars is a motivation to demonstrate that Louisiana is more than exotic and "curiously amusing."[77] This dissertation accepts that Louisiana was distinct when viewed in the lens of the United States. However, Louisiana is not the only enclave of civil law in North America. The Canadian province of Québec is also a civil law enclave within a broader Anglo-common law government.[78] Nor is Louisiana particularly distinct on a global scale. The common law tradition depends on case law and stems from England, whereas the civil law tradition relies on codes and stems from Roman law, particularly as codified by Emperor Justinian in his *Digest* (533).[79] Louisiana mixes these two traditions. As a mixed jurisdiction, it is regarded as belonging to the third of three main legal families worldwide—therefore, hardly so exceptional when viewed on a global scale.[80]

Both the tools of civil law and global connections mattered for enslaved people seeking

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Association Journal 12, no. 7 (1926): 481–85; Henry Plauché Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part II)," *American Bar Association Journal* 12, no. 9 (1926): 645–47.

[70] Louis Moreau Lislet, *A Digest of the Civil Laws Now in Force in the Territory of Orleans* (New Orleans: Bradford & Anderson, 1808).

[71] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*.

[72] Dargo, *Jefferson's Louisiana*.

[73] Edward Haas, *Louisiana's Legal Heritage* (Pensacola, Fla.: Published for the Louisiana State Museum by Perdido Bay Press, 1983), 1.

[74] Haas, 1.

[75] Warren Billings and Edward Haas, eds., "Foreword" in *In Search of Fundamental Law: Louisiana's Constitutions, 1812 – 1974* (Lafayette: University of Southwestern Louisiana, 1993).

[76] Judith Schafer and Warren Billings, *An Uncommon Experience: Law and Judicial Institutions in Louisiana, 1803-2003* (Lafayette: University of Southwestern Louisiana, 1997), 6.

[77] Schafer and Billings, 6.

[78] Michael McAuley, "Quebec," in *Mixed Jurisdictions Worldwide: The Third Legal Family*, ed. Vernon Palmer (New York: Cambridge University Press, 2012); Brian Young, *The Politics of Codification: The Lower Canadian Civil Code of 1866* (Montréal: McGill-Queen's University Press for the Osgoode Society for Canadian Legal History, 1994).

[79] Alan Watson, *The Making of the Civil Law* (Cambridge: Harvard University Press, 1981).

[80] Vernon Palmer, *Louisiana: Microcosm of a Mixed Jurisdiction* (Durham: Carolina Academic Press, 1999); Vernon Palmer, *The Louisiana Civilian Experience: Critiques of Codification in a Mixed Jurisdiction* (Durham: Carolina Academic Press, 2005); Vernon Palmer, *Mixed Jurisdictions Worldwide: The Third Legal Family* (New York: Cambridge University Press, 2012).

to better their situations.[81] Some time ago, Frank Tannenbaum put forward this pithy argument about the legal personhood of slaves:

> Wherever the law accepted the doctrine of the moral personality of the slave and made possible the gradual achievement of freedom implicit in such a doctrine, the slave system was abolished peacefully. Where the slave was denied recognition as a moral person and was therefore considered incapable of freedom, the abolition of slavery was accomplished by force—that is, by revolution.[82]

Tannenbaum identifies the British, American, Dutch, and Danish slave systems as falling into the latter category, and the Spanish and Portuguese into the former. Tannenbaum generally does not address the French system, but hints in a footnote that it lies somewhere between the two extremes of the British and Iberian systems.[83] Tannenbaum's mental map generally lines up with the dividing lines between common and civil law jurisdictions, although Catholic ideology plays a more important role in his study than does Roman law. The Tannenbaum thesis has been sharply criticized for many reasons, including a simplistic reading of legal sources and a blindspot for the economic explanations of abolition. However, the thesis has recently been revisited in new literature on manumission in settings as diverse as colonial Lima, Cuba, Louisiana, and Virginia.[84]

As a socio-legal history, this project draws on a variety of non-legal records. Nevertheless, a brief overview of the various legal fora available to enslaved people and owners seeking to free enslaved people over the course of Louisiana history is helpful. Because of a series of regime transitions, primary sources relevant to manumission are scattered among various sites, even within New Orleans. Louisiana was under French colonial rule between 1714 and 1769. At the end of the Seven Years' War, it was transferred to Spain. Although Spanish law was imposed, French cultural and legal practices continued.[85] Louisiana was briefly ruled by France again in 1803, and then sold to the United States. It remained an American territory until 1812, when it became a state (Appendix, Chronology of Law and Slavery in the French Atlantic).[86] The Louisiana State Museum houses the Colonial Judicial Records of the French Superior Council (1714-1769). The collections include petitions by individuals requesting to be recognized as either free or freed.

The Louisiana State Museum also houses the records of the Spanish Judiciary (1769-1803). The records from this period include many freedom petitions submitted by individuals of Native American ancestry. These suits were usually successful if claimants could prove Native

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[81] Vernon Palmer, *Through the Codes Darkly: Slave Law and Civil Law in Louisiana* (Clark, N.J.: The Lawbook Exchange, 2012); Watson, *Slave Law in the Americas*.
[82] Frank Tannenbaum, *Slave and Citizen* (Boston: Beacon Press, 1992), xvi.
[83] Tannenbaum, 65n153.
[84] McKinley, *Fractional Freedoms*; de la Fuente, "Slave Law and Claims-Making in Cuba"; Alejandro de la Fuente and Ariela Gross, "Manumission and freedom in the Americas: Cuba, Virginia and Louisiana, 1500s-1700s," *Quaderni storici* 50, no. 1 (2015): 15–48; Gross and de la Fuente, "Slaves, Free Blacks, and Race in the Legal Regimes of Cuba, Louisiana, and Virginia."
[85] Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part I)"; Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part II)."
[86] Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part I)"; Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part II)."

American ancestry.[87] The importance of "bloodlines" in determining legal status has been demonstrated both in Iberian Atlantic and French Atlantic literature.[88] Of course, it had long been Spanish colonial policy that Native Americans should not be enslaved. After a lengthy debate between Bartolomé de las Casas and Juan de Sepúlveda, King Philip II of Spain promulgated the General Ordinance of July 13, 1573, whereby no license was given to enslave Native American captives. This set the tone for a policy whereby the Spanish sovereign would bring benefits (such as bread, wine, oil, horses, cows, roads, peace, and freedom) to the Native Americans. In return, the Native Americans were expected to pay taxes to the Spanish sovereign.[89] This contractual understanding of the sovereign-subject relationship, it has been argued in other Iberian settings, paved the way for Native Americans to assert their rights against the Spanish Crown. These rights included claims to freedom.[90]

On the subject of manumission, there is an archival gap for the Territorial period. The Louisiana State Museum covers the colonial period, and the New Orleans City Archives picks up one year after Louisiana entered the Union as a state, but it is unclear where court records from the Territorial Period are held (if they survive at all). It is likely that this period of transition was a turbulent one, and court cases may have occurred in a more ad hoc way than they had under more structured regimes. The individual freeing of slaves may well have taken place outside of court altogether. The New Orleans City Archives holds 872 emancipation petitions submitted to the Parish of Orleans between the years of 1813 and 1843.[91] The geographic area known as a parish is roughly the equivalent of a county. The Parish of Orleans includes the city of New Orleans and surrounding areas.

The Legislature of Louisiana passed an act on January 31, 1827 requiring owners desiring to free their slaves to petition the parish judge, who then brought the request before a police jury. If three-quarters of the police jury as well as the judge approved of the request, the owner was allowed to proceed with emancipating the slave. For this reason, many emancipation petitions are held in a different collection in the New Orleans City Archives, that of the Police Jury Records. The Police Jury Records include four volumes of slave emancipation petitions decided upon between 1827 and 1846.[92] This legislative act signifies increasing restrictions on the freeing of individual slaves in Louisiana over time.[93]

The majority of claims based on the French free soil principle in New Orleans were brought in quick succession between the years of 1847 and 1850.[94] Because this project inquires into the transnational connections of local history, these lawsuits are the focal point. They were submitted to one of five municipal courts in New Orleans, usually the First District Court of New

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[87] Spear, *Race, Sex, and Social Order in Early New Orleans*.
[88] Guillaume Aubert, "'The Blood of France': Race and Purity of Blood in the French Atlantic World," *The William and Mary Quarterly* 61, no. 3 (2004): 439–78; María Elena Martínez, *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico* (Stanford: Stanford University Press, 2008).
[89] Lewis Hanke, ed., *All Mankind Is One: A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the American Indians* (DeKalb: Northern Illinois University Press, 1974).
[90] Brian Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008).
[91] For an index, see Index to Slave Emancipation Petitions, 1814-1843, *NOCA*, VCP320.
[92] Records of the Orleans Parish Police Juries, *NOCA* VJA320.
[93] "Laws Governing Manumission, 1807-1857," in Schafer, *Becoming Free, Remaining Free*, 1–14.
[94] This can be deduced from Schafer's survey of slave transit cases in 15–33.

Orleans (Table of Legal Authorities). All five courts exercised jurisdiction over the parish of Orleans. In theory, cases were distributed among courts according to subject matter. This system of courts was established in 1846.[95] These records are held in the New Orleans City Archives. If the case was appealed, a transcript of the lower court record is also available at the Historical Archives of the Supreme Court of Louisiana.

[95] "A Brief Explanation of the Orleans Parish Civil & Criminal Court System, 1804-1926," New Orleans Public Library, City Archives, Special Collections, accessed March 2, 2018, http://nutrias.org/~nopl/inv/courtsystem.htm.

1. BEFORE THE FREEDOM SUITS

> The principle that free soil emancipates the slave who touches it, is a principle that has been consecrated in Louisiana by twenty judgements of the supreme court of this state.
>
> *Le principe que le sol libre affranchit l'esclave qui le touche, est principe qui a été consacré en Louisiane par vingt jugements de la Cour Suprême de cet Etat*.
>
> -Aimé Roger, New Orleans French Consul, to the Ministry of Foreign Affairs of the Republic of France, December 10, 1848[96]

Introduction

Decades of socio-legal scholarship have shown that before any case becomes a legal record, it is first a social conflict. In the classic law and society model of a dispute pyramid, litigation is only the very top of a pyramid of "personal injurious experiences."[97] Most disputes, this model shows, are actually resolved outside court in informal ways. For those social disputes which do evolve into litigation, much happens outside the courtroom before any semblance of a judicial opinion is produced.[98]

This chapter first describes the ecological and environmental reasons why French slave owners living in New Orleans took their slaves with them to free territory, even though in so doing they risked both their property claims under Louisiana law and (by 1848) their rights to citizenship under French law. Litigation in the courts of New Orleans on the free soil basis would not have been possible without transatlantic travel. Enslaved people in Louisiana had the legal right—rare but not unique in antebellum Southern states—to be treated as if momentarily free for the purpose of commencing lawsuits to settle their disputed status. In *Marie-Louise v. Marot* (1836), the Supreme Court of Louisiana built on its own precedent to establish a slave's right to immediate emancipation upon touching French soil.[99] French intellectual history, as well as the history of free soil litigation in France, show that the claims brought to Louisiana were part of a much longer and more transnational phenomenon of free soil jurisprudence than has previously been appreciated. Finally, the case of Priscilla Smith demonstrates that in the 1830s, the Supreme Court of Louisiana respected the laws of sovereign nations (and particularly the laws of France) more than did the Supreme Court of the United States.

The Social Dispute

The Scourge of Yellow Fever

In July 1848, New Orleans would have been oppressive and sticky from the summer heat, and nervous from the ravages of seasonal disease. At that time, 5,000 to 6,000 French citizens

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[96] "Correspondence politique des consuls, Etats-Unis," 10 December 1848, *MAE*-Paris 16CPC/2, fol. 150. All translations are my own unless otherwise noted.
[97] Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes."
[98] Felstiner, Abel, and Sarat.
[99] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.

were living in Louisiana.[100] Many would return to the more hospitable climate of France in the summer months.[101] Those who were slave owners would sometimes take with them as servants people who were recognized as property in Louisiana.[102] In the flurry of freedom petitions brought to the First District Court of New Orleans starting in 1846, the phrase "in cholera times or thereabouts" became a formulaic way that lawyer Jean-Charles David set out the facts of when defendant-slave owners had left New Orleans for France with their then-slaves.[103]

Louisianans also traveled to Northern states with their slaves, but I focus on French Louisianans here.[104] Under Louisiana law, slave owners knew they were risking their property claims by taking these persons to jurisdictions where slavery was not legitimate.[105] Under the French decree abolishing slavery in 1848, slave owners would also have been risking their status as French citizens.[106]

With both their property and their citizenship on the line, why did slave owners nevertheless make the four to eight week transatlantic voyage?[107] French diplomatic records hold the answer to this and other questions. Consular offices in American cities such as Boston, Charleston, New York, Los Angeles, Philadelphia, Richmond, and San Francisco maintained correspondence with the Ministry of Foreign Affairs of the Republic of France.[108]

One sweltering July day, Consul Aimé Roger reported from New Orleans that, "the fevers have recommenced their ravages, and the number of burials has grown considerably….Thank heavens that the most terrible of these fevers, yellow fever, has not yet made its appearance."[109] By September, however, Consul Roger portended that, "the time of yellow fever is advancing in quick strides."[110] Yellow fever is carried by mosquitoes, ubiquitous in semi-tropical climates like that of New Orleans.[111] Yellow fever's classic symptoms are a jaundiced complexion and the regurgitation of blood.[112] Because this blood is partially-digested and has the color and consistency of coffee grounds, Spanish colonizers had called the disease

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[100] "Correspondence politique des consuls, Etats-Unis," 5 September 1848, *MAE*-Paris 16CPC/2, fol. 109.
[101] "Correspondence politique des consuls, Etats-Unis," 2 October 1848, *MAE*-Paris 16CPC/2, fol. 111.
[102] Schafer, *Becoming Free, Remaining Free*, 15.
[103] See, e.g., Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[104] John Hope Franklin, *A Southern Odyssey: Travelers in the Antebellum North* (Baton Rouge: Louisiana State University Press, 1976).
[105] Marie-Louise v. Marot, No. 2748, 8 La. 475 (1835), *HASCL*; Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
[106] On the reaction of French citizens in New Orleans to the Decree Abolishing Slavery in French colonies and Possessions, see "Correspondence politique des consuls, Etats-Unis," 6 July 1848 and 5 September 1848, *MAE*-Paris 16CPC/2. For the text of the decree of 27 April 1848, see Pierre Henri Boulle and Sue Peabody, *Le droit des noirs en France au temps de l'esclavage: textes choisis et commentés* (Paris: L'Harmattan, 2015), 238–39.
[107] For the length of a transatlantic voyage at this time, see, Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290 (whose voyage took eight weeks); Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290 (whose voyage took four weeks).
[108] Claire Sibille, ed., *Guide des sources de la traite négrière, de l'esclavage et de leurs abolitions* (Paris: La documentation Française, 2007), 159.
[109] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 95.
[110] "Correspondence politique des consuls, Etats-Unis," 5 September 1848, *MAE*-Paris 16CPC/2, fol. 103.
[111] Benjamin Trask, *Fearful Ravages: Yellow Fever in New Orleans, 1796-1905* (Lafayette: University of Louisiana at Lafayette, 2005), 5.
[112] Trask, 3; 8.

"black vomit."[113] Patients bleed internally and externally, enduring symptoms like weakness, constipation, chills, high fever, nausea, and delirium.[114]

"Epidemics have become so frequent in this city," Roger explained, "that its inhabitants have become fatalistic."[115] An advertisement from the New Orleans City Directory illustrates such fatalism. In it, the architect and keeper of the Old Catholic Cemetery, "respectfully informs his friends and the public that he still continues the construction of Tombs and Vaults…at the lowest price, and at the shortest notice. He has constantly on hand Tombs and Vaults, ready for setting up…." That members of the public might need tombstones "at the shortest notice" shows that death could indeed strike at any time.

Today known as St. Louis Cemetery Number 1, the Old Catholic Cemetery literally swelled with bodies in the fatal, tempestuous summer season. In the particularly horrific outbreak of 1853, victims died every hour. Cemeteries remained open for funerals and burials twenty-four hours a day.[116] Approximately 2,000 people were buried in each of the city's five cemeteries.[117] Yet others were buried in less dignified mass graves, such as "Yellow Fever Mound."[118] Even those who managed to secure a place in a proper cemetery would not necessarily stay there long. They were often buried in shallow graves,[119] which presents a problem in a frequently-flooding city that is already six feet under sea level.[120]

From Consul Roger's point of view, the municipality of New Orleans did remarkably little to set up public health infrastructure.[121] With the surprise of a foreigner experiencing culture shock, he described the dogs that wandered the streets of American cities.[122] Many dogs were tainted with the dreadful malady that was yellow fever.[123] In October 1848, the municipality finally took action against these diseased dogs, but only after citizens published energetic complaints in the local newspapers.[124] Consul Roger was all the more surprised at the city government's inaction when considering that the disease cycle proceeded with predictable regularity.[125] According to local knowledge, the scourge of yellow fever began every year in July, or even sometimes as late as August.[126] The population desperately awaited October's first frost, which was understood to signal yellow fever's annual retreat.[127]

Those who had the means to flee the infectious season in New Orleans, did.[128] Some wealthy merchants and planters went to Northern states; others to Europe.[129] Consul Roger

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[113] Trask, 3.
[114] Trask, 7.
[115] Trask, 7.
[116] Trask, 40.
[117] Trask, 40.
[118] Trask, 57.
[119] Trask, 40.
[120] Robert Florence, *City of the Dead: A Journey through St. Louis Cemetery #1, New Orleans, Louisiana* (Lafayette: University of Southwestern Louisiana, 1996), 2.
[121] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 95.
[122] "Correspondence politique des consuls, Etats-Unis," 2 October 1848, *MAE*-Paris 16CPC/2, fol. 112.
[123] "Correspondence politique des consuls, Etats-Unis."
[124] "Correspondence politique des consuls, Etats-Unis."
[125] "Correspondence politique des consuls, Etats-Unis," 2 October 1848, *MAE*-Paris 16CPC/2, fol. 111.
[126] "Correspondence politique des consuls, Etats-Unis."
[127] "Correspondence politique des consuls, Etats-Unis;" Trask, *Fearful Ravages*, 4.
[128] "Correspondence politique des consuls, Etats-Unis," 2 October 1848, *MAE*-Paris 16CPC/2, fol. 111.
[129] "Correspondence politique des consuls, Etats-Unis."

observed, "yellow fever has turned the immense trading post of New Orleans into a vast desert during the months of July, August, and September."[130] Indeed, it was common for more than a third of the city's population to flee at the onset of seasonal disease.[131] Periodic emigration left behind only "acclimatized Creoles," recently-arrived immigrants who did not know any better, and those who lacked the means to flee. Judicial tribunals took recess and ships reposed.[132] Meanwhile, Roger observed, "the great labor in the countryside commenced."[133] Precisely at the climax of the annual disease cycle, enslaved black workers on the plantations surrounding the deserted capital city of Louisiana toiled under extreme conditions to harvest the cotton and sugar crop.

By November, Roger reported, "Yellow fever has disappeared, cotton is arriving *en masse* in New Orleans, the sugar refineries have begun their work, a huge amount of merchandise is descending the Mississippi; everything finally signals the return of commercial life."[134] Planters and merchants returned to enjoy the wealth they had reaped *in absentia* on the backs of slaves.

A Slave-Owning Parisian Woman in New Orleans

Jeanne-Louise Emma De Larsille was one of the wealthy white women who had the means to flee disease-stricken New Orleans.[135] In 1847, she would become one of the defending parties in *Couvent v. Guesnard*, a case that is traced throughout this dissertation not only because it is particularly well-documented, but also because it marks the beginning of the end of French free soil claims in Louisiana.[136] Furthermore, *Couvent v. Guesnard* signifies an unexpected finding: the prevalence of African American girls suing white, property-owning women originally from France. Neither black girls nor white women are the traditional agents of American history.

A native of Paris, De Larsille entered her marriage to Dr. William Guesnard,[137] a physician of the New Orleans jail,[138] with considerable property in her name. De Larsille may even have descended from a family that had held noble status in Old Regime France.[139] In a move that was rare for propertied people, Guesnard and De Larsille married without a notarized

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[130] "Correspondence politique des consuls, Etats-Unis."
[131] Trask, *Fearful Ravages*, 8.
[132] "Correspondence politique des consuls, Etats-Unis," 2 October 1848, *MAE*-Paris 16CPC/2, fol. 111.
[133] "Correspondence politique des consuls, Etats-Unis."
[134] "Correspondence politique des consuls, Etats-Unis," 2 November 1848, *MAE*-Paris 16CPC/2, fol. 139.
[135] In primary sources, her last name is variously spelled De Larsille, Delarsille, and Delarzille. In the text, I have opted for the spelling "De Larsille," because this is how she signed her name in 1840. See "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462.
[136] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[137] "Marriage, William Guesnard and Jeanne Louis Emma De Larsille," 5 April 1842, *ANO*, Marriage vol. 8, p. 275, no. 275.
[138] See "Examination of Reuben Less," *Times-Picayune* 24 Nov. 1843; E.D. Friedrichs, ed., "Mayors of New Orleans, 1803-1936," *Works Projects Administration* [hereafter *WPA*] project 665-64-3-112, 1940.
[139] For Jeanne, the "De Larsille" version may have been a signifier that she came from a French noble heritage. It was indeed during the Bourbon Restoration (1830-1848) that descendants of returning French *émigrés* began re-claiming the lineage that had become such a liability during the bloodiest period of the French Revolution.

contract.[140] The distribution of property in their marriage would therefore have been subject to customary laws on the community of goods.[141] Although a marriage contract does not exist, other sources indicate her wealth. Before her marriage in 1842, she owned a small house on St. Peter and Dauphine streets in New Orleans.[142] Upon her death in August 1873, this house was valued at $4,500.[143] She also had enough capital to purchase at least three slaves: twenty-five year old Pénélope (Pamella), and her two children, ten-year old Marie (Mary) and five-year old Georges.[144] In April 1872, several months before her death, she owned luxury items, such as an apartment in Paris, a blue sapphire ring, a diamond necklace, and a pet dog.[145]

As a woman of her time, De Larsille went to great lengths to protect the property that she owned in her own right. Although English legal commentator William Blackstone wrote that women once married legally disappeared under the cover of their husbands, recent work shows that Blackstone's *Commentaries* were more aspirational than descriptive in this regard.[146] Under Louisiana's mixed civil law system, the property De Larsille brought into her marriage would have remained her separate property (*biens propres*), as distinguished from the common property (*biens en commun*) her husband would administer.[147] Although she could not appear in court without her husband, she could possess property separate from her husband, and even be a public merchant.[148] Her separate property was immune from seizures for debt incurred by her husband individually or even the couple jointly.[149] Should her husband mismanage their common funds, she could lawfully petition for a separation of property from him.[150] If the court were to grant her a separation of property (which would dissolve financial but not matrimonial ties), she would retake all the property she brought into the marriage,[151] and would once again be free to administer her estate.[152]

De Larsille was well aware that her separate property enhanced her legal personhood.[153] Upon writing her will in April 1872, she still recalled that thirty years before, "the house that

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[140] "Sale, Jeanne-Louise Emma De Larsille, to Charles Lamarque," 23 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act no. 467 (reproducing a power of attorney notarized by the Parisian notary Cyprien Saint-Hubert Thomassin on 23 November 1847, which specified that the couple married without a civil contract).
[141] On the community of goods as a default arrangement in the absence of a contract, see Art. 2312 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 752–53.
[142] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462.
[143] "The Succession of the Widow of Dr. Guesnard," No. 39364 (Civil D. Ct. New Orleans 23 May 1873), *NOCA* VT 290.
[144] "The Succession of the Widow of Dr. Guesnard."
[145] "Dépôt judiciaire du Testament de Mme Veuve Guesnard," 28 avril 1872, in "The Succession of the Widow of Dr. Guesnard."
[146] Stephanie-Jones Rogers, *Mistresses of the Market: White Women and the Economy of American Slavery* (forthcoming, New Haven: Yale University Press, 2019).
[147] Art. 2315 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 752–53.
[148] Art. 123 in Livingston, Derbigny, and Moreau Lislet, 36–37.
[149] Art. 2372 in Livingston, Derbigny, and Moreau Lislet, 770–71.
[150] Art. 2399 in Livingston, Derbigny, and Moreau Lislet, 778–79.
[151] Art. 2404 in Livingston, Derbigny, and Moreau Lislet, 780–81.
[152] Art. 2410 in Livingston, Derbigny, and Moreau Lislet, 782–83.
[153] See Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (New York: Doubleday, 1990) a sociological study on prisoners and inmates of other total institutions who are stripped of their property and therefore also of elements of their personhood. For the best discussion of property as legal

belonged to me before my marriage allowed me to pay for the burial of my *beilotte* [infant?] in all the comfort upon which my dearly beloved husband insisted."[154] Far from a financial dependent, De Larsille was a woman with property on both sides of the Atlantic. Her husband depended upon her to attain the material comfort he desired for himself and his family, both in life and in death.

De Larsille sought to ensure that even after her death, she had a say in what happened to her property. Property law is one of the few areas where the dead have rights. Here, not only is it surprising that an affluent white woman escaped the legal cover of her husband, but also that she had the resources and networks necessary to exercise the awesome power of the dead.[155] Months before her death in Paris, the now-widowed De Larsille knew enough about legal procedure to deposit her written, notarized will with the registry of the 7th Arrondissement of Paris. She then arranged for both the French Ministry of Foreign Affairs and the French Ministry of Justice to stamp her will before she sent it off across the Atlantic Ocean.[156] In New Orleans, the net value of her American assets totaled $73,476.16 upon her death.[157]

Caretakers and Wetnurses

Many defendants in this set of cases took slaves as caretakers with them to France. In the spring of 1847, for instance, De Larsille had long been indisposed and complained much of her bad health. To escape the height of epidemic outbreaks in New Orleans, she and her husband sailed for France, where De Larsille still had family and property.[158] A reluctant traveler, she took her eighteen year old slave Mary along "to take care of and attend to her."[159] In addition to acute illness, De Larsille was also generally prone to seasickness. As a caretaker, it was Mary's duty to attend to her mistress in outbreaks of seasickness. The record is unclear as to whether Mary's younger brother Georges also accompanied them.[160] It is likely that their mother Pénélope was dead by 1848. Through 1850 there is no evidence in New Orleans notarial records of De Larsille selling Pénélope. Nor is there any indication that De Larsille took Pénélope to France.

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personhood, see Margaret Jane Radin, "Property and Personhood," *Stanford Law Review* 34, no. 5 (1982): 957–1015.

[154] The original French reads, "Ma petite maison a la nouvelle Orleans (Louisiane) occupée depuis très longtemps par Monsieur Coloni maison qui m'appartenait avant mon mariage et me servait à payer l'inhumation de ma beilotte [?] tous le confort de l'insistence de mon cher bien aimé mari," in "Dépôt judiciaire du Testament de Mme Veuve Guesnard," 28 avril 1872, in "The Succession of the Widow of Dr. Guesnard," No. 39364 (Civil D. Ct. New Orleans 23 May 1873), *NOCA* VT 290.

[155] Lawrence Friedman, "The Law of the Living, the Law of the Dead: Property, Succession, and Society," *Wisconsin Law Review* 1966 (1966): 340–78.

[156] "Dépôt judiciaire du Testament de Mme Veuve Guesnard," 28 avril 1872, in "The Succession of the Widow of Dr. Guesnard," No. 39364 (Civil D. Ct. New Orleans 23 May 1873), *NOCA* VT 290.

[157] "The Succession of the Widow of Dr. Guesnard," No. 39364 (Civil D. Ct. New Orleans 23 May 1873), *NOCA* VT 290.

[158] "The Succession of the Widow of Dr. Guesnard."

[159] "The Succession of the Widow of Dr. Guesnard;" "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462 (for Mary's age).

[160] "Sale, Jeanne-Louise Emma De Larsille, to Charles Lamarque," 23 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, Act No. 467.

De Larsille's choice to take her slave Mary with her as a caretaker during the transatlantic voyage was part of a larger trend. Slave owners from French Caribbean colonies had long taken domestic slaves with them on trips to metropolitan France.[161] Although French authorities balked at the presence of blacks in France (a subject I discuss in the next chapter), they made exceptions for slave owners wanting to profit from the service of a domestic slave during the long transatlantic crossing. Under Articles 4, 5, 6, 7, 8, and 12 of the Royal Declaration of 9 August 1777, which was reaffirmed on 17 October 1817 by the Ministry of the Marine, every inhabitant of French colonies was entitled to bring one slave with them during the ocean crossing.[162] Although De Larsille was not an inhabitant of a French colony, De Larsille likely hoped that French customs officers would regard her frailty sympathetically and let Mary come under the exception for domestic servants. However, De Larsille seems to have been aware that the legality of her actions under Louisiana laws was questionable. Upon leaving New Orleans she stated to her agent Pierre Lemoine that she "would send the said Mary back by the first opportunity."[163] This was a way of clarifying that she did not intend to free her slave by bringing her to the republic of France, where slavery was not legally tolerated.[164]

Other women took slaves as wetnurses. For example, Jeanne Aimée Andry had married Frenchman Pierre Joseph Alphonse Varney, who resided in New Orleans between 1835 and 1845 as a professor of music.[165] In November or December of 1845, the couple left New Orleans with their infant child for France. Mrs. Varney had searched for a white woman to work for her as a wetnurse, suggesting her awareness that taking a slave with her to France might mean she would lose her property claim in that person. However, she did not succeed in finding a willing white woman to perform this labor, so she took her black slave, Sally.[166]

Similarly, in the summer of 1839, the wife of New Orleans-based ship owner Laurent Millaudon had traveled with three of her young children to visit their older sons who were studying at a secondary school (*collège*) in Paris. Mrs. Millaudon had taken the enslaved woman known as Milky with them. Milky's name drives home the harsh reality that in antebellum New Orleans, enslaved black women were forced to provide milk to their "little masters" (*petits maîtres*), as Milky's lawyer called them.[167] Reva Siegel has shown that long before the Women's Liberation movement of the 1970s, and as early as the antebellum era, wives claimed property rights in their household labor.[168] New scholarship investigates how white slave-owning women claimed property rights not only in their own household labor, but also in the milk that flowed from the breasts of the black women they owned.[169]

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[161] Palmer, *Intimate Bonds*.
[162] See, "Ciculaire: Ministère Secrétaire d'Etat de la Marine et des Colonies, au Direction des Colonies, Bureau d'Administration," 9 mars 1824, *ANOM* GEN/629, no. 34. For more on the *domestique* exception and its changes over time, see Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 102, 167, 195, 231.
[163] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[164] Couvent v. Guesnard.
[165] "New Orleans City Directory," 1846, *NOCA*.
[166] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[167] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[168] Reva Siegel, "Home As Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880," *The Yale Law Journal* 103, no. 5 (1994): 1073–1217.
[169] Stephanie Jones-Rogers, "'[S]he Could … Spare One Ample Breast for the Profit of Her Owner': White Mothers and Enslaved Wet Nurses' Invisible Labor in American Slave Markets," *Slavery & Abolition* 38, no. 2 (April 3, 2017).

Risking French Citizenship

Marriages across citizenship lines were not uncommon in this set of cases. While De Larsille had married an American man, the American woman Rosalba Preval (who became a defending party in a freedom suit in 1844) had married an officer in the French army.[170] When French slave-owning men and women traveled with their slaves, they were risking not only their property claims under Louisiana law but by the late 1840's also their French citizenship.

In the 1830s, a social movement was underway to abolish slavery in all of France's colonies and possessions.[171] From New Orleans, Consul Roger identified with Abolitionist values when he declared that, "slavery infuriates all of my sentiments as a man and as a French citizen."[172] Although he had lived exclusively in places where "slavery reigned" for the past seventeen years, he insisted that he himself had not bought or sold a human being.[173]

Nonetheless, Roger saw it as his professional duty to report on the reaction of Louisiana's 5,000 to 6,000 French citizens to the Abolition Decree.[174] Although "everyone in Louisiana expected the abolition of slavery in the French colonies," French slave-owning citizens blamed their government in violent terms for failing to offer them an indemnity payment for their loss of property.[175] Article 8 spawned the most bitter complaints.[176] It prohibited any French person (*tout Français*) from "possessing, buying, or selling slaves."[177] Any infraction would result in the loss of that person's French citizenship.[178] Under civil and penal law at the time, the category of French people (*tous les Français*) was generally understood to include women.[179]

As French Louisianans interpreted it, Article 8 forced them to choose between their right to own slaves and their French citizenship.[180] In strong terms, Consul Roger declared that if the French government failed to amend or repeal Article 8, within three years all French citizens in Louisiana would renounce their French citizenship and choose instead to become naturalized American citizens.[181] By reminding the Minister of Foreign Affairs that not long ago these people had been inhabitants of a French colony, Roger subtly argued that Article 8 would only further the loss that France had incurred in 1803.[182] In the Louisiana economy, he insisted,

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[170] Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[171] Lawrence Jennings, *French Anti-Slavery: The Movement for the Abolition of Slavery in France, 1802-1848* (New York: Cambridge University Press, 2000); Nelly Schmidt, *Abolitionnistes de l'esclavage et réformateurs des colonies, 1820-1851: analyse et documents* (Paris: Karthala, 2000).
[172] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 97-98.
[173] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 95.
[174] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 95; 98.
[175] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 95.
[176] "Correspondence politique des consuls, Etats-Unis."
[177] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 239.
[178] "Toute infraction à ces dispositions entraînera la perte de la qualité de citoyen français," in Boulle and Peabody, 239.
[179] Karen Offen, Women, Citizenship, and Suffrage in France Since 1789, accessed October 10, 2017, http://www.indiana.edu/~paris10/ParisOSS/Day10_Sex_and_Gender/d7_Offen.html; Karen Offen, *The Woman Question in France, 1400-1870*, 2017; Joan Wallach Scott, *Only Paradoxes to Offer: French Feminists and the Rights of Man* (Cambridge: Harvard University Press, 1996), 61.
[180]"Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 96.
[181] "Correspondence politique des consuls, Etats-Unis."
[182] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 95.

French citizens had no other choice. Without a right to own persons, they would have no chance at sustaining a competitive position compared to other inhabitants of the country. "They would have to renounce agriculture, a source of well-being and often of riches for a great number of them," Roger explained.[183]

Roger brought to life what an economy based on the commodification of humans looked like. Without the ability to own slaves lawfully, French men in Louisiana would be unable to achieve an honorable rank, Roger asserted.[184] This phrasing reveals Roger's perception that mastery was associated with honor; slavery, with dishonor, as sociologist Orlando Patterson argues in his comparative study on slavery and mastery from the Greco-Roman era to the antebellum United States. "the permanent, violent domination of natally alienated and generally dishonored persons."[185] Consul Roger continued that without slaves, men and women alike would be unable to take out the mortgages they would need to grow their wealth.[186] Without slaves, women would lose the option of financially separating from profligate husbands, Consul Roger lamented.[187] This affirms Stephanie Jones-Rogers's findings that white women in the antebellum South could and did own separate property—in the form of persons.[188]

Whether women were considered citizens at all in France at the time was an open, contested question. It was certainly not settled law that they were excluded from citizenship. Under the Constitution of 1791, women were excluded from active citizenship (such as voting and running for office).[189] However, this was not without pushback from Olympe de Gouges, whose widely circulated commentary satirized the contradictions between the *Declaration of the Rights of Man and Citizen* (1789) and the 1791 Constitution.[190] Under the Napoleonic Civil Code and until 1973, French women married to foreigners were supposed to be subsumed into their husband's nationalities, but Jennifer Heuer identifies a books-action gap whereby foreigners married to French women were often treated as French at law.[191] Women like De Larsille may have hoped to preserve their property rights in slaves by falling under the citizenship of their husbands. Decrees of March 5 and 8, 1848 proclaimed suffrage to be universal, not specifically excluding women.[192] Feminist activists like Jeanne Deroin tested the boundaries of citizenship by voting and running for political office.[193] In so doing, they exposed the 1848 Constitution's inherent contradictions on the question of gender and citizenship.[194]

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[183] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 96.
[184] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 97.
[185] Patterson, *Slavery and Social Death*, 13 (defining slavery as the "permanent, violent domination of natally alienated and generally dishonored persons").
[186] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 97.
[187] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 97.
[188] Stephanie Jones-Rogers, *Mistresses of the Market: White Women and the Economy of American Slavery* (forthcoming, New Haven: Yale University Press, 2017).
[189] Carla Hesse, *The Other Enlightenment: How French Women Became Modern* (Princeton: Princeton University Press, 2001), xviii.
[190] Olympe de Gouges, *Déclaration des droits de la femme et de la citoyenne: suivi de, Préface pour les dames, ou, Le portrait des femmes*, ed. Emanuèle Gaulier (Paris: Mille et une nuits, 2003).
[191] Jennifer Ngaire Heuer, *The Family and the Nation: Gender and Citizenship in Revolutionary France, 1789-1830* (Ithaca: Cornell University Press, 2005), 191.
[192] Scott, *Only Paradoxes to Offer*, 61.
[193] Scott, 68–84.
[194] Scott, 84.

Litigation Begins Upon Return to Louisiana

In November 1847, De Larsille sent Mary back to New Orleans with the purpose of having her sold as a slave.[195] Mary resisted. This is the inter-personal dispute that transformed into a legal claim.[196] Chapters 3 and 4 address questions of how Mary and others in her position accessed justice—whether in the form of attorneys or courts of law. The present chapter lays out the technical legal tools available to slaves, both under codified law and according to case law.

The Civil Capacity of Slaves

The *Civil Code of Louisiana* (1825) had harsh provisions on relations between masters and slaves. Articles 172-196 deal specifically with the topic of slaves.[197] The code is broken into three books, "Of Persons,"[198] "Of Things, and of the Different Modifications of Property,"[199] and "Of the Different Modes of acquiring the Property of Things."[200] Although provisions throughout the more than three thousand articles of the entire code might be relevant to slaves depending on the context, the chapter titled "Slaves/*Esclaves*" (Articles 172-196) is the most directly relevant. Perhaps surprisingly, it falls within Book 1, "On Persons."[201] As a code, the function of this document was to foresee as many disputes as possible, thereby providing judges with a decision-making guide. In this way, the civil law tradition differs from the common law tradition, where decision-making is driven by case law and is therefore arguably more malleable.[202]

The harshness of the state's policy towards slaves can be seen in the article that opens this chapter: "The slave is completely subject to the will of his master, who can correct and chastise him."[203] This language is reminiscent of judicial holdings in certain common law Southern states. Four years after the publication of the *Civil Code of Louisiana*, Justice Thomas Ruffin infamously penned the words, "The power of the master must be absolute to render the submission of the slave perfect."[204] Like Justice Ruffin, who ruled in *State v. Hoover* (1839) that one master had gone too far by killing his slave after brutally torturing her,[205] the *Civil Code of Louisiana* also drew a boundary only at mutilation and death. If a master mutilated, killed, or

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[195] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), NOCA VSA 290.
[196] Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes."
[197] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52–79.
[198] Livingston, Derbigny, and Moreau Lislet, 10–133.
[199] Livingston, Derbigny, and Moreau Lislet, 134–277.
[200] Livingston, Derbigny, and Moreau Lislet, 278–1112.
[201] Livingston, Derbigny, and Moreau Lislet, 52–79.
[202] For classic works on the civil law tradition, which is rooted in Roman law, see Watson, *The Making of the Civil Law*; Alan Watson, *Roman Law & Comparative Law* (Athens: University of Georgia Press, 1991). On judges as the heroes of the common law system compared to jurists (code authors) as the heroes of the civil law system, see Watson, *Slave Law in the Americas*, 10–21.
[203] Art. 173 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52–53.
[204] State v. Mann, 13 N.C. 263, 266 (1829).
[205] State v. Hoover, 20 N.C. 500 (1839).

treated his slave in a manner which might lead to death, then the state could intervene to punish the master.[206]

This violent beginning makes it all the more remarkable that the next article of the *Civil Code of Louisiana* provided enslaved persons with a loophole they might exploit.[207] They were generally forbidden from making contracts (or legally enforceable agreements) and thereby stripped of a major element of legal personhood.[208] However, there was one exception: slaves could make contracts to arrange for their own emancipation. Article 174 reads, "The slave is incapable of making any kind of contract, except those which relate to his own emancipation."[209] Similarly, Article 1783 reads, "The only case, in which slaves can contract on their account, is for their emancipation."[210] In Louisiana, this exception was rooted in the civil law tradition. This helps explain the practice of self-purchase, or *coartación*, especially during Louisiana's period as a Spanish colony.[211] Similarly, although slaves could generally not appear in court as either plaintiff or defendant in a civil suit, there was one exception.[212] Slaves could bring suit in order to reclaim or prove their liberty.[213]

Until recently, it was believed that Louisiana was unique among Southern states in allowing them both to contract for their freedom and initiate lawsuits for their liberty.[214] More recent studies demonstrate that Louisiana was rare but not unique. Missouri (another state with a history of French colonization and therefore a degree of civil law inheritances) also offered slaves venues where they could litigate their freedom.[215] Additionally, a Missouri statute outlined a procedure whereby slaves could request the waiver of court fees and the assignment of an attorney in order to sue their putative owners in direct legal actions.[216]

Common law states were more restrictive on the question of whether slaves could contract with their masters for their own freedom. Thomas Morris uses an emblematic case from South Carolina in 1790 to suggest that during the early Republic, it was not unheard of for local juries to hold in favor of a slave's freedom on the basis that she had purchased it from her master.[217] However, it is evident that in this case, Sally did not sue on her own behalf: a

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[206] Art. 173 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52–53.
[207] Art. 174 in Livingston, Derbigny, and Moreau Lislet, 52–53.
[208] Art. 174 in Livingston, Derbigny, and Moreau Lislet, 52–53.
[209] Art. 173 in Livingston, Derbigny, and Moreau Lislet, 52–53.
[210] Art. 1783 in Livingston, Derbigny, and Moreau Lislet, 568–69.
[211] Thomas Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: The University of North Carolina Press, 1996), 380; Ariela Gross and Alejandro de la Fuente, "Slaves, Free Blacks, and Race in the Legal Regimes of Cuba, Louisiana, and Virginia: A Comparison," *North Carolina Law Review* 91 (2013): 1699–2244).
[212] Art. 177 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 54–55. On the double character of slaves at law in the antebellum South, see Gross, *Double Character*.
[213] Art. 174; 1783 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52-53; 568-569. Schafer, *Becoming Free, Remaining Free*, 3.
[214] Schafer, *Becoming Free, Remaining Free*, 2–3.
[215] VanderVelde, *Redemption Songs*, 82.
[216] VanderVelde, 8.
[217] Morris, *Southern Slavery and the Law, 1619-1860*, 381 (discussing *Guardian of Sally, a Negro, v. Beaty*).

guardian sued for her although she was an adult.[218] In the Louisiana freedom petitions, in contrast, only minors accessed law through a free adult guardian[219].

More predictably, southern judges in common law states denied to slaves the right to sue to enforce agreements between themselves and their owners, because slaves were deemed to have no capacity to enter into contracts in the first place.[220] Furthermore, Morris identifies in common law states a narrowing of slaves' contractual rights over time. Examining Tennessee and Kentucky—two common law states that he determines to be "more sensitive to freedom than those in many other states,"—Morris finds that an initial recognition of master-slave contracts as "valid and obligatory" gradually gave way to more restrictive interpretations.[221] In Tennessee, slaves came to be viewed not as direct parties to contracts with their masters, but potentially as beneficiaries to an agreement between two free people.[222] If an owner had made a contract with another free person for the benefit of the slave, that slave might possess enforceable rights.[223] In Kentucky, similarly, a promise to emancipate a slave could be an enforceable contract only if both parties to the contract were free people. The slave was a passive beneficiary.[224] In Louisiana in contrast, enslaved people were treated as if momentarily free when contracting for their liberty, or when submitting petitions to contest their status.[225]

A French Medieval Maxim Revived (1835-1836)

In a brief opinion, Chief Justice George Mathews of the Louisiana Supreme Court penned powerful words that would often be repeated in subsequent French free soil cases. "Being free for one moment in France, it was not in the power of [the plaintiff's] former owner to reduce her again to slavery."[226] This case signifies the Supreme Court of Louisiana's adherence to the principle of *in favorem libertatis*, as well as its particular deference to the laws of the sovereign nation of France, an imperial power which had once laid claim to Louisiana as a colony.[227]

In April 1828, the Marot family had sailed to France. Among them were Josephine, whose passport issued by the Consulate of France in New Orleans identified her as a *mulatresse domestique* or mulatto domestic servant. Josephine was taken to Paris with the Marot family to learn the trade of hairdressing. Josephine was then a minor, and was about the same age as Marie-Emilie Suzette Marot, who although a child was also Josephine's owner. When Josephine and Marie-Emilie were about two years old, Josephine had been given as a slave to Marie-Emilie, on the condition that when Josephine reached the age of twenty, she would be freed.

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[218] Morris, 381.
[219] See, e.g., *Couvent v. Guesnard*, No. 1063, 5 La. Ann. 696 (1850), *HASCL*; *Lucille v. Maspereau*, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290, but not *Arsène v. Pineguy*, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[220] Morris, *Southern Slavery and the Law, 1619-1860*, 381 (discussing *Stevenson v. Singleton* [1829]).
[221] Morris, 383; 382.
[222] Morris, 383 (discussing *Isaac v. Farnsworth* [1859]).
[223] Morris, 383.
[224] Morris, 384 (discussing *Thompson v. Wilmot* [1809]).
[225] Arts. 174; 1783 Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52-53; 568-569. Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 3.
[226] Marie-Louise v. Marot, No. 2914, 9 La 473, 476 (1836), *HASCL*.
[227] On the history of statutory interpretation favoring liberty in Louisiana, see Finkelman, *An Imperfect Union*, 206–16.

However, when she turned twenty, this did not happen. Josephine's mother Marie-Louise was able to bring suit on her daughter's behalf because Marie-Louise was a free woman of color.[228] The articles limiting a slave's rights to contract and bring civil suit, therefore, did not apply to her.[229] Through her attorney E.A. Cannon, Marie-Louise argued that the Marot family had broken their promise to free her daughter Josephine at the age of twenty.[230]

The court of first instance (the First District Court of New Orleans) ruled for the plaintiff. The defendant then appealed to the Supreme Court of Louisiana. With much reluctance, Chief Justice George Mathews overturned Judge Watt's lower-court decision because he found that the document promising Josephine her freedom was legally defective. "It is really painful in applying rules of law to a case to be obliged to violate sentiments and feelings of humanity," he observed.[231] He asserted that given the facts of the case, the court "ought to exercise the general power granted by law to remand causes for a trial *de novo*, whenever justice, in our opinion, requires such a proceeding."[232] Mathews recognized that this was a strong assertion of judicial power, but he was clearly sympathetic to a free mother's legal action "brought to redeem a helpless female from slavery."[233] Perhaps to assuage his heavy heart, Mathews signaled to the plaintiff and her lawyer that since Josephine had traveled to France, she could submit a supplementary petition for freedom on that grounds.[234]

When Marie-Louise's lawyer filed a supplementary petition, the First District Court allowed several witnesses to testify on behalf of the plaintiff.[235] Among these were the renowned New Orleans-based lawyer Pierre Soulé, the attorney Robert Preaux, and the attorney Servant Granjac. Whereas Soulé and Granjac were natives of France, Preaux was native to Guadeloupe. They had all resided in France and were familiar with the laws of France. Soulé and Preaux had even formally studied French law. Their testimonies showed the court that merely by landing in France, a slave became "from that moment free."[236] Their testimony persuaded a jury of twelve white men to rule in favor of Josephine, the "helpless female" seeking to be redeemed from slavery.[237] Josephine was both female and a minor, and in this way unlikely to be seen as threatening by authorities. Chapter 3 situates this reasoning within a wider nineteenth-century gendered and racialized imaginary around the "tragic octoroon."[238]

Chief Justice Mathews affirmed the jury's holding when the defendant appealed to the Louisiana Supreme Court. Mathews deemed the trial court's expert witnesses on French law to have "unimpeached credibility," and held that merely by setting foot on French soil, Josephine had become free.[239] By emphasizing "immediate emancipation," Mathews distinguished Louisiana jurisprudence from the jurisprudence of Anglo-American jurisdictions.[240] In the

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[228] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
[229] Arts. 174 and 177 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52–55.
[230] Louise v. Marot, 8 La. 475 at 475 (1835).
[231] Louise v. Marot, 8 La. at 479.
[232] Louise v. Marot, 8 La. at 479.
[233] Louise v. Marot, 8 La. at 479.
[234] Louise v. Marot, 8 La. at 479.
[235] Louise v. Marot, 9 La. 473, 479 (1836).
[236] Louise v. Marot, 9 La. at 479.
[237] Louise v. Marot, 9 La. at 479.
[238] See, e.g., Hezekiah Hosmer, *Adela, the Octoroon* (Columbus: Follett, Foster, 1860).
[239] Louise v. Marot, 9 La. at 479.
[240] Louise v. Marot, 9 La. at 479.

precedent-setting free soil case of *Somerset v. Stewart* (1772), the legal issue had come to hinge on whether a slave was in temporary "transit" or on a permanent "sojourn" to free soil.[241] Similarly, in *Bryant v. Matson*, an Illinois free soil case that is relatively well known because the young lawyer Abraham Lincoln defended the master,[242] the most important legal question became the duration of the master's stay in free territory.[243] This is typical of Anglo-American jurisprudence in the decades leading up to the Civil War, which carefully distinguished between a "transient" (someone who traveled from slave state to slave state by passing through a free state), a "visitor" (someone who entered a free state with a definite intention of returning to a slave state), a "sojourner" (someone who intended to leave the free state at an unspecified time), and a "resident," (someone who planned to remain in the free state).[244]

However, this distinction seemed irrelevant to Mathews, who was much more interested to understand the "benign and liberal effect of the laws and customs" of France.[245] In the French legal tradition as Louisiana courts understood it, a slave became free instantaneously by touching French soil.

This maxim has a long intellectual history, dating to at least as early as the sixteenth-century. François Hotman's *Francogallia* (1573) reads with the tone of a founding myth.[246] In it, the people of Gallica or the western part of his contemporary France, invite the Franks (a German people) to liberate them from Roman rule.[247] Although not necessarily historically accurate, a story of origins demonstrates the values of the people who wrote it. Hotman makes eminently clear that freedom was the primary value of the French people from the very beginning. The very word Frank was derived from the Teutonic words for liberty, "Freyghait" and "Freyghun," and the Franks were commonly known as *die freyen Francken*, or free Franks.[248] Furthermore, the Franks were celebrated throughout Germany and Gaul as the "authors of liberty."[249] They even became a namesake for freedom, according to Hotman: "In popular speech the word 'Frank' came to mean free and immune, the word 'franchise' a sanctuary, and the verb 'to enfranchise' to set at liberty."[250]

But for Hotman, freedom did not mean personal liberty, as articulated in the freedom petitions here or in modern declarations of rights, whether the French Declaration of the Rights of Man and Citizen (1791), or the United States Bill of Rights (1789). In an unfree state, the Gauls had been obliged to serve Rome through money, goods, and military force.[251] They had been prohibited from passing "native provincial laws."[252] By implication, freedom for Hotman meant immunity from taxes and conscription imposed by a colonizing power. It also meant the

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[241] Somerset v. Stewart, 98 Eng. Rep. 499 (K.B. 1772).
[242] Brian Dirck, *Lincoln the Lawyer* (Urbana: University of Illinois Press, 2007); Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (New York: W.W. Norton & Co., 2010); Mark Steiner, *An Honest Calling: The Law Practice of Abraham Lincoln* (DeKalb: Northern Illinois University Press, 2006).
[243] Steiner, *An Honest Calling*, 119.
[244] Finkelman, *An Imperfect Union*, 9; 15.
[245] Louise v. Marot, 9 La. at 473.
[246] François Hotman, *Francogallia*, ed. Ralph Giesey, trans. J. Salmon (Cambridge: University Press, 1972).
[247] Hotman, 193; 209.
[248] Hotman, 201.
[249] Hotman, 203.
[250] Hotman, 201.
[251] Hotman, 177.
[252] Hotman, 179.

collective freedom for a group of people to write their own laws and decide when to go to war. For Hotman, military strength is the means by which a people becomes free.[253] This kind of freedom might today be understood as national self-determination. The divergence between French freedom as a collective right for sixteenth-century philosopher François Hotman and French freedom as an individual liberty for nineteenth century Louisiana petitioners shows the malleability of laws. They might be created for one purpose but used for another altogether centuries later.

Jurist Jean Bodin echoed Hotman when he asserted that "servitude… does not have any place in this Kingdom, just as the slave of a foreigner is frank and free, as soon as he sets foot in France."[254] Widely recognized as a leading theorist French absolutism, Jean Bodin first published his *Six Books of the Republic* in 1576 in Latin.[255] In Book I, Chapter 5, Bodin asks whether a well-ordered republic should allow slavery. In French, he uses the terms "ordonné" or "policé."[256] For lofty and pragmatic reasons alike, Bodin argues against slavery. In explicity disagreement with Aristotle, Bodin asserts that slavery is against the laws of nature.[257] Nor, in Bodin's view, is slavery in keeping with divine law.[258] In case this were not enough to persuade his royal readers, Bodin also holds that slaves threaten the stability of a republic. Slaves (who are always more numerous than their masters) present the constant danger of mutiny.[259] This would have been an especially salient argument in New Orleans, where an influx of refugees from the Haitian Revolution had nearly doubled the city's population in the early nineteenth century.[260] The Revolution had been successful at least in part because of the demographic imbalance between white people on the one hand and people of color (free and unfree) on the other.[261]

In France, there was also a long history of freedom litigation. An Edict of 1716 established the formal legal basis upon which slaves traveling from the colonies to the metropole with their masters could make claims in French courts.[262] In 1738, the enslaved Jean Boucaux exploited this opportunity. He had traveled from Saint Domingue (present-day Haiti) to Paris with his master Bernard Verdelin and Verdelin's wife as their cook.[263] Boucaux's lawyer Mallet circulated a legal brief that revived the sixteenth-century principles of Jean Bodin, François

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[253] Hotman, 173.
[254] This is my translation from Jean Bodin, *Les six livres de la République: A Facsimile Reprint of the 1583 Paris: Du Puis Edition* (Darmstadt: Scientia Aalen, 1961), 62. I have also consulted Jean Bodin, *The Six Bookes of a Commonweale : A Fac-Simile Reprint of the English Translation of 1606*, ed. Kenneth MacRae, trans. Richard Knolles (Cambridge: Harvard University Press, 1962), 42H.
[255] Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973).
[256] Bodin, *Les six livres de la République: A Facsimile Reprint of the 1583 Paris: Du Puis Edition*, 46; 67.
[257] Bodin, *The Six Bookes of a Commonweale*, 36G; 33D; See also Aristotle, *The Politics of Aristotle*, trans. Peter Simpson (Chapel Hill: University of North Carolina Press, 1997).
[258] Bodin, *The Six Bookes of a Commonweale*, 44K.
[259] Bodin, 38G.
[260] Rebecca J. Scott, "She... Refuses to Deliver up Herself as the Slave of Your Petition: Emigres, Enslavement, and the 1808 Louisiana Digest of the Civil Laws," *Tulane European and Civil Law Forum* 24 (2009): 134.
[261] Malick Ghachem, *The Old Regime and the Haitian Revolution* (New York: Cambridge University Press, 2012), 29–76 (discussing fear of rebellion and a conceptualization of slaves as "domestic enemies"); 77 (stating that in 1789, the slave population stood at 465,429 and the white population at 30,826, with the free people of color population at 89.4% of the white population).
[262] Peabody, *There Are No Slaves in France*, 18–19.
[263] Peabody, 24.

Hotman, and others.[264] Although Bodin and Hotman are primary historical sources, they are legal secondary sources because they are works of scholarship about law, and not law itself. At this time, French free soil was more of a maxim, or legal principle based on custom, than a formal written law.[265] Grounding for this principle was tenuous in written law, limited to a 1315 decree and a smattering of legal cases from the sixteenth-century.[266] This changed after Jean Boucaux successfully won his freedom in the Paris Admiralty Court. The court accepted Mallet's arguments, and the case was published in the 1747 edition of *Causes célèbres et intéressantes* (*Famous and Interesting Cases*).[267]

Boucaux's success prodded the king and his ministers to issue a new declaration with increased restrictions on black mobility within the French empire. Although slaves were still allowed to enter France with their masters, they had to be registered upon entry, had to pursue a useful trade, and could stay for a maximum of three years. Every sovereign court of France except for the Admiralty of Paris and the Parlement of Paris registered this declaration. Among historians of Old Regime France, the Parlement of Paris is known as a site of resistance against the exercise of absolute power.[268] After 1738, the Paris Admiralty Court continued to accept a flurry of freedom suits, with 247 slaves winning their freedom between 1730 and 1790.[269] Slaves not only from the Caribbean but also the Indian Ocean successfully sued on the French free soil principle well into the nineteenth century.[270]

A Federal-State Divergence

Two cases show that the nineteenth century Supreme Court of Louisiana was more deferential to the sovereign laws of France than was the Supreme Court of the United States.[271] In *U.S. v. Garonne*, Attorney General Butler criminally prosecuted the French ships *Garonne* and *Lafortune* for violating the 1808 and 1818 federal statutes prohibiting the importation of slaves into the United States.[272] Widow Marie Antoinette Rillieux Smith of New Orleans had taken her slave Priscilla with her to France in 1835.[273] Mrs. Smith was in poor health at the time.[274] Because she left in the springtime, this may well have been due to seasonal disease. When Priscilla desired to return to New Orleans, Mrs. Smith's son-in-law procured passage for

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[264] Peabody, 24.
[265] Peabody, 30–32.
[266] Peabody, 28–29.
[267] Peabody, 24.
[268] See, e.g., Bernard Barbiche, *Les institutions de la monarchie française à l'époque moderne: (XVIe-XVIIIe siècle)* (Paris: Presses universitaires de France, 2012); David Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (New York: Oxford University Press, 1994); Lucien Karpik, *French Lawyers: A Study in Collective Action, 1274-1994* (New York: Oxford University Press, 1999).
[269] Peabody, *There Are No Slaves in France*, 55.
[270] Sue Peabody, *Madeleine's Children: Family, Freedom, Secrets, and Lies in France's Indian Ocean Colonies* (New York: Oxford University Press, 2017).
[271] Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 272.
[272] United States v. Garonne, 36 U.S. 73 (1837); An Act to Prohibit the Importation of Slaves into Any Port or Place Within the Jurisdiction of the United States, ch. 22, 2 Stat. 426, 1807 Congress 9, Session 2; An Act: In Addition to the 'Act for the Punishment of Certain Crimes Against the United States,' ch. 88, 3 Stat. 447, 1818 Congress 15, Session 1.
[273] United States v. Garonne, 36 U.S. 73.
[274] United States v. Garonne, 36 U.S. 73.

her on the ship *Garonne* departing from Havre and landing in New Orleans.[275] Criminally prosecuting a ship rather than civilly suing a frail widow was no doubt part of a clever strategy to get courts to hear the claims of enslaved people whose legal personhood was practically non-existent under federal laws. Although nominally about things, this case was actually about people. In this way, the *Garonne* case is similar to many others throughout the antebellum South.[276]

Chief Justice Roger Taney would later hold that because of their race African Americans had "no rights which the white man is bound to respect,"[277] and could never have standing to sue in federal courts.[278] Unlike Mathews in *Marie-Louise v. Marot* (1836), Taney reasoned in *U.S. v. Garonne* (1837) that the French free soil principle was "not material to the decision."[279] The only relevant question was whether Congress intended by the Acts of 1808 and 1818 to "interfere with" the property rights of persons taking their slaves outside the United States.[280] For Taney, this had clearly not been the Congressional intent. He opined that these federal statues were "obviously pointed against the introduction of negroes or mulattoes who were inhabitants of foreign countries, and cannot properly be applied to persons of color who are brought back to their place of residence, after a temporary absence."[281] Taney affirmed the decision of the lower court, dismissing the Attorney General's attempt to prosecute criminally these two ships.[282] With its emphasis on the "temporary" nature of the transit,[283] Taney's reasoning shows a legal logic that is much more informed by English free soil jurisprudence while quickly dismissing French jurisprudence on the topic. Unlike Mathews, Taney made no reference to the Roman law principle that statutes should be interpreted so as to favor liberty.

In contrast, the Supreme Court of Louisiana held in favor of Priscilla in a civil suit two years later. Perhaps calculating that the United States Supreme Court would fail to rule in her favor, Priscilla accessed an attorney identified as A. Mace. He agreed to take her civil case on a contingency basis, meaning that if she won her case, he would take a percent of the damages, and if she lost her case, he would pay for court costs. He therefore took a risk. He filed her petition on January 23, 1837, ten days before the United States Supreme Court's judgement came down.[284] In it, he claimed that Priscilla had been taken to France with her then-owner Widow Smith to "perform domestic labor as a free person."[285] She had returned to New Orleans with the consent of Widow Smith, aboard the ship *Garonne*, whose records listed her as a free passenger. While still in Paris, Widow Smith instructed her agent in New Orleans to hire Priscilla out for wages, which would be forwarded to Widow Smith. Priscilla desired to keep her wages and be recognized as a free woman of color since she had touched free soil. When the trial court ruled against her, she appealed her case to the Louisiana Supreme Court.

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[275] United States v. Garonne, 36 U.S. 73.
[276] Gross, *Double Character*.
[277] Scott v. Sandford, 60 U.S. at 407.
[278] Scott v. Sandford, 60 U.S. at 406.
[279] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*; United States v. Garonne, 36 U.S. at 77.
[280] United States v. Garonne, 36 U.S. at 78.
[281] United States v. Garonne, 36 U.S. at 77.
[282] United States v. Garonne, 36 U.S. at 79.
[283] United States v. Garonne, 36 U.S. at 77.
[284] The first few pages of the petition are missing from *HASCL* but are available at *Smith v. Smith* (1838), *RSPP* 20883742.
[285] Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*.

The Supreme Court of Louisiana overruled the defendant's objection that Priscilla did not have standing to sue as a slave. It immediately addressed the issue whether the plaintiff was entitled to her liberty on the grounds of having been to France, a country whose laws did not tolerate slavery. It held that Priscilla should be declared a free woman, and that the defendant should not only bear the cost of both legal cases, but also be enjoined from "disturbing [Priscilla] in the enjoyment of her freedom."[286] To the trial judge's ruling that the single case of Marie-Louise could not settle the free soil question, the Louisiana Supreme Court replied that repeated decisions weighed in favor of immediate emancipation upon touching free soil. It pointed not only to *Marie-Louise v. Marot* (1836), but also to *Lunsford v. Coquillon* (1824) and *Louis v. Cabarrus* (1834).[287] Additionally, he cited legislation on masters traveling with their slaves to non-slave states.[288] Although Louisiana law allowed owners to emancipate their slaves in other states, the law required owners to do so "according to the laws of the country where the emancipation takes place."[289] Where the Supreme Court of the United States quickly dismissed the laws of France as irrelevant, the Supreme Court of Louisiana regarded them as superior, even sacrosanct, legal sources on the free soil question. As the following chapters show, this legal divergence would persist until the late 1840's. In 1847, the French consul still reported from New Orleans: "The principle that free soil emancipates the slave who touches it, is a principle that has been consecrated in Louisiana by twenty judgements of the supreme court of this state."[290]

This reveals a federal-state divergence on the issue of free soil, and not in the direction one might expect, given the centrality of New Orleans to the capitalistic system based on trade in human property. In two different cases involving the same slave, the court of the slave state found for Priscilla's liberty, while the highest court in the nation obscured Priscilla's personhood altogether. Previous literature explained this divergence away as pragmatic "because the national concern was the federal law prohibiting the international slave trade, while the state's concern was determining the status of a Louisiana slave.[291] However, it is not at all obvious that Chief Justice Martin's decision to free Priscilla was pragmatic. To the contrary, trial judge Charles Maurian observed that it would be dangerous to hold in favor of Priscilla's freedom, because this could undermine the "rights of our citizens on a most valuable species of property."[292]

Conclusion

Slave-owning men and women who traveled from Louisiana to France in the 1830s were aware in so doing, they were risking their property rights under Louisiana law. By the late 1840s, French citizens in Louisiana also believed that in traveling to France with slaves they were risking their citizenship rights under French law. Patterns of seasonal disease explain why

[286] Smith v. Smith, 13 La. 441.
[287] Smith v. Smith, 13 La. 441 [citing *Marie-Louise v. Marot*, 9 La. 473; *Lunsford v. Coquillon*, 2 Mart. (n.s.) 401 (1824); *Louis v. Cabarrus*, 7 La. 170 (1834)].
[288] An Act to Prevent Free Persons of Color from Entering into this State, and for Other Purposes, 16 March 1830, Louisiana Acts, § 16, 94.
[289] Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*.
[290] "Correspondence politique des consuls, Etats-Unis," 10 December 1848, *MAE*-Paris 16CPC/2, fol. 150.
[291] Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 274.
[292] The trial judgement is missing from *HASCL* but is available at *Smith v. Smith* (1838), *RSPP* 20883742.

they nonetheless fled Louisiana. The personal stories of the owners and slaves who would become party to free soil suits suggest connections between Louisiana and France were richer and deeper than has previously been appreciated. They also reveal the prevalence of two unlikely agents in this history: these are largely stories of black girls and young women suing white property-owning women.

Transatlantic travel opened up for a very select number of slaves the possibility to contest their status in the courts of Louisiana once they returned there. Under the *Civil Code of Louisiana* (1825), enslaved people could be treated as if free for a moment in order to prove or reclaim their liberty.[293] This right was rare but not unique among antebellum Southern states. A slave's right to contract for his or her liberty stemmed from Roman law and had been practiced in Louisiana during the period of Spanish colonization in the form of self-purchase. Louisiana's longer history of colonization by both France and Spain—imperial powers which both adhered to civil law traditions—helps explain why legal opportunities existed for slaves in Louisiana that did not generally exist in Anglo-American common law states. In *Marie-Louise v. Marot* (1836), the Supreme Court of Louisiana reaffirmed its previous free soil decisions to hold that "being free for one moment in France, it was not in the power of her former owner to reduce her again to slavery."[294] These words would be repeated again and again in the flurry of French free soil suits that would descend upon local courts in New Orleans in the 1840s. The precedent of immediate emancipation upon landing in France is best understood as part of a longer history of the French free soil principle, both on the books and in action.

The case of Priscilla Smith was litigated as a criminal suit at the United States Supreme Court in 1837, and then as a civil suit at the Louisiana Supreme Court in 1839. It demonstrates a federal-state divergence in two ways. First, it shows Louisiana's comparatively greater deference to the laws of France than to the Supreme Court of the United States. Second, it reveals that at the time, international law may have played a greater role in legal decision-making in Louisiana than in federal courts.

[293] Arts. 174; 1783 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52-53; 568-569.
[294] Marie-Louise v. Marot, No. 2914, 9 La. at 476 (1836), *HASCL*.

2. A Spirit of Liberty That Is Dangerous to the Republic: The World American Slaves Encountered in France (1818-1848)

Introduction

At trial during the precedent-setting free soil case of *Marie-Louise v. Marot* (1836), three expert witnesses who professed familiarity with the laws of France had testified that there were no slaves in France, and that any slave setting foot upon French soil became from that moment free. Upon appeal, the Supreme Court of Louisiana deemed these witnesses to be of "unimpeached credibility."[295] As shown in the previous chapter, the precedent of immediate emancipation upon touching French soil was thus established in Louisiana.

In actuality, the trial testimonials in *Marot* only presented the Supreme Court of Louisiana with a selective portrait of a distant land. This is not surprising, in that playing up a notion of France as free soil aided the plaintiff's case. In reality, however, the laws of race and slavery in France were more complicated than this. When people with unfree status crossed into free territory, their status did not magically transform. Rather, it was thrown into question. This chapter reconstructs the world that American slaves encountered in France in the second quarter of the nineteenth century. In so doing it posits explanations as to why enslaved women and girls have felt emboldened, upon their return to New Orleans, to sue for their freedom. This task is necessarily based on fragmentary evidence. Nevertheless, it is possible to locate specific transatlantic itineraries by relying on court records, ship passenger lists, and French consular records.

Because French authorities so prided themselves on a jurisprudential heritage of free soil, a series of laws had arisen to keep black people out of France. One way to ensure the freedom of French soil was to prohibit people of African descent (who might be mistaken for slaves, even if they were not slaves) from entering metropolitan France in the first place. French statesmen ordered black people entering France to be put in detention centers and heavily policed. However, there was a gap between the laws as they were written and the laws as they were enforced. Although most women and girls who would eventually submit freedom claims in New Orleans were not actually put in detention centers upon arrival in the port of Le Havre, they likely faced surveillance by the state because of their perceived race.

Having escaped detention centers in the port of Le Havre, certain American women and girls continued on to other parts of France. Many ended up in Paris, which was the center of a growing movement for the abolition of slavery throughout the French empire. Abolitionism as a political movement was limited in extent, and marked by a civilizing mission ideology. Abolitionism as a social movement was more expansive. Anti-slavery literature also shows deep empathy within the French community of people of color across free-unfree status lines. The French Abolitionist press demonstrates an awareness of the plight of American slaves, especially in New Orleans. French case law shows that at precisely the time enslaved women and girls were traveling from New Orleans to France, Abolitionist cause lawyers were reviving the medieval free soil principle. This chapter argues that during their sojourns in France, American slaves would have been exposed to deeply racist immigration and criminal laws, but also to law's emancipatory potentials.

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[295] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.

Atlantic Crossings

After 1803, Louisiana as a geographic space was no longer part of the French Empire. However, transatlantic connections between Louisiana and continental France were still rich and deep. Transatlantic voyages, furthermore, impacted the lives of American slaves in profound ways. An American slave's passage across the Atlantic laid the groundwork for the ability to launch a freedom suit upon return to New Orleans. In tracing the transatlantic itineraries of certain enslaved women and girls, this chapter draws on literature that investigates race in the French Empire,[296] and indeed recognizes a distinct inter-cultural, transnational formation called the Black Atlantic.[297]

Of the women and girls who would become litigants at municipal District Courts in New Orleans, Aurore was the first to depart the city, in 1818. Thereafter, four slaves departed in the 1820s, twelve in the 1830s, and two in the 1840s. This makes the 1830s the peak decade for departures. Mary was the last to depart, in November 1847 (Table 1).[298]

The departure and arrival dates shown in Table 1 are approximations based on the plaintiff's petition, the defendant's answer, or witness testimony. A range of possible departure years in Table 1 indicates uncertainty in the record itself. Lawyer Jean-Charles David would often present a range of possible departure years. For instance, Lucille's petition "respectfully represents that your petitioner was the slave of the widow Aimable Charbonnet in 1836 or 1837, that they went together during the said years or thereabout into France."[299] This may have been part of David's legal strategy to evade increasing restrictions on free soil claims in the 1840s, when the bulk of these petitions were presented. Alternatively, David's clients may only have had a murky memory of their departure date by the time they presented their cases to the court in New Orleans, often ten years later. Uncertainty in the departure dates in Table 1 also reflects contestation in the legal record. For instance, although David claimed in Charlotte's petition that she departed in 1838 or 1840, a witness for the defendant claimed that he saw Charlotte and her master in Paris in 1840, and that they stayed only one year, leaving in December 1841.[300] Finally, the departure date in Aimée's petition is the most unclear, merely reading, "in colera [*sic*] time or thereabout."[301] Because Sarah's petition reads, "in 1833 or about the colera [*sic*] time," it is reasonable to suppose that Aimée's departure year is 1833.[302]

In all twenty cases, the enslaved woman or girl traveling to France was identified in legal records as a person of African descent. Depending on the case, court clerks in New Orleans followed the name of the petitioner with one of several racial identifiers: "negress," "c.w. (colored woman)," or "f.w.c. (free woman of color)." Chapter 3 delves into the nuances of these distinctions. In almost all of the twenty cases, no racial profile followed the name of the person with whom the petitioner traveled to France, suggesting that they were white. However, Mathilde Guillaume was a free woman of color who traveled to France to escape a cholera

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[296] Boulle, *Race et esclavage dans la France de l'Ancien Régime*; Sue Peabody and Tyler Stovall, *The Color of Liberty: Histories of Race in France* (Durham: Duke University Press, 2003).
[297] Gilroy, *The Black Atlantic*.
[298] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[299] Lucille v. Maspereau, No. 1692 (1847-1848), *NOCA* VSA 290.
[300] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.
[301] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1847-1848), *NOCA* VSA 290.
[302] Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

epidemic and visit her sister Eugénie in about 1833. Guillaume took her slave Sarah with her.[303] This case reveals the possibility, however rare, that free people of color willingly traveled across the Atlantic Ocean in this period, that they owned slaves, and that they brought these slaves with them on these journeys.

The age of most of the would-be litigants is not specified in the records. Those who were brought along as wetnurses, such as Milky and Sally, must have been of child-bearing age.[304] Others were minors. Mary, who accompanied the unwell Jeanne-Louise Emma de Larsille, was about eighteen.[305] Josèphine was also a minor, but would have been old enough to manipulate a pair of scissors, since the Marot family brought her to Paris to put her "under the direction of a hairdresser to learn his art."[306] Others were even younger: Liza was ten, Lucille was eight, Louisa was only four, and Souri was "very young."[307]

These women and girls of color stayed in France for lengths of time ranging from two months and twenty days,[308] to eight years.[309] Nine of the would-be litigants stayed for a matter of months, although eight of them stayed for a year or more. The details of the other three are so unclear that I exclude them from this enumeration. Of the eight who stayed for a year or more, Aurore, Eugénie, and Sarah remained for five or more years.[310]

The murkiness of departure years in the petitions contrasts with the chronological precision of at least some defendants' responses. For instance, Laurent Millaudon stated in his response to Milky's petition that she departed with his wife and children on May 27, 1839 aboard the ship *Mozart*, destined for Le Havre.[311] As the owner of this ship, Millaudon had access to the ship's records.[312]

Because her master was a ship owner, Milky's transatlantic itinerary is particularly well-documented. Many of the travel details for other slaves have been lost. However, ship names can be determined in some cases. In chronological order, Josèphine departed New Orleans aboard the American ship *Manchester* on April 15, 1828 and departed Le Havre aboard the ship *Cérès* on September 11, 1828;[313] Priscilla Smith departed New Orleans in the spring of 1835 aboard the ship *Garonne*;[314] Hélène departed in 1838 or 1839 aboard the ship *Ville de Bordeaux*,

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[303] Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[304] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[305] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462; Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[306] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
[307] Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1850-1851), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1847-1848), *NOCA* VSA 290; Louisa v. Giggo, No. 6020 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290; Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.
[308] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[309] Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[310] Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[311] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[312] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[313] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
[314] United States v. Garonne, 36 U.S. 73.

and returned aboard the ship *America*;[315] and finally Sally departed in November or December 1845 aboard the ship *Taglione*.[316] Three of these ships, the *Manchester*, the *Mozart*, the *Taglione*, left New Orleans for Le Havre. Known itineraries are indicated in Figure 2. The destination port of the other ships is not identified in New Orleans legal records.

Consular records held in France clarify that, "Le Havre was the only port to maintain truly active relations with New Orleans."[317] Digitized French port authority records confirm that many ships indeed shuttled between New Orleans and Le Havre, although some also sailed between New Orleans and Bordeaux.[318] This gives us grounds to conclude that most of the enslaved women and girls who would become freedom litigants in New Orleans sailed aboard ships headed for Le Havre.

Between 1839 and 1846, eighty-five French ships traveled between Le Havre and New Orleans. Over seven years, these eighty-five ships sailed 182 times.[319] This enumeration does not include American ships, whose commercial activity was more vigorous (much to the chagrin of the New Orleans French Consul).[320] Five of the eighty-five French ships sailed between Le Havre and New Orleans seven or more times: *Le Vaillant*, *L'Andelle*, *la Ville de Bordeaux*, *le Châteaubriand*, and *l'Edouard*.[321] Mrs. Oliver Blineau and her daughter Mrs. Carrière, who sailed from New Orleans to France on the *Ville de Bordeaux* with their slave Hélène in 1838 or 1839, took passage on a ship that traveled regularly between New Orleans and Le Havre.[322] Extant passenger lists of landings in Le Havre do not mention Josèphine, Priscilla, Hélène, Milky, or Sally.[323] This is not surprising. French shipping records for the nineteenth century are considered "very incomplete."[324]

Although American commercial ships departing New Orleans rarely allowed passengers aboard, all French ships did.[325] They charged each passenger $15 to $17, or 25 to 30 francs for a one-way trip across the Atlantic.[326] This was roughly equivalent to the value of one and a half month's domestic labor in New Orleans.[327] The passage would thus have been quite expensive for any members of the laboring classes. The cost would not have been entirely out of reach for petty merchants like dry goods store owner Adolphe Pluché, who brought his wife and their slave Aimée with him to France in about 1833.[328] Finally, the passage would have been easily

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[315] Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1849-1850), *NOCA* VSA 290.
[316] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[317] "Correspondence consulaire et commerciale, La Nouvelle-Orléans," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 359 [hereafter "Correspondence commerciale"].
[318] "Répertoires d'armement et de désarmement des bâtiments de commerce, Quartier du Havre" 1818-1850, *ADSM* 6P.
[319] "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 356; 364.
[320] "Correspondence commerciale," fol. 356; 366.
[321] "Correspondence commerciale," fol. 364.
[322] Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1849-1850), *NOCA* VSA 290.
[323] This is based on research in the "Répertoires d'armement et de désarmement des bâtiments de commerce, Quartier du Havre" 1818-1850, *ADSM* 6P (a chronological index of ship arrivals and departures).
[324] P. de Vassière and Yvonne Bézard, "Répertoire numérique dactylographié," (1914-1975) 130-135.
[325] "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 362.
[326] "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 360; "Rôles des bâtiments de commerce, désarmement no. 270, *Ville de Bordeaux*," 22 July 1839, *ADSM* 6P6_95, digital image 1734.
[327] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[328] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1847-1848), *NOCA* VSA 290; "New Orleans City Directory," 1846, *NOCA*.

accessible to wealthy plantation owners like Jeanne-Louise Emma de Larsille and her husband Dr. William Guesnard, who brought Mary with them in 1847.[329] Nevertheless, New Orleans French Consul Aimé Roger criticized captains for allowing lay passengers aboard.[330] He believed that this slowed down a ship's commercial activity, while financially benefitting only the captain.[331]

American ships leaving New Orleans took the most direct route, sailing from the north of Havana, Cuba, through the channel of the Bahamas, into the Atlantic Ocean.[332] In contrast, French ships often stopped in Havana or Haiti (Figure 2). An image of a ship that regularly sailed from New Orleans to Le Havre during this time period is shown in Figure 3. Given the mass migration out of Haiti into Havana and New Orleans in the early nineteenth century,[333] lay passengers on French commercial ships may have had familial and economic connections in Havana and Haiti. Consul Roger observed that French captains made these stops so as to please their passengers.[334] Notably, in 1846 Consul Roger still referred to Haiti, which had declared its independence in 1804, by its French colonial name of St-Domingue.[335] If any of the would-be litigants did stop in the world's first black republic on their way to France, this may have been a transformative experience for them, helping to explain their eventual legal awakening.

The transatlantic voyages of the women and girls on whom this research concentrates would have been far from easy. Civilian passengers on commercial ships leaving New Orleans for Le Havre would have found themselves among bulky merchandise such as cotton, tobacco, wooden planks, and tallow.[336] Slaves like Mary who were brought along on this voyage would have had reason to fear for their lives. Although not common, the sinking of a ship was certainly a possibility. In seven years, one of eighty-five French ships sailing between New Orleans and Le Havre was lost at sea: the *Louis XIV*.[337] Wealthy white women like Jeanne-Louise Emma de Larsille had clearly decided that on balance, the risk of dying at sea was lower than dying from seasonal disease in New Orleans. Slaves like Mary were brought on board whether or not they agreed with this calculation.

Consul Roger described individuals from varying walks of life—"French, Creole, and Americans, respectable families and gentlemen of industry of the two sexes, priests and actors, big merchants, petty merchants, and tacky sorts, who were condemned to cohabit a narrow space together for forty or fifty days."[338] Although Roger did not include slaves in this list, New

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[329] For reference to their plantation, see "The Succession of the Widow of Dr. Guesnard," 23 May 1873, *NOCA* VT 290, Civil District Court, No. 39364. For Mary's departure date, see *Couvent v. Guesnard*, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[330] "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 365.

[331] "Correspondence commerciale," fol. 365.

[332] "Correspondence commerciale," fol. 360.

[333] Lachance, "Repercussions of the Haitian Revolution in Louisiana."

[334] "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 360.

[335] "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 360; "Haitian Declaration of Independence," 1 Jan. 1804, British National Archives CO 137/111/1.

[336] "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 357. On the wider trend of slaves traveling aboard commercial ships and their likely accommodations, see Calvin Schermerhorn, "The Coastwise Slave Trade and a Mercantile Community of Interest," in *Slavery's Capitalism: A New History of American Economic Development*, ed. Sven Beckert and Seth Rockman, 2016, 209–24.

[337] "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 365.

[338] "chevaliers d'industrie des deux sexes," in "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 361.

Orleans legal records show that slaves were among the passengers (Table 1). They would have been exposed to the challenges Consul Roger described: seasickness, boredom, and grave disorder. In Consul Roger's view, rare was the captain who could maintain harmony on a ship.[339]

Roger stated that many captains contributed to the social disorder of a ship "by their preference for certain beautiful travelers."[340] All women, white or black, would have been in the gender minority on the space of a commercial ship. When the *Ville de Bordeaux* unloaded its merchandise and passengers from New Orleans on July 22, 1839, it recorded twenty-seven crew members and thirty passengers, only eight of whom were women.[341] As a young woman of color who faced double modes of oppression, Mary and others like her would have been especially vulnerable to sexual assault in the isolated space of a ship.[342]

When persons recognized as slaves in one jurisdiction crossed the Atlantic, their legal status was thrown into question. Various records demonstrate this. In 1833, an inhabitant of New Orleans asked the Commissary of the Police in Saint-Jean d'Angely (Charente Inférieur) about the formalities he had to fulfill in order to bring a slave from Louisiana into France. Although his letter has not been preserved, this slave owner's inquiry shows his nervousness over bringing a slave into a nation that where at least in popular imagination, "there were no slaves."[343] This slave-owning inhabitant of New Orleans may have feared that when he crossed international borders, his property claims in persons would be jeopardized.

Surviving passports indicate that persons recognized as slaves in one jurisdiction might be recognized as domestic servants in another. For instance, when Louisiana State Governor and Commander-in-Chief of the Militia Henry Johnson issued a collective passport to the Marot family on April 15, 1828, he identified Josèphine as "a servant, a mulatto girl, and an inhabitant of this State."[344] He avoided the term, "slave," even though an earlier notarial act recognized Josèphine as belonging to the minor Marie-Emilie Marot.[345] During the Marot family's voyage between April 15 and September 17, 1828, several French authority figures stamped the family's passport without contesting Josèphine's status as a servant. In this way, they implicitly accepted Josèphine's transition from enslaved to free status. These authorities included the New Orleans French consul, the commissary of the Navy in Le Havre, and the Prefecture of the Police in Paris, which had its own sub-division devoted to passports.[346]

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[339] "Correspondence commerciale," fol. 361.
[340] "Correspondence commerciale," fol. 361.
[341] "Rôles des bâtiments de commerce, désarmement no. 270, *Ville de Bordeaux*," 22 July 1839, *ADSM l*6P6_95. While image 1736 of the digitized record indicates that there were twenty-six passengers, a close look at the passenger list reveals that four of these passengers traveled with additional family members.
[342] Edward Baptist, "'Cuffy,' 'Fancy Maids,' and 'One-Eyed Men:' Rape, Commodification, and the Domestic Slave Trade in the United States," in *The Chattel Principle: Internal Slave Trades in the Americas*, ed. Walter Johnson (New Haven: Yale University Press, 2005), 165–202; Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43, no. 6 (1991): 1241–99.
[343] "Correspondance entre le ministre des Affaires Étrangères et le ministre de la Marine sur les esclaves amenés en France de l'étranger," 23 sept.-4 oct. 1833, *ANOM* GEN/629, no. 2735. Peabody, *There Are No Slaves in France*.
[344] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
[345] Donation, S. Mornay to M.E. Marot, 26 Feb. 1816, cited in *Marie-Louise v. Marot*, No. 2914, 9 La. 473 (1836), *HASCL*.
[346] See reproduction of Marot passport in *Marie-Louise v. Marot*, No. 2914, 9 La. 473 (1836), *HASCL*.

In Anglophone America, similarly, there was a legal slippage between the terms servant and slave. The English legal tradition provided no common law of slavery.[347] Where property law provided one root concept upon which to construct a law of slavery, master-servant law provided another.[348] Particularly in early America, slaves were often referred to as servants. The legal distinction between slaves and servants emerged only gradually and in piecemeal fashion.[349] This adds ambiguity to Governor Johnson's description, in 1828, of Josèphine as a "servant" and not as a "slave."[350]

By neglecting to inquire into Josèphine's true status, it is unlikely that authorities in Louisiana and France sought to emancipate Josèphine. It is much more likely that they sought to help a white slave-owner travel freely with a slave. These white men (perhaps unwittingly) created a precious record that Josèphine could later exploit. In her study of nineteenth century identity papers, Vanessa Mongey approaches passports as documents testing the boundaries of nationality, race, and gender.[351] Here, passports helped individuals cross the boundaries between free and unfree status. The Marot family passport became invaluable legal evidence to Josèphine's mother (who, as a free woman of color, submitted the freedom petition on her enslaved daughter's behalf). The passport served as legal evidence weighing in favor of freedom for Josèphine. Ultimately, the passport's categorization of Josèphine as a mulatto domestic servant helped her win her freedom.[352]

By referring to the enslaved Josèphine as a domestic servant, the Marot family passport was similar to passports issued to people of color from other French colonies. For example, in 1816 the police in the Department of Oise issued an international passport to Josephine (called Zozotte), a "mulatto in the service of Mr. Lefevre" (Figure 4).[353] In this French document, no reference was made to her status as a slave. However, given that Mr. Lefevre was a property-owner in the slave-based economy of St. Lucia, Josephine was likely known as Mr. Lefevre's slave there.[354] In both these cases, passports were issued by local authorities, not by national governments as they are today.

Policing and Surveilling Black People in France

On the books, there is a long history of French governments designing immigration policies to keep black people out of France. This ran contrary to a long jurisprudential history of free soil. Although sixteenth-century legal philosophers like Étienne de la Boëtie, François

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[347] Morris, *Southern Slavery and the Law, 1619-1860*, 1–14.

[348] Morris, 37–49 (on property law as source of southern slave law); Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (New York: Cambridge University Press, 2010), 470–75 (arguing that slave law in Virginia was written onto a framework of master-servant law, itself marked by a colonizing logic).

[349] Tomlins, *Freedom Bound*, 270–74 (discussing the gradual distinction between servants and slaves in Virginia statutes between 1662 and 1726).

[350] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL* (reproducing the passport).

[351] Vanessa Mongey, "Travel Papers: Mobility and Race in Nineteenth century France," Conference Presentation, (Aix-en-Provence: French Colonial History Society, 15 June 2017).

[352] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.

[353] "Passe-port à l'étranger de Dlle. Josephine dite Zozotte," 20 mars 1816, *ANOM* GEN/629, no. 2735.

[354] "Passe-port à l'étranger de Dlle. Josephine dite Zozotte." St. Lucia had been a French colony, but became a British colony in 1814.

Hotman, and Jean Bodin promoted theories of France as a political space where slavery was not tolerated, three important laws stretching from the pre-Revolutionary to Napoleonic periods established an anti-black immigration policy.[355] Although this at first seems paradoxical, it may be that in the eyes of officials, one way to preserve France's founding myth and namesake as a free territory was to strictly forbid slaves from entering the country in the first place.

Old Regime France

When slave-owners ensured that their slaves were identified as domestic servants in passports, they were taking notice of a legal exception that would have worked in their favor. This legal exception has a long history. Under the Royal Declaration of August 9, 1777, King Louis XVI forbade people of African descent from entering the Kingdom of France. Louis XVI began this declaration by observing that,

> we have been informed that these days the number of blacks has greatly multiplied due to the ease of communication between the American continent and France, that every day we are taking out of the colonies that portion of men that is most necessary for the cultivation of our lands, and at the same time, their journey to the cities of our kingdom, especially to the capital city, are causing grave disorders, and once they return to the colonies, they carry with them a spirit of independence and disobedience, and there they become more aggravating than useful.[356]

Notably, Louis XVI avoided the word slave (*esclave*) in this document. Instead, he used the term domestic servant (*domestique*). At the time, domestic servant could refer to people of free or unfree status.[357] Louis XVI here appears to have deliberately employed a term with malleable meanings. As in the United States, there were degrees of freedom in the French Empire.[358] France did not abolish serfdom until 1789.[359] Arguments have been made that even thereafter, there was more continuity than change in class structure—not only in post-Revolutionary France but also in post-Revolutionary Haiti.[360] domestic servants were so scattered that they were among the last groups of workers to initiate collective action to lobby for better working conditions.[361] Until the early twentieth century, few laws existed to protect them at work.[362]

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[355] Etienne de de la Boëtie, *La servitude volontaire*, ed. Claude Pinganaud (Paris: Arléa, 2007); Hotman, *Francogallia*; Bodin, *Les six livres de la République: A Facsimile Reprint of the 1583 Paris: Du Puis Edition*.
[356] "Déclaration du Roi pour la Police des noirs, donée à Versailles le 9 août 1777, enregistrée en parlement [de Paris] le 27 desdits mois et an," in Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 99–102.
[357] Boulle and Peabody, 85.
[358] Tomlins, *Freedom Bound*, 193–331 (discussing scales of liberty and degrees of unfreedom in various jurisdictions throughout the United States).
[359] For a timeline of this and other important Revolutionary events, see François Furet, *The French Revolution, 1770-1814* (Oxford, UK; Cambridge, Mass., USA: Blackwell, 1996).
[360] Alexis de Tocqueville, *The Old Régime and the French Revolution*, trans. Stuart Gilbert (New York: Anchor Books, 1983); Ghachem, *The Old Regime and the Haitian Revolution*.
[361] Pierre Guiral and Guy Thuillier, *La vie quotidienne des domestiques en France au XIXe siècle* (Paris: Hachette, 1978).
[362] Jacqueline Martin-Huan, *La longue marche des domestiques en France: du XIXe siècle à nos jours* (Nantes: Opéra, 1997), 43–65 (discussing the slow growth of collective organizing and labor protection laws). Martin-Huan, 135–48 (discussing law and domestic employment).

Nevertheless, it is clear that the Declaration of 1777 was directed at a category of people known as slaves. The king described them as black and as necessary for colonial agriculture. He feared that upon return to the colonies, they would institute annoying lawsuits at best, and violent rebellions at worst. At this time, the king's solution was to forbid any French subject or foreigner from bringing into the kingdom "any black, mulatto, or other person of color, of either sex."[363] Violation of this law would result in a fine of 3,000 *livres tournois*—a considerable sum at the time.[364]

However, the king recognized that such a policy might "deprive colonial inhabitants from the care of black servants during the crossing."[365] Therefore, the king created an exception. Under Article 4, each colonial inhabitant was allowed to bring one black or mulatto domestic servant to aid them during the ship voyage.[366] Although this exception created an opening that enslaved people of color could exploit, it was not created with their humanity in mind at all. In fact, colonial inhabitants could only bring their (enslaved) domestic servants with them if they confined them to buildings specifically designated for people of African descent who entered France. The king referred to a *dépôt des noirs*, or "depot of blacks."[367] Such buildings served the purpose of detention centers, so I use this translation throughout the chapter. Upon the ship's landing, it became the responsibility of the admiralty court prosecutor to ensure that (enslaved) domestic servants were put into detention centers. There, they would wait for the next ship home.[368]

This exception created a work-around, should any slave sue for freedom on the basis of having touched French soil. A clever lawyer for the master might argue that technically the slave had never touched French soil, rather only a French dock and the floor of a French detention center. More practically, it meant that the French crown could isolate slaves from the society which it so feared would instill in them a rebellious spirit of independence.

The top-down directive was clear: keep black people out of France. If for the sake of their white masters they must enter in sparse numbers, then at least they must be kept out of French society. The crown aspired to shut down opportunities for enslaved domestic servants to sue for freedom on the basis of the free soil principle. Nowhere was this more clear than in Article 12, which read, "we wish that during their stay in France and until their return to the colonies, the said blacks, mulattos, etc. retain the status they had during their departure, without the possibility that this status could be changed by their masters or otherwise."[369] The Declaration of 1777 thus allowed slave-owners to travel to and from France with their slaves, without jeopardizing their property rights. Simultaneously, by designing a holding center for any (enslaved) black people entering France, it preserved the myth of France, frank and free.

The 1777 Declaration is better used as a historical source indicating the crown's aspirations, than the actual state of the law. A gap between the law on the books and the law in action marks the history of black immigration policy in France from this period until at least

[363] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 100.
[364] Boulle and Peabody, 100.
[365] Boulle and Peabody, 99.
[366] Boulle and Peabody, 100.
[367] Boulle and Peabody, 99–102.
[368] Boulle and Peabody, 100.
[369] Boulle and Peabody, 102.

1836.[370] Although the crown ordered eight ports to establish detention centers, enforcement was poor.[371] In the pre-revolutionary period, only Le Havre, Nantes, and possibly Bordeaux regularly operated such detention centers.[372]

France in Revolution

In the early Revolutionary years, the French government extended the ideals of the 1789 Declaration of the Rights of Man and Citizen to the colonies. On September 28, 1791, the Constituent Assembly declared that each individual was free upon entering France. On February 4, 1793, slavery was abolished throughout the French Empire.[373] In 1804, Haitian leaders successfully established the world's first black republic.

However, in 1802, Napoleon re-established slavery in the colonies of Martinique and Guadeloupe.[374] This coincided with a return to pre-revolutionary laws on black immigration. A law passed on July 2, 1802 formed the foundation of French immigration policy towards non-whites until 1836.[375] As in 1777, there was an exception for any black, mulatto, or other person of color working as the servant of a French person—as long as they held a valid authorization to enter from the Navy or from colonial authorities.[376] Any black person or mulatto who entered continental France without valid authorization after the passage of this law was to be arrested, detained, and deported.[377] A ministerial order of 1807 hardened these laws.[378] Under it, any black person or person of color arriving in a French port—with or without valid authorization—was to be placed in a detention center to await the next ship home.[379]

By re-establishing detention centers specifically designed for people of African descent, Napoleon effectively also re-established the *Police des noirs*, or law enforcement body tasked with arresting, detaining, and surveilling people based on the color of their skin.[380] Each local police body (*préfecture*) was to report to the national police body (*Police des noirs*) on the number and activities of people of color within their jurisdiction. In 1807, 1,295 people of color were reported to be living in France.[381] Because several local police bodies reported no people

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[370] The literature on the gap between the law on the books and the law in action is vast. For primers and overviews, see Richard Abel, "Redirecting Social Studies of Law," *Law & Society Review* 14 (1980 1979): 805–30; Robert Ellickson, *Order without Law: How Neighbors Settle Disputes* (Cambridge: Harvard University Press, 1991); Stewart Macaulay, "New Legal Realism: Unpacking a Proposed Definition," *UC Irvine Law Review* 6 (2016): 149–68.

[371] These ports were Bordeaux, Brest, Dunkerque, La Rochelle, Le Havre, Marseille, Nantes, and St. Malo. See Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 86. On poor enforcement, see Erick Noël, "Noirs dans les prisons de Nantes," *Cahiers des Anneaux de la Mémoire*, no. 10 (2007), 201-10.

[372] Boulle and Peabody, 86.

[373] "Laptots et autres esclaves amenés en France," *L'Abolitionniste français* [hereafter *AF*] (1847).

[374] Dubois, *A Colony of Citizens*.

[375] "Arrêté du 13 messidor an X (2 juil. 1802) portant défense aux noirs [etc.] d'entrer sans autorization sur le territoire continental de la République," re-printed in Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 178–79.

[376] Boulle and Peabody, 178–79.

[377] Boulle and Peabody, 179.

[378] "Arrêté ministériel de juillet 1807," excerpt re-printed in Boulle and Peabody, 179.

[379] Boulle and Peabody, 179.

[380] Boulle and Peabody, 159.

[381] Boulle and Peabody, 169.

of color in their jurisdictions, historians have been skeptical of this number.[382] Michael Sibalis establishes the actual number at 1,600 or 1,700.[383] This was far less than 1% of the entire French population of approximately thirty million.[384]

Like King Louis XVI in 1777, Napoleon in 1802 justified the passage of these laws by drumming up fears of the disorder that would result if too many black people entered France.[385] By this time, the word "disorder" had taken on greater gravity than it had in 1777. Today we conceive of a Haitian Revolution between 1791-1804 (and its leaders saw themselves as revolutionaries), but French contemporaries referred to the Haitian events as "disorder" in the colonies.[386] The euphemism would have been clear to contemporaries in 1802. Letters written to colonial administrators in this period explicitly laid out further motives behind the laws of 1802 and 1807. Authorities in the Napoleonic era showed great anxiety over "the scandalous and impolitic mixing of French blood," that could result from "the introduction of the African race into France."[387]

As Robin Mitchell shows, the European intellectual development of scientific racism profoundly shaped the experiences of black people in France from the Napoleonic era to the Bourbon Restoration.[388] France as a nation was traumatized in the aftermath of the unthinkable Haitian Revolution.[389] By 1804, men of African descent had successfully established an independent republic. France had lost its most important sugar-producing colony.[390] By examining four cases of black women represented in fine arts, literature, legal cases, and human zoological exhibits, Mitchell argues that French men inscribed their anger on the bodies of black women.[391] Although France now had less control over black bodies, representing black women's bodies as open for consumption was a way to reassert that power.[392] Women's bodies were easier targets because they were less threatening, but still marked as inherently non-French.[393] If the new France was supposed to be classless, a new boundary had emerged: race.[394]

Where Mitchell argues that representations of black women in early nineteenth century France were doing important cultural work, this dissertation argues that laws were also doing important cultural work. Even if they were not uniformly enforced, laws as they were written are

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[382] Boulle and Peabody, 169.
[383] Michael Sibalis, "Les Noirs en France sous Napoléon : l'enquête de 1807," in *Rétablissement de l'esclavage dans les colonies françaises, 1802*, ed. Yves Bénot and Marcel Dorigny (Paris: Maisonneuve et Larose, 2003), 99–100.
[384] "Population of the Major European Countries in Millions," accessed August 9, 2018, http://dmorgan.web.wesleyan.edu/materials/population.htm (citing B.R. Mitchell, *European Historical Statistics, 1750-1975*, 2d ed. [New York: 1980]).
[385] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 168.
[386] Gaffield, *The Haitian Declaration of Independence*.
[387] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 186.
[388] See for instance, Georg Hegel's assertion that, "this condition is capable of no development or culture," qtd. in Robin Mitchell, "Les Ombres Noires de Saint Domingue: The Impact of Black Women on Gender and Racial Boundaries in Eighteenth- and Nineteenth century France" (University of California, Berkeley, 2010), 8.
[389] On the Haitian Revolution as a collective trauma for France, see Mitchell, 9–20. On the Haitian Revolution as unthinkable, see Trouillot, *Silencing the Past*.
[390] On the economic importance of the colony of Saint Domingue to France, see Dubois, *Avengers of the New World*; Ghachem, *The Old Regime and the Haitian Revolution*.
[391] Mitchell, "Les Ombres Noires de Saint Domingue," 9–26.
[392] Mitchell, 9–20.
[393] Mitchell, 9–20.
[394] Mitchell, 9–20.

valuable historical sources revealing cultural and racial prejudice. The Napoleonic era was clearly marked by an increased anxiety over policing and surveilling black bodies.

Bourbon Restoration (1814-1830)

In 1814, a descendant of the Bourbon family, Louis XVIII, was restored to the French thrown. This time the monarchy was to be limited by a constitutional charter. Napoleon Bonaparte's regime formally ended with his defeat at the Battle of Waterloo in 1815.[395] The Restoration period was marked by an overall disorganized policy on slavery and black immigration, and chaotic execution of the laws.[396] The body most responsible for patrolling movement of slaves within the French Empire was the Ministry of Navy and the Colonies. In sixteen years, the Ministry had thirteen different Ministers.[397]

Such disorganization may explain why white slave-owners from New Orleans took slaves to France during this period. They may have been freer to deviate from the rules during a time of confused legality. Of the slaves who would eventually become freedom petitioners in New Orleans in the 1840s, five departed during the Bourbon Restoration. Aurore stayed from approximately 1818 to 1823;[398] Fanny and Liza were in France in 1821;[399] Ajoie, stayed from approximately 1822 to 1824;[400] and Josèphine was in France in 1828.[401]

It is not entirely clear whether these enslaved women and girls were put in detention centers upon their arrival. Although the law on the books certainly dictated that they should be, enforcement was lax. In 1817, a colonial official in Guadeloupe complained of "much abuse of the Royal Declaration [of 1777]."[402] Slave-owners easily evaded the requirement of traveling with only one black servant, and of paying a deposit to ensure that slave's return to the colony.[403] The books-action gap extended to detention centers in France as well. In 1817, only Bordeaux had a functioning detention center. Le Havre, along with six other ports, was supposed to have a detention center, but none of the ports was operating a center.[404]

To remind port officials of the laws restricting black mobility, the Navy's Administrative Bureau circulated an official disposition. The Navy sent a letter to commandants and intendants

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[395] Compared to other periods of Revolutionary France, little has been written on the Bourbon Restoration. For the best historiographical overviews, see Guillaume de Bertier de Sauvigny, *The Bourbon Restoration.* (Philadelphia: University of Pennsylvania Press, 1967); Guillaume de Bertier de Sauvigny, "The Bourbon Restoration: One Century of French Historiography," *French Historical Studies* 12, no. 1 (1981): 41–67; Sharif Gemie, *French Revolutions, 1815-1914: An Introduction* (Edinburgh: Edinburgh University Press, 1999).

[396] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 183.

[397] Boulle and Peabody, 183.

[398] Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[399] Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1847-1848), *NOCA* VSA 290; Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1850-1851), *NOCA* VSA 290.

[400] Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290.

[401] Marie-Louise v. Marot, No. 2748, 8 La. 475 (1835), *HASCL*; Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.

[402] "Demande d'une instruction nouvelle sur les demandes des habitans qui désirent améner des domestiques de couleur en France," Basse Terre de la Guadeloupe, April 1817, *ANOM* GEN/629, no. 2735 [hereafter "Demande"].

[403] "Demande."

[404] "Rapport sur les dispositions de la déclaration du Roi du 9 août 1777, qui défend l'introduction des hommes de couleur en france," Paris, 25 Sept. 1817, *ANOM* GEN/629, no. 2735 [hereafter "Rapport"].

in several French port cities.[405] This letter ordered that a detention center be opened and operated in Le Havre. The Navy reminded commandants of the three major laws of 1777, 1802, and 1807 designed to keep black people out of France. Lest there be any hesitation, the Navy emphasized that the only purpose of the domestic servant exception was to provide colonial inhabitants with personal service during the sea voyage. The Navy continued, "the assertion that blacks, mulattos, and other people of color become free upon touching the soil of France, is contradicted by the dispositions of Article 12 of the Royal Declaration of August 9, 1777."[406]

This is an important turning point. What had once been interpreted as a maxim of French law was now downgraded to a mere "assertion," and an invalid one at that.[407] This makes it all the more remarkable that the Supreme Court of Louisiana, a slave state embedded in the Deep South, would accept free soil not as an assertion, but as the inviolable law of a sovereign nation.[408] That the Navy needed to elaborate on the irrelevance of the free soil principle suggests that in fact, black people were entering France and claiming freedom on that basis during this period—whether in the courts of France, or the courts of their home country or colony. Despite the prohibition on blacks entering France, Louisiana slave owners did travel to France with their slaves during the Bourbon Restoration. Bernard de Marigny, the master of Ajoie, was a prominent American-born French Creole who held both French and American citizenship. The names of the owners of the four other slaves who traveled to France in this period and would eventually be sued in New Orleans (Pierre Lausans, Desdunes Poincy, Félicie Norbert Fortier, and Marie-Emilie Marot) suggest that they may well have been French citizens as well as naturalized Americans. Although France ceded Louisiana to the United States in 1803, 5,000-6,000 Louisianans retained their French citizenship through at least 1848.[409] De Marigny's French citizenship may explain why he was able to bring Ajoie with him in 1822. As a French citizen, he benefited from the domestic servant exception.[410] In contrast, foreigners did not benefit from the domestic servant exception.[411] Under Article 1 of the law of July 2, 1802, they were simply forbidden from bringing black people, mulattos, or other people of color into France under any circumstances.[412] The Plenipotentiary Minister of France to the United States was charged with notifying Anglo-American ships of this travel ban.[413]

In 1820, the Office of the Navy Administration in the port of Brest still complained of enforcement and compliance problems.[414] Top-level officials clearly saw it as their duty to

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[405] These were Brest, Toulon, Rochefort, L'Orient, and Cherbourg in the metropole, and the colonies of Senegal and Cayenne. "Rapport."
[406] "Rapport."
[407] On the free soil principle as a maxim of French law, see Peabody, *There Are No Slaves in France*, 30–32.
[408] See, e.g., *Smith v. Smith*, No. 3314, 13 La. 441 (1839), *HASCL*.
[409] "Correspondence politique des consuls, Etats-Unis," 5 Sept. 1848, *MAE*-Paris 16CPC/2, fol. 109.
[410] Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290.
[411] Doc. 8/4, "Le ministre clarifie la politique à suivre à l'égard des esclaves des étrangers arrivant en France," 7 oct. 1818, in Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 196.
[412] See *Arrêté du 13 messidor an X* (2 July 1802), copied and re-circulated in "Rapport," 25 Sept. 1817, *ANOM* GEN/629, no. 2735.
[413] "Rapport," 25 Sept. 1817, *ANOM* GEN/629, no. 2735.
[414] "Sur la légalislation actuelle en fait des noirs, mulâtres et hommes de couleur, libres ou esclaves, des possessions françaises ou étrangères, pour leur entrée dans le Royaume," Brest, 30 Dec. 1820, *ANOM* GEN/629, no. 2735 [hereafter "Légalisation actuelle"].

follow royal orders to rid French soil of black people.[415] To them, the French free soil principle was now obsolete.[416] By this logic, the minute number of slaves who did enter France should not have been allowed to circulate freely in French society, let alone sue for freedom on the basis of the French free soil principle.

Emancipation in Fact

However, even top-level officials knew that the reality on the ground was different. Much as King Louis XVI had feared rebellion in the colonies, the Navy's Administrative Bureau in 1817 worried that black people who had touched the soil of France had acquired a dangerous spirit of liberty.[417] In 1777, the only official solution was to forbid the entry of black people and create detention centers.[418] The Navy retained this law, but revealed a greater tolerance towards people of color who had already managed to enter France illegally and set up lives there. After receiving a report from the Police Ministry, the Navy concluded that it would not be possible to send all people of color in the metropole back to the colonies. Instead, the Navy instructed port officials to ensure that these people remained in France and never returned whence they had come, lest they foment rebellion there. The Navy explained,

> To uproot these people [of color] today from the soil of France in order to re-enslave them, this would be at once impolitic and severe—impolitic because they would carry into the colonies a spirit of independence and discontent that may be fatal to the tranquility of our possessions; severe, because although they are not legally free, they have acquired a sort of emancipation in fact as a result of their residence in a state of liberty in the metropole, where they have been able to exercise civil rights, and where many even contribute to public office.[419]

Of course, the Navy here focused on slaves from France's colonies. Since France had ceded Louisiana to the United States in 1803, Aurore, Ajoie, Fanny, Josèphine, and Liza did not officially fall under this category. Nevertheless, the Navy's logic applies. In France, enslaved American women and girls would have been coded right alongside people of color from French colonies, whether or not they felt akin to them.[420]

Domestic labor certainly should not be romanticized. It involved grueling hours and left women vulnerable to domestic abuse.[421] However, living with the certain status of slave in the United States would have been a different experience from living with the malleable status of domestic servant in France. Although the Lausans, De Marigny, Fortier, Marot, and Poincy families may have treated Aurore, Ajoie, Fanny, Josèphine, and Liza as slaves within their own

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[415] "Légalisation actuelle."
[416] "Rapport," 25 Sept. 1817, *ANOM* GEN/629, no. 2735.
[417] "Rapport," 25 Sept. 1817, *ANOM* GEN/629, no. 2735.
[418] Déclaration du Roi pour la Police des noirs, donée à Versailles le 9 août 1777, enregistrée en parlement [de Paris] le 27 desdits mois et an," in Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 99–102.
[419] "Rapport," 25 Sept. 1817, *ANOM* GEN/629, no. 2735.
[420] For an example of the lumping-together of others, see Mitchell, "Les Ombres Noires de Saint Domingue" who juxtaposes nineteenth century French representations of black women from Saint-Domingue, South Africa, and imagined Africa.
[421] Guiral and Thuillier, *La vie quotidienne des domestiques en France au XIXe siècle*, 9–151 (describing "a difficult life," [128], including sexual abuse, cramped living quarters where diseases like tuberculosis festered, and fifteen to sixteen hour workdays).

households, those households were part of a larger society and legal system where the status of slave was technically non-existent. Outside these households, they may in fact have experienced a degree of emancipation.[422]

To say that these women lived as if free in France would be an exaggeration. But perhaps for the first time in their lives, Aurore, Ajoie, Fanny, Josèphine and Liza had an opportunity to think of themselves as not necessarily unfree. Perhaps for the first time in their lives, they saw their status as contestable. The awareness of the possibility of legal redress—however remote—is a necessary pre-requisite to starting a lawsuit.[423] In other words, Aurore, Ajoie, and Josèphine's legal consciousness may have been awakened by their experiences in France. Their return to Louisiana might not be *fatal* to that state's tranquility, but in its own way, it would be dangerous to the legal underpinnings of a slave-holding republic of the United States. When they returned to New Orleans and filed freedom petitions, they revealed a spirit of independence from the establishment and discontent with the way things were.

Explaining the Books-Action Gap

That Fanny and Liza stayed for less than one year in France suggests that all they saw of France was a detention center. In these cases, port authorities may have applied the law as it was written, detaining these women until the next ship headed for New Orleans could take them. By 1820, authorities in Le Havre were detaining at least some black travelers.[424] Clearly, they were not detaining all black travelers. In 1821-2, one slave-owner informed the Navy that his slave had been able to travel from Le Havre to Paris without the notice of authorities. In Paris, the Police Commissary had even informed the slave that "everyone is free in France."[425] In sum, Fanny and Liza may have been detained upon entry to France in 1821, but it is unclear.

In contrast, it is almost certain that Aurore, Ajoie, and Josèphine lived as domestic servants in French society for a time. Aurore and the masters she sued agreed that she stayed in France 5 to 6 years.[426] Had she been put in a detention center, she should only have stayed for a season at most (awaiting the next ship to New Orleans). Ajoie stated in her petition to the Fourth District Court of New Orleans that had she known she would be re-enslaved upon return to New Orleans, she would have stayed in France. This suggests that she was living as a free person there, not held up in a detention center.[427] Members of the Marot family had no problem asserting to the First District Court of New Orleans that they were taking Josèphine to France to learn the trade of hairdressing in Paris (far from any existing detention center).[428]

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[422] On freedom as a spectrum, see Rebecca Scott, *Degrees of Freedom: Louisiana and Cuba after Slavery* (Cambridge: Belknap Press of Harvard University Press, 2005).

[423] For foundational works on legal consciousness, see Robert H Mnookin and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce," *Yale Law Journal* 88 (1978); Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes"; Ewick and Silbey, *The Common Place of Law*.

[424] "Commissaire Générale de la Marine au Havre au Ministère de la Marine," *ANOM* GEN/629, no. 2735 [hereafter "Havre au Ministère"].

[425] "Marron à cause d'absence de dépôt au Havre," 23 Dec. 1821-5 Jan. 1822, *ANOM* GEN/629, no. 2735. Although this document suggests there was no detention cetner in Havre, an earlier document suggests otherwise. See "Havre au Ministère,"3 June 1820, *ANOM* GEN/629, no. 2735.

[426] Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[427] Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290.

[428] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.

This reveals that during the Bourbon Restoration, it was in the interest of the master class to maintain a gap between the law on the books and the law in action. Neither ship captains, slave-owners, port authorities, nor local police benefited from a policy of detaining and policing black bodies. The almost-complete ban on allowing black people to enter France meant one less ticket sale ship captains could count on to line their own pockets on the return voyage.[429] One slave-owning woman from a French island colony complained in 1820 that her slave, whose help she needed, was held up in a detention center in Le Havre.[430] Slave-owners had long protested that holding wetnurses in a detention center was inhumane—not because of cruelty towards the enslaved black women, but because it deprived white children of their nannies and their milk.[431]

Port authorities complained to the Navy that creating a detention center would be no easy feat. In various French ports, they were reluctant to build an entirely new building, and were concerned about the cost of feeding inmates. In Bordeaux, the Sisters of Charity had offered to care for and feed detained people for the cost of 1 franc a day.[432] In Le Havre, port authorities predicted that the only suitable building would be a former convent.[433] However, the Chief Civil Engineer of Le Havre estimated that converting the building into a detention center would cost 1,042 francs.[434] Le Havre port authorities insinuated that this was a large cost, and seemed reluctant to put out the money.[435] Nevertheless, the engineer submitted a floorplan to the Navy for such a building.

Whether or not this design was carried through to construction, it shows that people of color detained in France's ports during the Bourbon Restoration would have experienced cramped conditions.[436] These spaces were known to fester with disease.[437] By the engineer's estimation, the renovated structure could accommodate thirty to forty-two men, and about ten women.[438] Figure 5 shows the second floor (or *premier étage*, in the French usage). The engineer titled his floorplan a "lodging for the deported," (*logement des déportés*) and not a "depot of blacks" (*dépôt des noirs*).[439] This linguistic turn might signify his slightly greater recognition of the humanity of slaves. Whereas depots are built to house goods, lodgings are built to accommodate people. Although the national organization of the Navy preferred a term that suggested black people were objects to be stored in a warehouse, the local engineer's language conceived of them as people and deleted racialized language.

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[429] On ship captains charging passengers fares, see "Correspondence commerciale," 15 décembre 1846, *MAE*-Paris 227CCC, fol. 360; "Rôles des bâtiments de commerce, désarmement no. 270, *Ville de Bordeaux*," 22 July 1839, *ADSM* 6P6_95, digital image 1734.

[430] "Havre au Ministère," 3 June 1820, *ANOM* GEN/629, no. 2735.

[431] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 88.

[432] "Sur les moyens indiqués par les administrateurs des ports, pour l'éxécution de l'article 4 de la déclaration du Roi du 9 août 1777," Paris, 15 July 1818, *ANOM* GEN/629, no. 2735 [hereafter "Sur l'execution de l'article 4,"].

[433] "Sur l'éxécution de l'article 4," 15 July 1818, *ANOM* GEN/629, no. 2735.

[434] "Rapport sur l'établissement d'un lieu de dépôt pour les gens de couleur destinés à retrouner dans les colonies, avec évalutions des dépenses à faire dans le local qui sera proposé," Havre, 13 Nov. 1817, *ANOM* GEN/629, no. 2735 [hereafter "Rapport."]

[435] "Sur l'éxécution de l'article 4," 15 July 1818, *ANOM* GEN/629, no. 2735.

[436] "Extrait du plan du premier étage du logement des déportés," 8 Nov.-13 Nov. 1817, *ANOM* GEN/629, no. 2735 [hereafter "Plan."]

[437] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 86–87.

[438] "Rapport," 13 Nov. 1817, *ANOM* GEN/629, no. 2735.

[439] "Plan," 8 Nov.-13 Nov. 1817, *ANOM* GEN/629, no. 2735.

As Figure 5 shows, Rooms and A and B were intended for women, while rooms C and D were intended for men. Rooms A and C were separated by a staircase. Each room had windows not more than one meter wide. For a sense of the measurements, Room B measured five meters by three meters. It was to contain three beds, each one measuring one meter by two meters. Each bed was to be shared by two people. This meant that in Room B, six people would have shared a space of five meters by three meters.[440]

Despite a top-down directive to surveil black bodies, police in certain municipalities were half-hearted. Other departments were more willing to comply.[441] Thus the actual experiences of American slaves in France could vary greatly depending upon where exactly they found themselves, and how zealously the police in that department enforced the laws governing people of color. Although humanitarian sentiment might explain some of the lax local enforcement, at the national level the language of the laws retained its race-based ideology. Law-makers did little during this period to change the laws as they were written.

At every point along an enslaved person's itinerary—from the departing dock in New Orleans, to the point of entry in France, to their circulation within various parts of France, medium-level authorities were happy to look the other way. Half-hearted enforcement created openings enslaved people could exploit. From the ships they debarked, Ajoie, Josèphine and most likely Aurore made their way to Paris and possibly Nantes, even though the presence of black people was outlawed in France.[442]

July Monarchy (1830-1848)

The argument that their experience in France awakened the legal consciousness of these woman and girls can be made more strongly of the fifteen remaining slaves at the center of my dissertation, those who entered France during the period of the July Monarchy. Where Aurore, Ajoie, Fanny, Josèphine, and Liza encountered a confused legal system, the other would-be litigants traveled during a period of hope and promise for people of color in metropolitan France. The Revolution of July 1830 ushered in King Louis-Philippe, who in 1822 had joined the Society of Christian Ethics, an organization that promoted the abolition of the slave trade.[443] Between 1830 and 1832, he passed a series of ordinances that eased restrictions on the civil rights of people in metropolitan France, and simplified the manumission process in France's colonies.[444] Under his reign, anti-slavery literature and Abolitionist litigation intensified.

From at least 1832, the Navy began following a policy of recognizing slaves entering French ports as free people.[445] But this was not yet the law on the books. Four years later, Louis-Philippe changed the law to reflect better the reality on the ground. With the Ordinance of April 29, 1836, he re-established the French free soil principle as positive (written) law. Under

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[440] Surprisingly, this compares favorably to the conditions in which people lived in the tenements of New York in the 1880s, as documented by Jacob Riis in *How the Other Half Lives: Studies among the Tenements of New York*, ed. David Leviatin (Boston: Bedford Books of St. Martin's Press, 1996).
[441] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 191–92.
[442] Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290; Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
[443] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 211.
[444] Boulle and Peabody, 214. See, for example, "Ordonnance royale, qui rétablit les personnes de couleur libres dans la jouissance entières des droits civiles," 24 Feb. 1831, *ANOM* GEN//160/1320.
[445] Boulle and Peabody, 215.

this ordinance, any French colonial inhabitant wanting to bring a slave into France was required first to manumit that slave in the colonies.[446] Any slave whose master sent or brought that slave to France without having fulfilled the manumission requirement, "would become completely free at law from the moment of his landing in the metropole, and will consequently receive a title of liberty."[447] This may have referred to a physical legal title. If so, these freedom papers would have become the most prized possessions of formerly enslaved people.[448] However, no petitioners presented such papers in the cases I look at from the local courts of New Orleans. Nevertheless, in France this emancipatory law applied to any slaves that found themselves on the territory of France in 1836 or later.[449] Unlike the previous domestic exception, here the slaves of foreigners were not explicitly excluded.

The Ordinance of 1836 signifies a major shift away from the Bourbon Restoration policy, which regarded the free soil claim as an invalid assertion. It also signifies a shift away from nearly a century of avoiding the term slave in written French law. Where the major laws of 1777, 1802, and 1807 had all preferred the euphemism of domestic servant, the Ordinance of 1836 used the word slave four times and the word master once.[450] Of the women and girls with whom we are here concerned, eight would have benefited from this explicit re-affirmation of the French free soil principle. These were: Eugénie, who was in France from 1830 to 1838; Arsène, who arrived in July 1836; Lucille, in 1836 or 1837; Hélène, who arrived in 1838 or 1839; Charlotte who arrived between 1838 and 1840; Milky, in 1839; Sally, in 1845; and Mary, in 1847.[451]

Mary and Other Domestic Servants in Paris

In five cases, Louisiana legal records specifically state that the petitioner stayed in Paris. These are Charlotte, Josèphine, Mary, Milky, and Priscilla Smith.[452] Because Aurore and Sally's legal records name the Lausans' and Varneys' relations Paris, there is some indication that Aurore and Sally also stayed there.[453] Of course, it would be a mistake to assume on this basis that the remaining several litigants necessarily lived in Paris. New research shows that during

[446] Art. 1 in "Ordonnance du Roi concernant l'affrachissement des esclaves amenés des colonies en France," Paris, 29 April 1836, *ANOM* GEN/629, no. 2735 [hereafter "Ordonnance."]
[447] Art. 2 in "Ordonnance."
[448] On both the power and fragility of freedom papers, see Scott and Hébrard, *Freedom Papers*.
[449] Art. 3 in "Ordonnance," 29 April 1836, *ANOM* GEN/629, no. 2735.
[450] "Ordonnance," 29 April 1836, *ANOM* GEN/629, no. 2735.
[451] Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*; Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290; Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1846-1847), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1847-1848), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1849-1850), *NOCA* VSA 290; Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[452] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290; Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*; Couvent v. Guesnard, No. 1063, 5 La. Ann. 696 (1850), *HASCL*; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*.
[453] Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

the nineteenth century, there were communities of people of color in many port cities, such as Bordeaux and Nantes.[454] Indeed, Liza stayed in Bordeaux, and Aurore's legal record also mentioned her master's relations in Nantes.[455]

Because Mary's is the best documented case, and because she was in France the year before the official Abolition of slavery in 1848, hers is a helpful itinerary to follow. Her path was not necessarily representative, but it can be used to open up lines of inquiry into the other cases. In Paris, Mary lived and worked for three months as the domestic servant of Jeanne-Louise Emma de Larsille, in the prosperous neighborhood of Faubourg de Poissonière.[456] Jeanne was the daughter of Jean-Louis de Larsille and Bernardine Philippine Victoire Castel. Both were deceased by 1842.[457] Between 1799 and 1821, Jean-Louis had worked his way up the hierarchy of the legal profession. He was first known as a "man of law" (*homme de loi*), then as a barrister (*avocat*), and finally as an applicant to the position of judge.[458] In fact, there is some indication that before the French Revolution, Jean-Louis was a barrister in the Parlement of Paris, a prestigious legal institution long known for its defiance against political absolutism.[459]

Because of her mistress's familial connections to men of the law, Mary more than other would-be petitioners had an opportunity to be exposed to the inner workings of legal procedure while in Paris. Like other domestic servants of the time, she would have lived in close quarters with her mistress and mistress's family.[460] A classic source on the daily lives of domestic workers in nineteenth century France describes a master-class worldview whereby a domestic servant was but a "portable shadow" of the master, who existed only for him and by him.[461] In many ways, the lives and personalities of servants were subsumed into those of their masters. For example, masters and mistresses had no compunction in changing the first names by which

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[454] In *To Be Free and French: Citizenship in France's Atlantic Empire* (New York: Cambridge University Press, 2017) Lorelle Semley focuses on key port cities in Haiti, Senegal, Benin Republic and France to explore the challenge of black citizenship to the nineteenth century French Empire. Rebecca Hartkopf Schloss's current book project, "France at the Edges: Life in France's Atlantic Port Cities, 1802-1830," explores the commercial, personal, and political connections between New Orleans and Bordeaux, among other ports.

[455] Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1850-1851), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[456] On Mary's itinerary, see *Couvent v. Guesnard*, No. 1063, 5 La. Ann. 696 (1850), *HASCL*. For de Larsille's address in Paris in 1847, see "Sale, Jeanne-Louise Emma de Larsille, to Charles Lamarque," 23 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act no. 467. On Faubourg de Poissonière, see Pascal Étienne, *Le Faubourg Poissonnière: architecture, élégance et décor* (Paris: La Délégation à l'Action artistique de la ville de Paris, 1986).

[457] "Marriage, William Guesnard and Jeanne Louis Emma de Larsille," 5 April 1842, *Archdiocese of New Orleans* [hereinafter *ANO*], Marriage vol. 8, p. 275, no. 275.

[458] References to Jean-Louis de Larsille in the central notarial records of Paris (*Minutier Central*) are plentiful. See, for example, "Procuration, Jean-Louis de Larsille, homme de loi, au Jean-Louis Renard," 11 thermidor an VII, *AN*-Paris MC/ET/XVII, Notary Pierre Langlois; "Quittance, Jean-Louise de Larsille, avocat," 4 Aug. 1809, *AN*-Paris MC/ET/XII/681, Notary Pierre Lienard; "Pouvoir, Jean-Louis de Larsille, avocat et appliquant au juge," 9 June 1812, *AN*-Paris MC/ET/XII/821, Notary Pierre Lienard.

[459] "Jean-Louis de Larsille, avocat au Parlement de Paris, et Chiboun de Montigny Veuve Camusat," 25 Nov. 1787, *AN*-Paris MC/ET/CVII/629. For arguments that the Parlement of Paris spearheaded defiance against absolutism and eventually the French Revolution, see Barbiche, *Les institutions de la monarchie française à l'époque moderne*; Bell, *Lawyers and Citizens*; Karpik, *French lawyers*.

[460] Guiral and Thuillier, *La vie quotidienne des domestiques en France au XIXe siècle*, 83–86 (describing the space where domestics lived and worked).

[461] Guiral and Thuillier, 22–24.

their domestic workers were known.[462] Indeed, when Jeanne-Louise purchased Mary's mother, she had changed her name from Pénélope to Pamela.[463]

Mary would have waited on Jeanne-Louise hand and foot from sunrise to sundown.[464] She may have heard her mistress speak of barristers, notaries, and the Ministry of Justice over dinner. Although Jean-Louis was deceased by the time Jeanne-Louise arrived in Paris with Mary in 1847, it is clear that he had instilled in his daughter an awareness of the importance of legal documentation. For instance, when seeking to send Mary back to New Orleans to sell her as a slave, Jeanne-Louise visited a notary in Paris to deposit her legal title of ownership on Mary, and record her wishes to have Mary and her brother sold in New Orleans. Cyprien St-Hubert Thomassin worked for the 110th notarial firm (*étude*) of Paris. He was located at 10 Boulevard Bonne-Nouvelle, walking distance from the de Larsille residence at 12 Rue du Faubourg Poisonnière.[465] Jeanne-Louise then had the legal sense to carry this notarized document to the Ministry of Justice, the Ministry of Foreign Affairs, and the United States Consulate in Paris. All of these organizations stamped the document, making it more and more "official" (Figure 7).[466]

If Mary truly was treated as a "portable shadow" of her mistress, she would not only have seen her walk to the notary, but may have even walked with her. Given how intertwined the lives of masters and servants in nineteenth century France tended to be, it is plausible that at some point along the process of Jeanne-Louise's legal documentation of her wish to sell Mary, Mary discovered her intentions.[467] In a most unforgetable way, she would have come to understand the crucial importance of papers with markings she could not decipher.

As Mary witnessed her mistress—a woman in a patriarchal regime asserting property claims separately from her husband—she may have wondered how she too could use legal papers to test the boundaries of her own oppression. It is plausible that Mary even conferred with other domestic workers in Paris about what to do. Given that Mary's mistress was a native French-speaker and that Mary had entered her household at the age of ten, Mary would have been able to communicate with them in French.[468] Although Mary would have been recognizably different from them, they were all migrants. As outsiders, they had something in common. Where Mary came from another country, most domestic workers in urban environments had moved from the French countryside in an effort to improve their lives.[469] Theresa McBride's research in marriage records shows that they were largely able earn enough money for dowries that attracted bourgeois husbands. McBride thus interprets domestic labor

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[462] Guiral and Thuillier, 23.
[463] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462.
[464] Guiral and Thuillier, *La vie quotidienne des domestiques en France au XIXe siècle*, 19–86.
[465] "Procuration de Mme Jeanne-Louise Emma Delarzille à Pierre Lemoine," 24 Nov. 1847, *AN*-Paris MC/ET/CX/935, Notary Cyprien Saint Hubert Thomassin.
[466] "Sale, Jeanne-Louise Emma de Larsille, to Charles Lamarque," 23 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act no. 467 (copying Thomassin's act).
[467] On the intertwined nature of the lives of masters and servants in nineteenth century France, see Guiral and Thuillier, *La vie quotidienne des domestiques en France au XIXe siècle*, 19–112.
[468] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462.
[469] Theresa McBride, *The Domestic Revolution: The Modernisation of Household Service in England and France, 1820-1920* (New York: Holmes & Meier, 1976), 82–98.

(for all its grueling hours) as an eventual means of upward social mobility.[470] Ratcliffe and Piette, similarly, revise on a classic account of an atomized Parisian working-class to show that domestic workers exercised more agency and had more connections to each other than has previously been appreciated.[471]

French Abolitionism

A Social and Political Movement

Paris was the center of a growing social and political movement towards the abolition of slavery throughout the French Empire. In 1830, activist Victor Schoelcher published an essay calling for the emancipation of slavery within 15-20 years.[472] The British abolition of slavery in 1833 spurred French counterparts to action. The French Society for the Abolition of Slavery (*Société française pour l'Abolition de l'esclavage*, or SFAE) formed in 1834 in Paris.[473] It retained an elitist intellectual composition, a gradualist approach, and close ties with British Abolitionists.[474] That same year in Paris, the Martinican free man of color Cyrille Bissette established the first Abolitionist periodical run by black people.[475] *La Revue des Colonies* was radical in its approach, demanding immediate emancipation throughout French colonies.[476] With only 300 subscribers, the periodical struggled financially.[477]

Bissette's struggles reflect the nature of the movement as a whole. Leading historian of French anti-slavery Lawrence Jennings concludes that the movement was never able to gain the widespread sympathy of the French public.[478] However, Atlanticist Laurent Dubois critiques Jennings for overly downplaying the agency of enslaved people. Jennings writes a top-down narrative focused on an elite group of intellectuals. He stops short of focusing on the enslaved, or examining transatlantic connections.[479] Here, I argue that even if French Abolitionism was never mainstream, it would still have deeply impacted American slaves in Paris during this period – people like Charlotte, Mary, Milky, and Priscilla. Furthermore, people in powerful

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[470] McBride, 82–98.
[471] Barrie Ratcliffe and Christine Piette, *Vivre la ville: les classes populaires à Paris, 1ère moitié du XIXe siècle* (Paris: Boutique de l'histoire, 2007), 131–47; Louis Chevalier, *Laboring Classes and Dangerous Classes in Paris during the First Half of the Nineteenth Century* (New York: H. Fertig, 1973) (presenting nineteenth century Paris as a space of overcrowded squalor and little hope for collective action).
[472] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 211.
[473] Chapter 3 in Jennings, *French Anti-Slavery*.
[474] Schmidt, *Abolitionnistes de l'esclavage et réformateurs des colonies, 1820-1851*, 84–91; Jennings, *French Anti-Slavery*, 19–20.
[475] Jennings, *French Anti-Slavery*, 49.
[476] See, for example, Cyrille Bissette, "Prospectus," *Revue des Colonies* (July 1834) 1:3. Anna Brickhouse, "A Francophone View of Comparative American Literature: *Revue Des Colonies* and the Translations of Abolition," in *Transamerican Literary Relations and Nineteenth century Public Sphere* (New York: Cambridge University Press, 2004).
[477] Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 213.
[478] Jennings, *French Anti-Slavery*; Lawrence Jennings, *French Reaction to British Slave Emancipation* (Baton Rouge: Louisiana State University Press, 1988).
[479] Laurent Dubois, "Review Essay - The Road to 1848: Interpreting French Anti-Slavery," *Slavery and Abolition* 22, no. 3 (2001): 156–57.

positions (such as the New Orleans French Consul) viewed *L'Abolitionniste français* (*AF*) as an important publication.[480]

In 1837, the *Revue des Colonies* published *The Mulatto* (*Le Mulâtre*), an anti-slavery polemic that is now known as one of the earliest works of African American fiction.[481] Its author, Victor Séjour, was born in Louisiana in 1817 to free people of color. His father had emigrated from Haiti. Séjour's parents, who encouraged his education, sent him to Paris to study under fewer racial restraints in 1836. This was common practice among New Orleans-based free people of color.[482] Séjour became well-known on both sides of the Atlantic, receiving the Legion of Honor in 1860, and upon his death in 1874, a *New York Times* obituary about five times as long as Herman Melville's in 1891.[483] *The Mulatto* is just one example of a wider body of Paris-based literature. A group of Creole poets living in Paris called themselves *Les Cenelles*, after a berry native to Louisiana.[484]

In July Monarchy France, Séjour experienced a comparatively freer press than he would have encountered in Louisiana.[485] There, a state act of 1830 outlawed the publication of any text that might "produce discontent among the free colored population…or excite insubordination among slaves."[486] Similar to the censorship laws that were passed in the wake of Nat Turner's 1831 rebellion,[487] the logic of this law was to suppress the spirit of independence and discontent that French authorities had so feared in an earlier era.

Literate free people of color had more independence in Paris than in New Orleans. Whereas the *Revue des Colonies* was run exclusively by people of color, literary journals in Louisiana had to be supervised by white men.[488] In New Orleans, slaves like Mary could not have been exposed to anti-slavery polemics like *The Mulatto*. In Paris, the possibility was much greater. Although there is no evidence that slaves like Mary could read, the literate community of people of color may have conveyed such stories to her orally.

The Mulatto is a melodramatic piece that takes place in pre-revolutionary Haiti (Saint-Domingue). Its central character, Georges is the child of the enslaved Senegalese woman Laïsa and her master Alfred, "the king of the Antilles" who repeatedly rapes her.[489] However, Georges does not know the identity of his father. Although initially a loyal slave (even saving his master's life), Georges turns on Alfred when he makes advances on Georges's wife Zélie. When she refuses her master and harms him, Alfred procures her criminal conviction, and she is publicly executed. Georges takes revenge by poisoning Alfred's wife and (unwittingly) beheading his father, only to kill himself when he finds out this is what he has done.

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[480] "Correspondence commerciale," 30 May 1845, *MAE*-Paris 227CCC/9, fol. 113.
[481] Henry Gates and Valerie Smith, eds., *The Norton Anthology of African American Literature*, 2014, 286.
[482] "Séjour, Victor (1817-1874)," in Eric Martone, ed., *Encyclopedia of Blacks in European History and Culture* (Westport, Conn.: Greenwood Press, 2009), 480–81.
[483] Mary Grace Albanese, *Translated Subjects: Visions of Haiti in 19th-Century Literary Exchange*, 2017, chap. 2, p. 3.
[484] Michel Fabre, *La rive noire: de Harlem à la Seine* (Paris: Lieu commun, 1985); Lloyd Pratt, *The Strangers Book: The Human of African American Literature* (Philadelphia: University of Pennsylvania Press, 2016).
[485] Albanese, *Translated Subjects*, Ch. 2, 32; 36.
[486] Qtd. in Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868*, 94.
[487] Brickhouse, "A Francophone View of Comparative American Literature: *Revue Des Colonies* and the Translations of Abolition," 85.
[488] Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868*, 123.
[489] Victor Séjour, "Le Mulâtre," *Revue des Colonies* (1837) 376-392.

The Mulatto is notable for its "frank representation of slavery," to an extent that would have been impossible in Séjour's native United States.[490] Séjour was not the only member of an oppressed group to speak out clearly against slavery during Louis-Philippe's bourgeois monarchy. Even ladies of Paris frankly represented slavery to a French audience. Claiming to be "unfamiliar with the business world," and that "it is not up to us to express our political views," their 1847 petition in favor of the Abolition of slavery instead appealed to emotion. It highlighted the tragic trajectory of an archetypal enslaved female who is robbed of her childhood (insinuating rape), and the possibility to do what a woman is supposed to do: marry and raise children. Nominally, the piece embraces separate sphere ideology. Functionally, it condemns in no uncertain terms the economic and political institution of "human property."[491]

A strong sense of the gap between law and justice pervades *The Mulatto*. Written laws allow for Zélie's execution. Positive law also condones the violent transformation of free men into property. The island's planter elite "buy black men; that is, free men, uprooted by ruse or by force from their homeland, who through violence have become the property of their equals."[492] But the black men at the center of the story do not forget their heritage. When Georges runs away to a maroon community, he greets them with the passphrase, "Africa and liberty."[493] Séjour's body of work as a whole reveals an under-appreciated era of transatlantic intellectual exchange.[494] As an African American writer, Séjour not only wrote for the cause of justice in *The Mulatto*, but also in *The Fortune-Teller* (*La Tireuse des Cartes*, 1859), where he linked the misfortune of African Americans to that of Jews in Europe.[495]

The Mulatto also shows that in the black francophone imaginary, kinship could be found in unexpected places.[496] For example, shortly after Alfred buys Laïsa, she discovers that her brother from Senegal is also a slave on Alfred's plantation. Georges conveys a strong sense of empathy across lines of (un)freedom when he tells Alfred he cannot accept his individual liberty as repayment for saving his master's life, because, "I cannot be free, when my son and my wife are slaves."[497] This all suggests that Séjour and his cohort would have made it their business to communicate with domestic American slaves like Charlotte, Mary, Milky, and Priscilla who found themselves in Paris during Louis-Philippe's reign.

Even publications of less radical French Abolitionists reveal an awareness of the plight of the enslaved in the United States. When the French government sent politicians Alexis de Tocqueville and Gustave de Beaumont to the United States to study the prison system in 1831, both were struck by the disjuncture between a polity which promoted lofty ideals about freedom and an economy that relied on slavery.[498] De Tocqueville's musings on American inequality in *Democracy in America* (1835) are famous to this day. Gustave de Beaumont's novel *Marie, or Slavery in the United States* (1835) has fallen into oblivion but was wildly popular in its day. It

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[490] Albanese, "Translated Subjects," Ch. 2, p. 32.
[491] "Pétition des dames de Paris en faveur de l'abolition de l'esclavage," *AF* (1847), 35-41.
[492] "Le Mulâtre," 378.
[493] "Le Mulâtre," 388.
[494] Elèna Mortara, *Writing for Justice: Victor Sejour, the Mortara Case, and the Age of Transatlantic Emancipations* (Hanover: Dartmouth College Press, 2015).
[495] Mortara.
[496] On kin as a broader concept than blood relations in the antebellum American South, see Penningroth, *The Claims of Kinfolk*.
[497] "Le Mulâtre," 386.
[498] George Pierson, *Tocqueville and Beaumont in America,* (New York: Oxford University Press, 1938).

recounts the tragic love story between a young Frenchman and a woman from Baltimore whose relationship is forbidden under American laws because of her black ancestry.[499] Its popularity in its time reveals that even apolitical members of the French public were exposed to the racial injustices promoted by American law.

In its monthly bulletin, the gradualist SFAE regularly covered slavery not only in French colonies, but also in the United States.[500] For example, to illustrate the "horrible industry" of the United States, in 1846 *AF* published a *New Orleans Tropic* advertisement for, "An Assortment of Negroes…choice slaves, of good value, at the lowest market price."[501] The republication of these details from American newspapers was no doubt intended to persuade a French audience that an economy based on the commodification of human beings had to end. In an editorial note, *AF* reflected on "how much American Abolitionists would have to do to reform the public spirit on the topic of slavery."[502]

As Thomas Laqueur argues, bodies, details, and narratives were necessary for the success of British Abolitionism.[503] Laqueur also argues that British Abolitionism was the first human rights movement because it transcended differences among citizens. Instead, it rallied around the basic human desire to be free from suffering.[504] Details and images about the bodily suffering that enslaved Africans endured were key to rallying public support for the movement.[505] Whether in literature or in newspapers, French Abolitionists also employed narratives and images about basic human suffering. Like the British Abolitionists, their work was transnational in scope. This was not a movement to advance the rights of French citizens, but to broaden the scope of humanity.

Although French Abolitionists sought to broaden the scope of humanity, they did not necessarily see Africans as equals. De Tocqueville's *Report on the Abolition of Slavery* (submitted to the Chamber of Deputies in 1839) insists that French colonial slavery must end, but the point is made with all the inflections of the nineteenth century's civilizing mission. For instance, he asserts that people of African descent are more like children than men, and so must be given freedom only gradually.[506] Similarly, in 1843, Victor de Broglie concluded that civil, political, and legal rights of slaves should be introduced only gradually, and severely limited in the beginning.[507] In this way, French Abolitionists were similar to British Abolitionist leaders like William Wilberforce, who fell far short of advocating black equality, and viewed Abolitionism as a vehicle for expanding British imperialism in Africa.[508]

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[499] Gustave de Beaumont, *Marie, ou, l'esclavage aux États-Unis*, ed. Marie-Claude Schapira (Paris: Harmattan, 2009).

[500] Published in Paris, the monthly bulletin was known as *Société française pour l'Abolition de l'esclavage* from 1835-1842, and as *L'Abolitionniste français* from 1844-1850. See *BnF* M-17928; M-17929; M-7620.

[501] "États-Unis. Horrible industrie," *AF* (1846): 187; "Assortiment de nègres en vente à la Nouvelle-Orléans," *AF* (1846): 54-55.

[502] "États-Unis. Horrible industrie."

[503] Thomas Laqueur, "Bodies, Details, and the Humanitarian Narrative," ed. Lynn Hunt, *The New Cultural History*, 1989, 176–204.

[504] Thomas Laqueur, "The Foundations of Humanitarianism," Lecture, U.C. Berkeley, Sept. 11 and Sept. 13, 2012 U.C. Berkeley.

[505] Thomas Laqueur, "Bodies, Details, and the Humanitarian Narrative."

[506] "Rapport par M. A. de Tocqueville," 23 July 1839, *ANOM* FM/GEN/171, no. 1376.

[507] "Rapport de M. Broglie," 14 April 1843, *ANOM* FM/GEN/171, no. 1376.

[508] Matthew Wyman-McCarthy, "Rethinking Global Empire: The Imperial Origins and Legacies of British Abolitionism c. 1783-1807" (McGill University, 2017).

Abolitionist Litigation

Case law from the July Monarchy period also shows that throughout the French empire, Abolitionists were using litigation as a tool to dismantle slavery gradually. In 1835, the Royal Court of Guadeloupe declared that a single voyage to metropolitan France sufficed to give two slaves their definitive freedom, which could not be contested in colonial courts. This language closely mirrors Louisiana Chief Justice George Mathews's holding one year later that, "being free for one moment in France, it was not in the power of [Josephine's] former owner to reduce her again to slavery."[509]

Inspired by the litigation success of the white Abolitionist lawyer-turned-deputy François André Isambert, in the early 1840s Cyrille Bissette submitted freedom petitions to local Parisian courts like the Tribunal of Peace of the 2nd Arrondissement on behalf of twelve slaves residing there.[510] This provides further reason to believe that Bissette and other literate free men of color would have sought to communicate with American slaves like Charlotte, Mary, Milky, and Priscilla. Bissette grounded his argument on the free soil principle, which had recently been enshrined in positive law under the Ordinance of 29 April 1836. His efforts met with varying success, as the Ministry of the Navy and the Colonies preferred to deal directly with slaves seeking freedom.[511] They may have felt they could more easily control illiterate slaves without the intervention of a lettered activist like Bissette.

On April 27, 1847 (approximately five months before Mary's arrival in Paris), France's highest court heard the freedom petitions of thirty-nine slaves. As in the flurry of freedom suits heard in the First District Court of Louisiana beginning in 1846, legal intermediaries called tutors or curators brought suit on behalf of slaves. Many of the petitioners were women, and many of the defendants were also women (often widows).[512]

In 1847, *AF* published the legal brief that Abolitionist cause lawyer Adolphe Gatine presented to the *Cour de Cassation* when arguing for the liberty of four captive Senegalese sailors who had reached French ports.[513] Gatine based his free soil argument not only on the Ordinance of 29 April, 1836, but also on historical research he conducted in the French National Archives.[514] He reminded the court that as early as 1315, King Louis X produced the first legal formulation of the maxim that "no one is a slave in France."[515] Under this edict, which was republished in 1553, "every slave became free, as if by a miracle of French soil, the very instant

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[509] Louise v. Marot, 9 La. at 476.

[510] Pierre Henri Boulle and Sue Peabody, *Le droit des noirs en France au temps de l'esclavage: textes choisis et commentés* (Paris: L'Harmattan, 2015), 191; 205-206; 220 (describing various cases which Isambert took on between 1826 and 1839 as both a lawyer and later as a deputy on behalf of certain free people of color, including Bisette himself, to help them reclaim their liberty and rights in French courts on various grounds, including the free soil principle and compensation for military service for France).

[511] Boulle and Peabody, 220–21.

[512] "Cour de Cassation," *AF* (1847), 209-212.

[513] On Gatine as an activist lawyer, see Jacques Adélaïde-Merlande, "Un avocat défenseur des droits de l'homme : Adolphe Ambroise Alexandre Gatine (1805-1864)," *Bulletin de la Société d'histoire de la Guadeloupe*, (1995) 106: 96-99.

[514] "Laptots et autres esclaves amenés en France," *AF* (1847), 388.

[515] "Laptots et autres esclaves amenés en France," 389.

he set foot on it."[516] But the emancipatory effect of French soil became "an inconvenience" for slave-holding colonists, who desired to bring their domestic slaves with them on trips to the metropole.[517]

Conclusion

When American slaves traveled from Louisiana to France as domestic servants in the early nineteenth century, they encountered a legal system that was very different from the France as free soil portrait with which freedom suit lawyers had presented the Louisiana Supreme Court in the 1830s. Instead, American slaves encountered a legal system designed to keep black people out of France. But Navy officials were never able to implement these laws very effectively. They feared that slaves experienced *de facto* emancipation in France. Indeed, a look at the daily lives of working-class French people shows that urban migration and domestic service could be a very effective means of upward social mobility.[518] Furthermore, with the rise of Louis-Philippe's bourgeois monarchy, all spheres of Parisian life—literary, journalistic, political and legal—buzzed with talk of emancipation for slaves throughout France's empire. This helps explain why enslaved women and girls felt emboldened to sue for freedom in Louisiana courts upon their return. In France, they had the opportunity to acquire a spirit of liberty that could endanger the slave-holding republic from which they had come.

[516] "Laptots et autres esclaves amenés en France," 389.
[517] "Laptots et autres esclaves amenés en France," 389.
[518] McBride, *The Domestic Revolution*; Ratcliffe and Piette, *Vivre la ville*.

3. NEW ORLEANS: A FREEDOM SUIT MOBILIZES A COMMUNITY

Introduction

"She was insolent and impertinent," Guillaume Robert declared before Judge John McHenry at the First District Court of New Orleans in December 1846.[519] Robert had been summoned as a witness to assess the monthly value of Arsène's services as a domestic worker. A month earlier, Arsène had initiated a lawsuit against her master, Louis-Aimé Pineguy, with the intention of gaining her liberty.[520] Similarly, when the enslaved Charlotte brought suit against her master in 1849, a witness scolded, "are you not ashamed to give your master trouble?"[521]

What gave these two women—and at least eighteen others—the audacity to challenge their putative owners in direct legal actions? Both Arsène's and Charlotte's alleged owners had far more resources, which translated into good lawyers and the benefits of a legal system designed to protect property-owners. While Pineguy owned a livery in New Orleans, Pierre Cazelar ran a plantation just outside New Orleans. In the last chapter, I argued that encounters with a growing French Abolitionist movement emboldened American slaves to question their status in their home country. In this chapter, I follow the women and girls back across the Atlantic Ocean to New Orleans. How did they access justice upon their return? This is the central research question of Chapter 3.

Although Judith Schafer identified these suits, her methodological approach was decidedly not socio-legal.[522] The suits raise a host of questions informed by both socio-legal and critical legal history. What did claimants want: not in legalese, but in lay terms? How did they come to believe that any court, let alone the courts of the master class, could give them what they wanted? How did they access and pay for legal representation? How did their race and gender make a difference? How much did claimants participate in legal proceedings? Finally, how were plantiffs' lives different before and after suit? After applying the socio-legal model of a dispute pyramid to my cases, I address each of these questions in turn.

Conducting historical research on people who held very little power is no easy task. Historical anthropologist Michel Rolph-Trouillot argues that those who hold power direct the way history is produced, effectively silencing the past.[523] There are many ways in which the claimants enjoyed little social status in their time. First, they were enslaved. In an economy based on forced labor, enslaved persons were at the very bottom of a highly stratified, pyramid-like social structure.[524] In the antebellum Southern legal system, enslaved people were generally regarded as property at law and could not initiate civil suits.[525] Second, clerks of court identified them as non-white. Blackness was often an indicator of enslaved status in the antebellum South,

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[519] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[520] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[521] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.
[522] In *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862*, xxii Schafer writes that her study is "not a social history of slaves, slave owners, and free people of color," explaining that her focal primary sources are judicial decisions.
[523] Trouillot, *Silencing the Past*.
[524] Laura Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *American Historical Review* 112, no. 2 (2007).
[525] Morris, *Southern Slavery and the Law, 1619-1860*, 61-158.

and the laws locking black people into slavery intensified over time up to the Civil War.[526] Third, all of these petitioners were females living in a patriarchal society. Some of the petitioners were even minors, who could not act at law without an adult to represent them.

The bias of the historical discipline towards written records also presents challenges. Illiterate, enslaved claimants were unable to produce written records of their own. In many ways, their voices have been silenced by the past. However, written records can be read with an eye towards the experience of history's most oppressed. To this end, I employ the methodological tools of legal history from below, historical anthropology, and critical legal geography.[527]

The Dispute Pyramid

Freedom suits are not representative. In fact, the socio-legal model of a dispute pyramid shows that not every personal injurious experience transforms into a lawsuit, let alone matures into litigation. Only a small fraction of personal injurious experiences are ever resolved in court. This is because not all people have the knowledge that a wrong they have endured can be compensated by a court. Even if they have the knowledge, they may not have the morale or resources necessary to undergo stressful and expensive litigation. They may seek instead to resolve their disputes extra-legally.[528] Applying this model reveals the possibility that of slaves taken to France, only a small fraction of those desiring freedom–the tip of the pyramid–sought to obtain it by suing.

Some owners took slaves to free territory with the intention of manumitting them there. For instance, Mr. Pecquet took two slaves with him from New Orleans to France in 1831 with the purpose of freeing them. He did not give them emancipation papers, but they returned to New Orleans of their own volition. There, they acted as free people. Mr. Pecquet testified that he had desired this outcome.[529]

Other slave owners appear to have invited freedom suits. For instance, Widow Blanche Vidal did not contest Tabé's claim to freedom on the basis of having been to France. Through her lawyer, Widow Vidal submitted the following brief response to the court, "respondent admits the claim of petitioner and confesses judgement in her favor. Wherefore respondent prays that judgement be entered accordingly."[530] Shortly thereafter, the court entered judgement in Tabé's favor.[531] As Tabé and her former mistress desired the same outcome, the purpose of bringing

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[526] Tomlins, *Freedom Bound*.

[527] For discussions of theory and methods, see William Forbath, Hendrik Hartog, and Martha Minow, "Introduction: Legal Histories from Below"; Gordon, "Critical Legal Histories"; Thompson, *Whigs and Hunters*, 259–68; Trouillot, *Silencing the Past*; Welch, *Black Litigants in the Antebellum American South*, 223–26. For examples of legal history monographs that employ these methods, see Davis, *Fiction in the Archives*; Richard Kagan, *Lawsuits and Litigants in Castile, 1500-1700* (Chapel Hill: University of North Carolina Press, 1981); Premo, *The Enlightenment on Trial*. For an example of critical legal geography, see David Delaney, *Race, Place, and the Law, 1836-1948* (Austin: University of Texas Press, 1998).

[528] Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes."

[529] See "Prior History," in *United States v. the Ship Garonne*, 1837 U.S. LEXIS 166. Mr. Pecquet's first name is not recorded in this document.

[530] Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[531] Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

suit was not so much to resolve a dispute as to formalize Tabé's freedom with a paper trail and the authority of a court.

Similarly, when Souri sued her alleged master, Joseph Vincent in 1848, one of the witnesses who testified on her behalf was her former master Louis Bordeaux, who had taken her to France in 1831 when she was "very young."[532] Indeed, other likely candidates for invited freedom suits are those who were young girls at the time they traveled to France. For instance, Louisa was only four; Lucille was eight; and Liza was ten.[533] Although enslaved children could and did begin performing tasks for the families who owned them around the age of eight, they could not have been nearly as productive as adolescents and adults.[534] If the only purpose of bringing slaves to France was to have them perform domestic services, it is puzzling why these owners opted for such young girls.

It is also possible that many enslaved people from New Orleans stayed in France. For instance, Ajoie stated that had she known she would be re-enslaved upon her return to New Orleans, she would have stayed in France.[535] This suggests that this possibility was available to her—either with or without the permission of her former owner. The stories of those who remained in France are not preserved in the archives of New Orleans. Tracking them down in France would be an interesting (but challenging) future project.

Why any slaves returned from France, where they experienced a degree of freedom, to New Orleans, where their freedom would certainly be precarious, is an interesting question. When Widow Marie Antoinette Rillieux Smith told her domestic servant Priscilla that she wished her to stay in France, Priscilla allegedly retorted that she would "rather be a slave in New Orleans than a free person in France."[536] Allegedly upon Priscilla's insistence, Widow Smith arranged for her return to New Orleans.[537] If Priscilla did indeed utter these words, it shows that living as a free person of color in France should not be romanticized, precisely because of the racially-discriminatory policies I outlined in the previous chapter.

The trial court judge used this testimonial evidence as a rationalization to keep Priscilla enslaved. Upon appeal, Justice François-Xavier Martin used the same evidence to come to a different conclusion. He held that it would be unreasonable to force freed American slaves to stay in the country or state where they had gained their freedom because, "they have their relations, connections, and friends here."[538] Justice Martin clearly understood the petitioners as part of a broader community, and sympathized with the deep insecurity and vulnerability that a woman living alone in a strange place would face.

Applying the model of a dispute pyramid here, it is clear that the sample I have selected is far from representative. I make no claim of representativeness in the following pages. I argue instead that these cases are worth studying in their own right, because of their exceptional nature. In the antebellum South, the fact that a slave sued a master at all is remarkable, so it is worth inquiring as deeply as possible into how enslaved people accessed justice.

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[532] Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.
[533] Louisa v. Giggo, No. 6020 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290.
[534] Phillips, *American Negro Slavery*.
[535] Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290.
[536] Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*.
[537] United States v. Garonne, 36 U.S. at 77.
[538] United States v. Garonne, 36 U.S. at 77.

What Did Claimants Want?

Most obviously, claimants wanted "to be decreed free."[539] This was the stock language that attorney Jean-Charles David used in the petitions he drafted for at least seventeen enslaved claimants. Because Arsène's was the first in a flurry of freedom petitions that David submitted to the First District Court of New Orleans, and because he more or less replicated its language in the petitions that followed, I append a transcription of Arsène's petition.

But what did freedom mean for the claimants? In court, one witness attested that Sally had told him she was "happy with her master."[540] Although the witness was clearly puzzled as to what Sally hoped to gain from suing her master, Sally's attorney objected to this question.[541] This suggests a raw desire to be free, regardless of how benevolent any particular owner might be.

Charlotte, likewise, was derided by witnesses as a "spoiled servant" whose alleged master treated her as a free person.[542] Witnesses further alleged that she was at liberty to go where she pleased.[543] If it is true that Charlotte enjoyed a degree of mobility, then freedom must have meant more to her than mobility. Like Adelaïde Métayer and Eulalie Oliveau, who sued in Louisiana courts under the doctrine of freedom by prescription, Charlotte was probably seeking to formalize her freedom by bringing suit.[544] Indeed, the Supreme Court of Louisiana had ruled that a former slave's long possession of his freedom was insufficient grounds for him to gain formal recognition as a free person.[545] In *Baker v. Tabor* (1852), the court held that even though the plaintiff had enjoyed his liberty for more than ten years, "the act of emancipation passed according to the forms of law, can alone give him the status of a free man."[546]

There is no evidence that any of the slaves at the center of my dissertation were awarded freedom papers, but having a court judgement in their favor would surely help protect them from the future risk of re-enslavement. Even if a benevolent owner treated them as free, the children or executors of a deceased owner might not. Furthermore, being free meant release from the caprice of another human being. Although Pierre Cazelar might have treated Charlotte as free one day, he would have been completely within his legal right to sell her at his whim the next.

Claimants also typically asked for wages dating back to the period from which they believed they were wrongly enslaved: that is, any wages they had earned since setting foot on French soil. This might seem puzzling, for an enslaved person is not typically thought of as receiving pay for work at all. However, many of the claimants in this set of cases were receiving wages on a monthly basis, with instructions to forward these wages to the person who owned them. To be clear, many but not all claimants were being rented out at the time they initiated suit.For instance, when Widow Smith sent Priscilla back to New Orleans, she ordered her to

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[539] See, e.g., Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[540] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[541] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[542] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.
[543] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.
[544] For a discussion of these cases (1819 and 1856, respectively), see Scott, "Social Facts, Legal Fictions, and the Attribution of Slave Status."
[545] Meilleur v. Coupry, 8 Mart (n.s.) 128 (1829).
[546] Baker v. Tabor, 7 La. Ann. at 556.

work, collect monthly wages, and give those wages to Mr. Musson, Smith's agent of affairs in New Orleans.[547] Arsène, similarly, had been sent back to New Orleans while her putative owner Mrs. Pineguy stayed in France. In her petition, Arsène demanded "twelve hundred dollars unduly received" by Mr. Pineguy, who was in New Orleans and acted as the agent of his wife.[548] Because Arsène's services were valued at approximately ten dollars per month, this means that she was asking for compensation for ten years of work—roughly the length of time that had elapsed between her return from France and the initiation of her suit.[549]

Claimants performed different kinds of work. For general domestic service, such as cooking, cleaning, and sewing, women earned ten to twelve dollars per month.[550] As wetnurses, Milky and Sally also earned twelve dollars per month.[551] Breadsellers such as Fanny earned nearly twice as much, at twenty dollars per month.[552] Finally, hairdressers such as Josèphine and Sarah earned the most, at thirty dollars per month.[553] Considering that the judge in most of these suits, John McHenry, paid twenty-five dollars per month in rent for housing, the typical income of a breadseller or hairdresser is not insignificant.[554] Of course, domestic servants and wetnurses were still very poor.

Although almost all the claimants sought back pay, the language of Milky's petition more than others stressed her right to work. According to Milky, Mr. and Mrs. Laurent Millaudon had led her to believe that upon her return from France, she should be free "and able to work for herself."[555] Not only did Milky demand that she "be decreed free," she further requested that she be "intitled [*sic*] to her Labour at $12 per month since 1839."[556] In the French language petition, her lawyer specifically referred to her "droit à son travail," or her "right to her work."[557] Milky's insistence upon her right to her work may be contrasted with Justice Thomas Ruffin's description of slavery as a condition where one toils "that another may reap the fruits."[558]

Most claimants successfully fulfilled their desire to be decreed free. Of twenty women and girls who petitioned New Orleans courts for their freedom between 1835 and 1856 on the basis of having touched French soil, seventeen successfully gained a court declaration of their freedom (
Table 3).

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[547] Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*.
[548] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[549] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[550] See, e.g., Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL* (showing that Priscilla's services were valued at eleven dollars per month); Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290 (whose services were valued at ten dollars per month); Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290 (showing that Mary's services were valued at twelve dollars per month).
[551] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[552] Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[553] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[554] "Letter, John McHenry to Ellen McHenry," 4 Sept. 1847, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.
[555] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[556] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[557] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[558] State v. Mann, 13 N.C. at 266.

Arsène's case set the precedent that claimants suing under this fact pattern were entitled to back pay, but only from the date they initiated their suit, not from the time they returned from France. This precedent would have left many claimants disappointed so far as their monetary claims were concerned. Although Arsène demanded ten dollars per month for 120 months, the court not only limited the time period but also the monthly wage she claimed. A summoned witness, who had rented Arsène from her alleged owner, declared that "she knows nothing," and that he would not value her services at more than six or eight dollars per month.[559] Therefore, the court awarded Arsène compensation in the amount of eight dollars for eight months. Forty-eight dollars was far less than the $1200 for which she hoped.[560] Similarly in 1847, Tabé demanded twenty dollars per month since 1833, but the court only awarded her five dollars total.[561] On the whole, claimants were more successful in gaining declarations of freedom than in gaining back wages.

Legal Consciousness

It is one thing for an individual to experience a raw desire to be free. It is another for that individual to believe that law holds a remedy. This belief can be defined as legal consciousness.[562] How did these enslaved women and girls develop a legal consciousness? We can never know the answer to this question with certainty, but possibilities can be suggested.

In bringing direct legal actions against their owners, enslaved domestic servants risked a great deal. As domestic servants, they were often favored slaves and therefore among the best-placed to access the resources they needed to expand their rights. A witness in Milky's case stated that Mrs. Millaudon showed Milky "more affection than any other slave."[563] Indeed, this may explain why Mrs. Millaudon specifically chose Milky to accompany the family to France in the summer of 1839.[564] Ajoie, meanwhile, expressed to the court her "love and devotion" towards the Marigny family (a founding family of New Orleans).[565] Of course, this statement should be viewed critically. She was suing them precisely because she believed they had broken their promise to free her upon her return from France.[566] However calculated a statement of love, or however wrought that love might be with feelings of betrayal, it remains the case that domestic slaves forged thick bonds with family members. They assisted them in childbirth, nursed their children, and cleaned up their vomit when nausea struck them at sea. Mrs. Jeanne Louise Emma de Larsille Guesnard specifically mentioned that the reason she needed Mary to accompany her to France was that she was prone to seasickness.[567]

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[559] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[560] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[561] Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[562] Ewick and Silbey, *The Common Place of Law*; Austin Sarat and William L. F. Felstiner, "Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office," *Yale Law Journal* 98 (1989 1988): 1663.
[563] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[564] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[565] Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290; "Marigny de Mandeville, Bernard," in Glenn Conrad, *A Dictionary of Louisiana Biography* (New Orleans: Louisiana Historical Association, 1988), 548–49.
[566] Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290.
[567] Pierre Lemoine's witness testimony in *Couvent v. Guesnard*, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

In short, these were intimate—albeit forced—ties. In her study on families with ties to both the French port city of La Rochelle and the Western province of Saint Domingue during the French colonial period, Jennifer Palmer looks to the *Encyclopédie* (1765) to define intimacy as "close and deep personal relations."[568] Although there is much work on sexual relations between white men and black women, newer work shows that intimate relations between masters and slaves were not necessarily sexual.[569] In my work, I cannot exclude the possibility of sexual relations or rape. However, given the preponderance of female defendants (which I address in Chapter 4), I more often see evidence of intimate bonds between enslaved black women and white women and children. Even "nonsexual relations forged in the household created paths to freedom," Michelle McKinley argues of colonial Lima.[570] Nor was there an automatic association between affection and freedom.[571] McKinley adopts a view of the household as political: a site of negotiation among its intimate members.[572] Bringing a lawsuit was a dangerous calculus, and in this way the intimate bonds between slaves and owners were "dangerous dependencies."[573]

The analytical frame of a "dangerous dependency" can certainly be applied here.[574] Should they lose their lawsuit, these claimants might descend from a status of most favored slave, to most hated. They could find themselves susceptible to severe punishment for having challenged their owner's authority. In the midst of her lawsuit, Josephine went into hiding for fear of being whipped or jailed by the mistress she was suing.[575] Charlotte actually was "held in irons" towards the end of her lawsuit.[576] Because there is no disposition in Sarah's case, it is not impossible that her owner sold her before the suit concluded.[577] To take such a risk, these women and girls must have had a great deal of hope that courts would help them secure both freedom and their economic security.

Under the *Civil Code of Louisiana* (as reviewed in Chapter 1), slaves could generally not appear in court as either plaintiff or defendant in a civil suit.[578] But there was one exception. Slaves could bring suit in order to reclaim or prove their liberty.[579] That slaves could bring suit

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[568] Palmer, *Intimate Bonds*, 13–15.

[569] On intimate sexual relations between white men and black women in New Orleans and the Atlantic world, see Emily Clark, *The Strange History of the American Quadroon: Free Women of Color in the Revolutionary Atlantic World* (Chapel Hill: The University of North Carolina Press, 2013); Hanger, *Bounded Lives, Bounded Places*; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*; Spear, *Race, Sex, and Social Order in Early New Orleans*; Lisa Ze Winters, *The Mulatta Concubine: Terror, Intimacy, Freedom, and Desire in the Black Transatlantic* (Athens: University of Georgia Press, 2016). On nonsexual intimacy between white women and enslaved black women, see McKinley, *Fractional Freedoms*; Palmer, *Intimate Bonds*; Jones-Rogers, "'[S]he Could … Spare One Ample Breast for the Profit of Her Owner.'"

[570] McKinley, *Fractional Freedoms*, 11.

[571] McKinley, 110.

[572] McKinley, 111.

[573] For the chapter by this title, see McKinley, 108–41.

[574] McKinley, 108–41.

[575] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*.

[576] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290**.**

[577] Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290. Schafer, *Becoming Free, Remaining Free*, 23.

[578] Art. 177 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 54–55.

[579] Art. 174 in Livingston, Derbigny, and Moreau Lislet, 52–53.

at all in a system of courts set up by a majority slave-owning legislature is surprising.[580] It is not immediately apparent what slave owners had to gain by allowing these exits from slavery for some.

Even if enslaved people bore the right to sue for freedom, the question remains how they became aware of it. Slave owners no doubt had an incentive to conceal legal knowledge from slaves. Nevertheless, certain claimants had seen their owners involved with the legal system. Dr. William Guesnard was a physician of the jail for the First Municipality of New Orleans under the Freret Administration between May 1840 and April 1842.[581] In April 1842, he married Jeanne Louise Emma De Larsille, a native of Paris and the daughter of a Parisian barrister.[582] De Larsille had already purchased Mary (along with Mary's brother and mother).[583] In 1843, Guesnard continued his work at the intersection of medicine and criminal law, for instance serving as an expert witness in a murder trial after he examined the body of the deceased.[584] This meant that Mary entered as a slave into a household that was deeply imbricated in the legal system—on both sides of the civil-criminal law divide, and on both sides of the Atlantic Ocean. This still does not explain how Mary came to believe that a court could help *her*, but it does show that she was exposed to law's possibilities.

Claimants understood the power of paper towards fulfilling their desires for freedom. On 20 July 1836, when the ship *François I* departed New York for Le Havre, Louis-Aimé Pineguy scribbled the departure details on a scrap of paper. Arsène, on the boat with him, picked up the note. It is unclear what she hoped to do with it at the time, but she must have treated it as a precious resource. When she initiated her legal suit eleven years later, she produced it as evidence of Pineguy's handwriting.[585]

That claimants understood the power of paper is all the more remarkable when one considers that they themselves could not read or write. Arsène and eight other petitioners left their handwritten marks on the legal records produced concerning them, but only with an "X," indicating illiteracy.[586] If they did know how to read or write, it would not have been to their advantage to reveal this, because in 1830 Louisiana lawmakers had criminalized teaching a slave to read or write.[587] However, there was a gap between the law on the books and the law in

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[580] On majority slave ownership in the Louisiana legislature, see "Correspondence politique des consuls, Etats-Unis," 10 December 1848, *MAE*-Paris 16CPC/2, fol. 150.On the establishment of the second state court system in 1846, see "A Brief Explanation of the Orleans Parish Civil & Criminal Court System, 1804-1926."

[581] E.D. Friedrichs, ed., "Mayors of New Orleans, 1803-1936," *WPA* project 665-64-3-112, 1940.

[582] "Marriage, William Guesnard and Jeanne Louis Emma De Larsille," 5 April 1842, *ANO*, Marriage vol. 8, p. 275, no. 275; "Quittance, Jean-Louise de Larsille, avocat," 4 Aug. 1809, *AN*-Paris MC/ET/XII/681, Notary Pierre Lienard.

[583] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462.

[584] "Examination of Reuben Less," *Times-Picayune* 24 Nov. 1843.

[585] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[586] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290; Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[587] Section 3 in "An Act to Punish the Crimes Therein Mentioned, and for Other Purposes," 16 March 1830, Louisiana Acts, pp. 96-97 (reading, "That all persons who shall teach, or permit or cause to be taught, any slave in

action. Despite laws and customs forbidding slave literacy, a small number of slaves throughout the antebellum South managed to learn to read and write, thereby strategically resisting.[588]

A densely populated urban area provided the conditions under which illiterate people could meet and share legal knowledge with one another. As Sandra Lauderdale Graham shows in her study of domestic servants in nineteenth century Brazil, domestic workers were often expected to perform errands that took them outside of the home, and onto the street. There, they could enjoy relative autonomy as well as exposure to valuable knowledge. Enslaved women and girls who performed general domestic labor—such as cooking and cleaning—were at times sent on household errands, giving them opportunities to escape the watchful eye of a mistress.[589] Likewise, McKinley finds in her study of colonial Lima that urban slaves lived in conditions more conducive to litigation. For instance, Limeño slaves often lived in spaces separate from their owners. This semiautonomous existence created confusion over an individual's status and more opportunities for legal contestation.[590]

Similarly, my findings suggest that the close proximity of urban slaves to each other in New Orleans created the conditions under which litigation could occur. Determining where petitioners lived in relation to one another is not easy, because enslaved people were not listed by name either in the City Directory or in the tax records. However, their owners often were listed by name. Searching for the owners by name in the City Directory provides some indication of how close the enslaved women and girls lived to each other before their freedom suits began. In 1846, a year before the majority of the lawsuits, eleven of the more than twenty slave owners who would become defendants in French free soil cases lived within thirteen by twenty-one blocks of each other. Nine of the would-be defendants had commercial storefronts in this same area.[591]

I have reconstructed the proximity of these addresses in Figure 8. Petitioners were not close to each other simply because New Orleans was particularly small at the time. The city and its environs extended at least eighty blocks by thirty-seven blocks.[592] In 1840, the population was 102,193. By 1850, it had grown to 119,460.[593] If a defendant is not included on this map, it is either because I was unable to locate them in the City Directory, or because they lived outside the boundaries of the map. As a point of comparison, those petitioners who brought freedom

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this state, to read or write, shall, on conviction thereof, before any court of competent jurisdiction be imprisoned not less than one month nor more than twelve months.")

[588] Heather Andrea Williams, *Self-Taught: African American Education in Slavery and Freedom*, 2007, 7–29.

[589] Sandra Lauderdale Graham, *House and Street: The Domestic World of Servants and Masters in Nineteenth century Rio de Janeiro* (Austin: University of Texas Press, 1992).

[590] McKinley, *Fractional Freedoms*, 17.

[591] There is some overlap between these two sets. For instance, Bernard de Marigny lived at the corner of Old Levee and Marigny streets, while he registered conveyances in his office at 167 Royal street (corner of Orleans). To determine cross streets where they were not listed in the directory, I consulted Gray B. Amos, "Alphabetical and Numerical Index of Changes in Street Names and Numbers, Old and New, 1852 to 1938," City Archives New Orleans Public Library, accessed May 17, 2018, http://nutrias.org/info/louinfo/numberchanges/numberchanges.htm.

[592] "Norman's Plan of New Orleans & Environs," 1845, *Louisiana Research Collection*, Tulane University, C5-D6-F4.

[593] Richard Campanella, *Bienville's Dilemma: A Historical Geography of New Orleans* (Lafayette: Center for Louisiana Studies, University of Louisiana at Lafayette, 2008), 32–34.

suits on the grounds of having traveled to English-speaking jurisdictions (either the Bahamas, England, or within the United States) all lived outside the boundaries of oldest part of the city.[594]

The "Map of Legal Networks" shows that before they launched their freedom suits, the majority of claimants lived within walking distance of each other, meaning it is plausible they were acquainted and could have shared legal knowledge. For instance, the owners of Milky and Mary lived only two blocks apart, and Milky and Mary launched their freedom suits only four months apart.[595] In this map, I also indicate where the courthouse, St. Augustine Catholic Church, and attorney Jean-Charles David were located.

Arsène's case in particular spurred several copycat cases. After Judge McHenry held in her favor in July 1847, Sally, Milky, Fanny, Tabé, Mary, Aimée, Lucille, Sarah, Aurore, Souri, Hélène, and Liza all filed petitions in the First District Court of New Orleans in rapid succession. Like Arsène, all of these women and girls had been to France, most of them before 1846.[596] They were all represented by the same attorney: Jean-Charles David, who is the focal point of Chapter 4. As in colonial Lima, enslaved litigants appear to have borrowed successful arguments from each other.[597]

The sources suggest an urban-rural divide that could be investigated in a comparative study. At least some of the petitioners divided their time between New Orleans and the plantations that their putative masters owned. One witness in Milky's trial declared that she had a separate bedroom, "above the chicken yard apart from the mainhouse" on the Millaudon plantation.[598] Charlotte's putative master, Pierre Cazelar, filed with the court his address as the "plantation, three miles below Algier [*sic*] Point, Right Bank Mississippi."[599] Attorney Jean-Charles David requested that the court interrogate John Hagan as to whether he had at any point carried Sarah to a plantation called Wood Point.[600] Finally, the post-mortem succession of Dr. William Guesnard shows that he and his wife owned a plantation, even after the Civil War.[601] However, it was when these women and girls were in the urban center of New Orleans that they

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[594] "New Orleans City Directory," 1846, *NOCA*; Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL* (an Ohio free soil suit); Eulalie v. Blanc, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290 (an English free soil suit); Malotte v. Hackett, No. 2712 (1st D. Ct. New Orleans 1849), *NOCA* VSA 290 (an Indiana free soil suit).

[595] "New Orleans City Directory," 1846, *NOCA*; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[596] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1847-1848), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Rogers v. Guesnard, No. 2362 (1st D. Ct. New Orleans 1849), *NOCA* VSA 290; Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1847-1848), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1847-1848), *NOCA* VSA 290; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1849-1850), *NOCA* VSA 290; Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290.

[597] McKinley, *Fractional Freedoms*, 6.

[598] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[599] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.

[600] Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[601] "The Succession of the Widow of Dr. Guesnard," 23 May 1873, *NOCA* VT 290, Civil District Court, No. 39364.

initiated legal suits. Whether they would have been able to do so in rural areas is an open question requiring further research in rural parish court archives.[602]

New Orleans had a vibrant market culture, with enterprising free women of color like Rose Nicaud selling their goods.[603] In her study of the New Orleans food economy in the long nineteenth century, Ashley Rose Young argues that "the food economy provided the disenfranchised—people of color, women, and recent migrants—a means to connect themselves to the public culture of the city, despite legal prohibitions intended to keep them on the margins."[604] Fanny may have heard stories of successful freedom petitions as she walked the streets of New Orleans selling bread for her putative master (the baker, Desdunes Poincy).[605] Aimée may have overheard rumours from clients in Adolphe Pluché's dry goods store or J.B. Bousquet's grocery store.[606] Hélène may have overheard talk of successful freedom suits while working in Oliver Blineau's soap and candle manufactury on the corner of St. Ann and Derbigny streets.[607]

Hairdressers were also positioned to quickly learn rumors of successful freedom suits. Claiming to earn thirty dollars per month (more than any other slave in this set of petitions), Sarah must have developed a wide client base.[608] Access to a group of people also meant access to their knowledge. Furthermore, hairdressing requires developing a level of intimacy with clients. Not only do they sit for hours with their hairdresser, but they must also trust the hairdresser enough to allow her to approach their heads with sharp objects. In these circumstances, clients may have shared gossip, knowledge, and opinions with Sarah that they would not have shared with other enslaved people of color. Marie Laveau, a free woman of color and fabled character of local New Orleans history, is revered by some as a Voudou priestess. Others regard her as a savvy woman who derived her power from the knowledge that clients shared with her in her primary occupation: as a hairdresser.[609]

Access to Justice

The time lapse between an enslaved person's return from France and the initiation of her suit varied greatly. Judges did not express any concern over a statute of limitations. While

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[602] For a study focusing on the archives of rural county courthouses in the lower Mississippi Valley, see Welch, *Black Litigants in the Antebellum American South*.
[603] Gehman, *The Free People of Color of New Orleans*, 56.
[604] Ashley Rose Young, "Nourishing Networks: The Public Culture of Food in Nineteenth-Century America" (Ph.D. dissertation, Duke University, 2017).
[605] Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; "New Orleans City Directory," 1846, *NOCA*.
[606] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; "New Orleans City Directory," 1846, *NOCA*. Aimée sued J.B. Bousquet, Adolphe Pluché, and his wife, suggesting that all three claimed a right to Aimée's labor.
[607] Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; "New Orleans City Directory," 1846, *NOCA*.
[608] Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[609] Carolyn Morrow Long, *A New Orleans Voudou Priestess: The Legend and Reality of Marie Laveau* (Gainesville: University Press of Florida, 2006); Martha Ward, *Voodoo Queen: The Spirited Lives of Marie Laveau* (Jackson: University Press of Mississippi, 2004).

Fanny waited twenty years to institute suit, Mary brought suit immediately upon her return.[610] There are several possible reasons for this range. Formerly enslaved women like Fanny may basically have been living and working in New Orleans as if free, and were seeking to formalize their freedom. The need to initiate suit would have been less pressing. In contrast, Mary was sent from Paris to New Orleans with knowledge of her mistress's desire to sell her to Mobile, Alabama.[611] The need to initiate suit was immediate.

How did claimants access justice, whether in the shape of courts of law or legal representatives? In the petition that attorney Jean-Charles David drafted for Josephine (who claimed freedom on the basis that she had been to Pennsylvania) he represented that, "she is poor and kept as slave [*sic*], that she is unable to pay the tax and costs to prosecute her present suit."[612] Therefore, he requested that the court allow her to proceed with her suit *in forma pauperis*. The court granted this request, meaning that it assigned the impoverished plaintiff counsel (but did not require that attorney to work on a *pro bono* basis).[613] David also employed this strategy in the case of Eugénie, whose petition he filed in the same court only sixteen days later.[614]

Thereafter, Jean-Charles David typically drafted petitions which requested that defendants be condemned to pay the costs of suit. If the court held in favor of the petitioner, it usually granted this request.[615] For instance, at the conclusion of Arsène's precedent-setting case, the First District Court of New Orleans commanded the sheriff of the Parish of Orleans to recover costs from defendant Louis-Aimé Pineguy. In particular, Pineguy owed Arsène damages of eight dollars a month for eight months ($48), plus court fees of $52.55. Should Pineguy fail to pay this amount within two months, the sheriff would seize his personal estate. The sheriff was instructed to first seek to satisfy costs without seizing slaves, but if the defendant only had property in the form of slaves, the sheriff could seize them.[616] Therefore, it is not impossible that in some of these cases, one slave was seized in order to free another.

This was not necessary in Arsène's case. Pineguy satisfied the costs the same day. In total, Pineguy paid $133.95 to the plaintiff's attorney Jean-Charles David.[617] After court costs and damages were paid out, the remainder of $33.40 must have gone to David as his salary. The swiftness with which Pineguy paid out speaks to the great wealth disparity between the plaintiff and the defendant, and underlines the courage of slaves who sued their owners in direct legal

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[610] Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[611] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[612] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*. Why Josephine would "prosecute" a civil suit is unclear. Perhaps in the nineteenth century, the term "prosecution" did not inherently connote criminal suits.
[613] VanderVelde, *Redemption Songs*, 8–9.
[614] Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[615] See, e.g., Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Eulalie v. Blanc, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.
[616] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[617] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

actions. In one day, Pineguy paid what Arsène, even as a free person, could only hope to earn in one year and five months.

Of course, Arsène had two separate lawsuits: her habeas corpus petition, and the direct legal action against Pineguy. Excluding attorneys' fees, the court costs for these two cases amounted to $57.80.[618] Court costs included things like clerks' fees, notaries' fees, and the cost of rendering a judgement. Presumably, this was paid to the clerks, notaries, and judge of the First District Court. The docket book records of freedom suits brought to the First District Court show that the cost of a single lawsuit ranged from $7.65 to $53.40.[619] The average cost was $21.97.[620] Even filing a petition was costly: for instance costing Arsène $2.60 and Fanny $5.70.[621] However, the court only claimed these costs at the conclusion of the suit. Plaintiffs—and especially their lawyer—understood that although there was an accounting of expenses from the beginning of the suit, the costs might well fall on the defendant at the conclusion of the suit. Particularly after one successful suit, the hope of success removed one major barrier on access to justice.

Chapter 4 addresses David's salary and motives. This chapter focuses on the petitioners. As scholars have found in other settings, freedom suits were not one-time acts; they mobilized a community.[622] Particularly because enslaved petitioners were so under-resourced, situating them in their broader community helps explain how they accessed justice. Of 102,193 New Orleans residents in 1840, a reported 23,448 were slaves, while a reported 11,906 were free people of color.[623] This is almost certainly an underestimate. For tax purposes, slave owners had an incentive to hide or minimize their slave ownership. Free people of color living in a regime with hardening laws on race and slavery also had an incentive to avoid government officials such as census-takers. Nevertheless, even this underestimate shows that slaves and free people of color together constituted over forty percent of the city's population.

Furthermore, this was a closely-knit community. It is estimated that in the antebellum years, 735 free people of color owned 2,351 slaves. It was often (but not always) the case that free family members bought enslaved family members as a way to shield them from other owners.[624] In this way, New Orleans was distinct from Stateburg, South Carolina, where a detailed study of William Ellison finds that slave-owning freed people of African descent did not identify with their slaves and did not intermarry with slaves. Ellison (who had once been a slave but came to own a plantation and sixty-three slaves in his lifetime) rather identified as a "freed yellow man," occupying a middle ground that was neither black nor white.[625] Although free

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[618] "First District Court (Orleans Parish) General Dockets," 1846-1850, *NOCA* VSA 350.

[619] These were *Lucille v. Maspereau*, No. 1692 and *Aurore v. Décuir*, No. 1919 in "First District Court (Orleans Parish) General Dockets," 1846-1850, *NOCA* VSA 350.

[620] When accounting for Arsène's two separate lawsuits and Mary's three separate lawsuits, the total number of freedom suits brought to the First District Court of New Orleans between 1846 and 1851 was twenty, and the total costs associated with these suits was $439.30. "First District Court (Orleans Parish) General Dockets," *NOCA* VSA 350.

[621] *Arsène v. Pineguy*, No. 434; Fanny v. Poincy, No. 1421 in "First District Court (Orleans Parish) General Dockets," 1846-1850, *NOCA* VSA 350.

[622] Brana-Shute and Sparks, *Paths to Freedom*.

[623] Campanella, *Bienville's Dilemma*, 32–34.

[624] Gehman, *The Free People of Color of New Orleans*, 66.

[625] Michael Johnson and James Roark, *Black Masters: A Free Family of Color in the Old South* (New York: Norton, 1984), 3; 5 ("freed yellow man"); 195-232 (describing the racial and legal middle ground which Ellison occupied).

people of color in New Orleans certainly occupied a racial middle ground at law, in social life, boundaries between the three "castes" were fluid, as my discussion of the Couvent family below shows.[626]

Mary's case is exemplary and particularly well-documented. Not one, but two free men of color aided Mary as she navigated local courts. Bernard Couvent's involvement in her case demonstrates that free people of color, property a powerful means of upward social mobility. Robert Rogers's participation suggests that the church was an important platform for legal networking. The involvement in Mary's case of one free person of color from each side of the Anglophone-Francophone divide is notable.

Property as Power

On December 7, 1847, Bernard Couvent personally appeared before the First District Court of New Orleans. The clerk of court identified him as a free man of color. The clerk then authorized Couvent to fulfill the duties of tutor *ad hoc* for Mary, who was then a minor and as such could not act at law without a legal guardian.[627] A tutor *ad hoc* was appointed by a court when a minor had no parents or next of kin. The tutor's responsibility was to represent the interests of the child to the best of their abilities.[628] The fact that the court appointed Couvent as a tutor and not as a curator shows that he successfully represented to the court that Mary was a prepubescent girl under the age of twelve.[629] However, other records place her age at eighteen.[630] Next to the words, "So help him God," Couvent signed his name with a cross, indicating his illiteracy (Figure 9).[631]

Although illiterate, Couvent had considerable resources. He practiced artisan carpentry, the trade of his father. He likely served in the First Battalion of Free Men of Color during the War of 1812.[632] As such he was part of a network of artisan-soldiers of African descent who used the property they owned to root themselves in a growing city and build institutions such as schools and churches for their community.[633] In helping the enslaved Mary access justice, Couvent was part of a larger, and largely heretofore underappreciated, trend. In New York in 1852, a black working man known as Louis Napoleon successfully petitioned the city's Superior Court to recognize the freedom of eight slaves belonging to the Lemmon family who had set foot

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[626] In *Making Race in the Courtroom* Aslakson describes a caste-like legal system.
[627] Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Art. 366 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 110–11.
[628] Art. 295 in Livingston, Derbigny, and Moreau Lislet, 88–89.
[629] Arts. 263; 357 Livingston, Derbigny, and Moreau Lislet, 78-79; 106-107.
[630] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462; Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[631] Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[632] Elizabeth Clark Neidenbach, "The Life and Legacy of Marie Couvent: Social Networks, Property Ownership, and the Making of a Free People of Color Community in New Orleans" (Ph.D., The College of William and Mary, 2015), 321–22.
[633] This is Neidenbach's argument in "Social Networks and Spatial Practices: Owning Land," in 312–98. See also Donald Everett, "Emigres and Militiamen: Free Persons of Color in New Orleans, 1803-1815," *The Journal of Negro History* 38, no. 4 (1953): 377–402.

on soil that the state had recognized as free in 1841.[634] Couvent and Louis Napoleon were both "common black laborers [who] could and did find ways to make their local governments respond to the ongoing presence of slavery on American soil."[635]

Couvent was the stepson of Marie Justine Cirnaire Couvent, a propertied free woman of color. When she passed away in 1837, she gave Bernard Couvent two hundred dollars as his inheritance.[636] When Mary appealed the First District Court's decision against her, Couvent contributed to the one hundred dollar appeal bond.[637] The text that follows refers to Bernard Couvent as Couvent and to Marie Justine Cirnaire Couvent as Cirnaire, so as to avoid confusion between the two individuals, since they were part of the same extended family.

Cirnaire's remarkable story demonstrates the power of property to advance not only individuals but also communities.[638] Cirnaire was born in the Bight of Benin. As a child, she was captured and shipped to Saint Domingue as a slave. She gained her freedom there. During the Haitian Revolution, she escaped as a refugee to New Orleans, where she was once again able to assert free status.[639] There, she probably sold textile goods in the market.[640] In 1812, she married Bernard Couvent, a carpenter who was her slave until she married him.[641] In this way, she is very different from William Ellison, the freed slave-owning man of South Carolina who went to great lengths to avoid intermingling with slaves, for fear of falling back into the degraded state of slavery.[642] In 1806, Couvent had accumulated enough capital to purchase two properties, one valued at $550 and the other at $500.[643] By the end of her life, these properties had appreciated in value to $3,000 and $12,000 respectively.[644] In her lifetime, she sold at least twenty-five slaves over three decades.[645] Upon her death, she owned these two pieces of real estate and four slaves, two of whom were sold to pay her debts.[646] In her will, Cirnaire expressed her dying wish that one of her two properties be used in perpetuity as a free school to educate children of color.[647] At this time, children of color were not allowed to attend public schools.[648] Through personal philanthropy, Cirnaire sought to correct structural injustice.

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[634] Sarah Gronningsater, " 'On Behalf of His Race and the Lemmon Slaves': Louis Napoleon, Northern Black Legal Culture, and the Politics of Sectional Crisis," *Journal of the Civil War Era*, 2017, 206.
[635] Gronningsater, 210.
[636] "Will of Marie Justine Cirnaire Couvent," 10 July 1837, *NOCA* Louisiana Wills and Probate Records, vol. 5, pp. 492-494.
[637] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[638] Neidenbach, "The Life and Legacy of Marie Couvent."
[639] Neidenbach, 1–2.
[640] Elizabeth Clark Neidenbach, "Marie Couvent," ed. David Johnson, *Know Louisiana* (Louisiana Endowment for the Humanities, 2010), http://www.knowlouisiana.org/entry/marie-couvent.
[641] Neidenbach, "The Life and Legacy of Marie Couvent," 2.
[642] Johnson and Roark, *Black Masters*.
[643] "Sale, Maria de los Santos Dias to Marie Justine Sirnez (Cirnaire)," 18 June 1806, *NONA*, Notary Narcissus Broutin; "Sale, Bernard de Marigny to Marie Justine Soinaire (Cirnaire)," 13 May 1806, *NONA*, Notary Narcissus Broutin.
[644] "Will of Marie Justine Cirnaire Couvent," 10 July 1837, *NOCA* Louisiana Wills and Probate Records, vol. 5, pp. 492-494.
[645] Neidenbach, "The Life and Legacy of Marie Couvent," 3.
[646] "Will of Marie Justine Cirnaire Couvent."
[647] "Will of Marie Justine Cirnaire Couvent;" Elizabeth Neidenbach, "'Mes dernières volontés': Testaments to the Life of Marie Couvent, a Former Slave in New Orleans," *Transatlantica*, 2013.
[648] Gehman, *The Free People of Color of New Orleans*, 76.

Cirnaire was far wealthier than a slave, who might only own a change of clothes.[649] But, she had not lived as ostentatious a lifestyle as the owner of Mary. While De Larsille's succession included a sapphire ring and a diamond necklace, Cirnaire's postmortem inventory described "five sylver spoons, two sylver forks and one sylver gravyspoon, the whole much worn and abused, valued at $25."[650] Nevertheless, Cirnaire's wealth rivaled De Larsille's. The Couvent family's support of the enslaved Mary helps explain how a slave could even hope to sue such an affluent mistress. The whole of Cirnaire's assets in 1837 amounted to $20,000, while the whole of De Larsille's American assets in 1872 amounted to $80,000.[651] When accounting for inflation over thirty-five years, these assets are not so dissimilar.

After her death, Cirnaire's family faced vigorous opposition to realizing her goal of establishing a school to educate children of color. However, it finally opened in 1848, the same year that Bernard Couvent helped Mary access law.[652] This was also the year that France abolished slavery in its empire.[653] Only thirteen days after he appeared on Mary's behalf as her tutor, Couvent helped another minor access court. This time, he appeared as the curator *ad litem* of Lucille, in her lawsuit against the widow of Pierre Maspereau, who had been a prominent New Orleans slave trader.[654] Although neither Couvent nor Cirnaire could sign their names, it is clear that this family of color was deeply invested in social mobility for young African Americans, whether through education or litigation.

Cirnaire's story is not unique among free people of color in New Orleans, but it is distinct from the broader context of the United States. There is a consensus among historians that compared to free people of color elsewhere in the United States, those in Louisiana occupied a privileged position.[655] Ira Berlin's groundbreaking survey of free blacks across fifteen states from the Revolutionary War to the Civil War presented scholars with a generalized distinction between the Upper South and the Lower South. Free blacks in the Upper South were more numerous and mostly rural. They tended to be poorer. Because they were racially coded as closer to slaves, they were also seen by whites as a potential cause of unrest. They faced draconian limits on their freedom to move about, to sue and be sued, and to own property. Free blacks in the Deep South were comparatively more urban, wealthier, and racially coded as closer to whites. Therefore, Berlin claims, free blacks in the Deep South were tolerated for a longer period of time. Their existence was not seen as a threat to white hegemony because they could often pass for white, and because white power-holders actually depended upon their economic prosperity.[656] My findings in this chapter provide no reason to dispute the claim that free blacks

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[649] Genovese, *Roll, Jordan, Roll: The World the Slaves Made*; Phillips, *American Negro Slavery*.
[650] "The Succession of the Widow of Dr. Guesnard," 23 May 1873, *NOCA* VT 290, Civil District Court, No. 39364; "Will of Marie Justine Cirnaire Couvent," 10 July 1837, *NOCA* Louisiana Wills and Probate Records, vol. 5, pp. 492-494.
[651] "The Succession of the Widow of Dr. Guesnard;" "Will of Marie Justine Cirnaire Couvent."
[652] Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868*, 123 et. seq.; Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290
[653] Article 6 of the Constitution of the Second Republic (4 Nov. 1848) read, "L'esclavage ne peut exister sur aucune terre française," reproduced in Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*, 240.
[654] Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[655] Aslakson, *Making Race in the Courtroom*, 5; Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868*; Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: Pantheon Books, 1975); Spear, *Race, Sex, and Social Order in Early New Orleans*.
[656] Berlin, *Slaves without Masters*.

in New Orleans were indeed so wealthy that their freedom to own property was crucial to the flourishing of the local economy.

Berlin's thesis has largely stood the test of time as far as New Orleans is concerned, and this may be because his generalization about the Deep South was largely based on the case of New Orleans.[657] Loren Schweninger's study shows that among free people of African descent in the antebellum South, those in New Orleans were by far the wealthiest.[658] Kenneth Aslakson demonstrates that in the Territorial period (1803-1812), free people of color in New Orleans used their wealth both to protect and expand their legal rights (with property ownership being a crucial legal right).[659] Indeed, the period from 1803 to 1830 is now understood as the "golden age" for New Orleans free people of color.[660]

However, subsequent studies have shown that Berlin's thesis does not apply throughout the Deep South, nor even in all Northern states. In South Carolina (which already constitutes the Lower South), free blacks were the exception, and wealthy free blacks were the exception within the exception.[661] At precisely the time when the free woman of color Marie Couvent was amassing her wealth in both land and slaves in New Orleans, the legislature of the state of New York placed strict property requirements on black voters (who of course could only have been men).[662]

Nevertheless, the "golden age" of the community of free people of color in New Orleans did not last forever. By the 1830s to 1840s, restrictions on the civic participation of free people of color hardened. Many free people of color who had long been rooted in New Orleans chose to leave for places like France, Haiti, and Mexico.[663] These demographic changes provide further context for why the Couvent family rallied around girls like Mary and Lucille. Property records show that hundreds of houses owned by free people of color in the French Quarter of New Orleans were sold during the 1830s and 1840s.[664] Between 1840 and 1850, the population of free people of color plummeted from 19,226 to 9,961.[665] Whereas slaves and free people of color together had made up 41% of the New Orleans population in 1840, by 1850 they constituted only 23% (Table 2).[666] Similarly in 1860, an assault on free black people in Charleston described by some historians as "an antebellum *Krystallnacht*" resulted in a mass exodus.[667] In New Orleans, the Couvent family and other propertied free people of color who remained may have sought to increase their numbers gradually by helping enslaved women and girls cross the legal line that divided slave from free.

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[657] Berlin.
[658] Loren Schweninger, *Black Property Owners in the South, 1790-1915* (Urbana: University of Illinois Press, 1990), Chapter 1.
[659] "Owning So as Not to Be Owned," in Aslakson, *Making Race in the Courtroom*, 127–52.
[660] Gehman, *The Free People of Color of New Orleans*, 52–53.
[661] Johnson and Roark, *Black Masters*; Michael Johnson and James Roark, *No Chariot Let Down: Charleston's Free People of Color on the Eve of the Civil War* (Chapel Hill: University of North Carolina Press, 1984).
[662] Sarah Gronningsater, "'Expressly Recognized by Our Election Laws': Certificates of Freedom and the Multiple Fates of Black Citizenship in the Early Republic," *William & Mary Quarterly* 75, no. 3 (2018): 465–506 (analyzing the election law of 1821).
[663] Campanella, *Bienville's Dilemma*, 32–34; Gehman, *The Free People of Color of New Orleans*, 68–71.
[664] Florence Jumonville, *The Vieux Carré Survey* (New Orleans: Historic New Orleans Collection, 1981).
[665] Campanella, *Bienville's Dilemma*, 32–34.
[666] I derived these percentages from Campanella's population statistics, 32–34.
[667] Johnson and Roark, *Black Masters*, 237.

The Church as a Platform for Legal Networking

One month after Bernard Couvent filed a petition on Mary's behalf as her tutor *ad hoc*, a free man of color by the name of Robert Rogers instituted a separate lawsuit on Mary's behalf. He hired the same attorney, but put forward a slightly different legal argument, alleging that Mary's former owners had violated the Act of 1830, which forbade freed slaves from re-entering the state. Unlike Couvent, Rogers signed the petition with his name, indicating that he could write.[668] Born a slave in North Carolina, Rogers entered the state of Louisiana sometime between 1828 and 1838 with emancipation papers. In 1843, Judge Baldwin of the Second Municipality of New Orleans certified his freedom. That Rogers registered his freedom twice (in 1856 and again in 1857) shows just how precarious his status was. Nevertheless, Rogers's literacy helped him advance economically. In 1856, he was working as a warehouseman, and by 1859 he was working as a clerk.[669]

Rogers also put himself forward as the godfather of Mary. If Mary was baptised at birth, this would have been close to 1830. Assuming she was baptised in the Catholic Church in New Orleans at birth, it appears her record did not survive the passage of time.[670] Alternatively, Mary may have been baptised in a non-Catholic church, outside of New Orleans, or anytime between the years 1832 and 1847.

Especially if he was a Catholic godfather, Rogers's involvement in Mary's litigation is powerful evidence weighing in favor of Frank Tannenbaum's assumption that religious doctrine which recognized the moral personality of slaves made gradual emancipation possible.[671] In Tannenbaum's view, recognizing the moral personality of the slave was a prerequisite for recognizing the legal personality of the slave.[672] Tannenbaum further argued that wherever the legal system recognized the moral personality of slaves, slavery was abolished gradually.[673] Although slavery was ultimately abolished through violence in Louisiana, the historiographical consensus is that in the early antebellum years, there were more possibilities for slaves to gain their freedom through legal means in Louisiana than anywhere else in the antebellum South.[674]

The Tannenbaum thesis has been sharply criticized for several reasons. Critics point variously to Tannenbaum's naïve reading of doctrinal sources, his limited understanding of race relations in Latin America, and his blindspot for economic explanations for the abolition of

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[668] Rogers v. Guesnard, No. 2362 (1st D. Ct. New Orleans 1849), *NOCA* VSA 290.
[669] Judy Riffel, *New Orleans Register of Free People of Color, 1840-1864* (Baton Rouge: Le Comité des Archives de la Louisiane, Inc., 2008), 47; 114.
[670] All extant sacramental records of the Catholic Church of New Orleans between 1718 and 1831 have been indexed by name. Earl Woods, Charles Nolan, and Dorenda Dupont, eds., *Sacramental Records of the Roman Catholic Church of the Archdiocese of New Orleans* (New Orleans: Archdiocese of New Orleans, 1987). I searched various surnames and spellings between the years 1820-1831, including Baylé (the surname of the woman from whom Jeanne Louise Emma De Larsille purchased Mary in 1840), Couvent, Masson (the surname of the husband of Emmeline Baylé), and Rogers.
[671] Tannenbaum, *Slave and Citizen*.
[672] Tannenbaum.
[673] Tannenbaum, xvi.
[674] Helen Catterall, *Judicial Cases Concerning American Slavery and the Negro* (Washington, D.C.: Carnegie Institution of Washington, 1926), vols. 3, 389–391; Finkelman, *An Imperfect Union*, 212–14; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 277–88; Schafer, *Becoming Free, Remaining Free*, 27–28.

slavery.[675] However, Tannenbaum's comparative work has been revisited in recent years, and is proving the source of inspiration for newer work on freedom suits.[676] My research into how girls like Mary accessed justice suggests that the church was indeed an important part of this story. That her godfather submitted a petition on her behalf suggests that networks she could access through religious institutions might have served as the platform for her legal networks. Furthermore, that Rogers put himself forward as her godfather in a legal document suggests that he believed the court would value this connection, and perhaps take her claim more seriously because she had the backing of her godfather.

Regardless of Rogers's religious denomination, godparentage would have been understood by many residents of New Orleans in a Catholic institutional context.[677] In 1840, about forty-five percent of Louisiana residents were Catholic.[678] By 1850, the proportion had fallen to about thirty-two percent.[679] However, the number of Catholic churches in New Orleans had grown from ten to fourteen.[680] One of these, St. Augustine, has an important place in African American legal history. St. Augustine opened its doors in October 1842.[681] Homer Plessy was a parishioner; in the late nineteenth century he would use social religious networks to launch his lawsuit contesting segregated railroad cars.[682] Although I have not been able to determine with certainty that any of the claimants here had connections to St. Augustine, the timing of the church's opening in 1842 roughly coincides with the flurry of freedom suits in 1847. This suggests that St. Augustine may have a deeper historical connection to civil rights litigation than has previously been recognized. St. Augustine was built not through the wealth of white anglophone Protestant planters, but through many small donations from African American francophone Catholics.[683] The free people of color who contributed to the building of this church bought pews, not only for themselves but also for slaves. This was significant in its time because free people of color and slaves in other congregations were forced to stand or kneel during services.[684] The church became a forum for all kinds of social assembly. It opened a parochial school and a nursing home, as well as sponsoring self-help and mutual aid societies.[685] It is not impossible that it also served as a gathering space where slaves could share knowledge

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[675] Thomas Ingersoll, "Slave Codes and Judicial Practice in New Orleans, 1718-1807," *Law and History Review* 13, no. 1 (1995): 23.
[676] De la Fuente, "Slave Law and Claims-Making in Cuba"; McKinley, *Fractional Freedoms*.
[677] For a general history of Catholicism in Louisiana, see Roger Baudier, *The Catholic Church in Louisiana* (New Orleans: A.W. Hyatt Stationary Mfg. Co., 1939).
[678] *The Metropolitan Catholic Almanac and Laity's Directory* (Baltimore: Fielding Lucas, Jr., 1842) (reporting on the preceding year, when the Catholic population of Louisiana was 160,000). According to the U.S. government, the population of Louisiana was 352,411 in 1840. Richard Forstall, ed., *Population of States and Counties of the United States: 1790-1990* (Washington, D.C.: U.S. Government Printing Office, 1996), 4.
[679] In 1850, the population of Louisiana was 517,762. Forstall, *Population of States and Counties of the United States: 1790-1990*, 4. That same year, the Catholic population of Louisiana was 170,000. *The Metropolitan Catholic Almanac and Laity's Directory* (Baltimore: Fielding Lucas, Jr., 1851).
[680] *The Metropolitan Catholic Almanac and Laity's Directory*, 1842; *The Metropolitan Catholic Almanac and Laity's Directory*, 1851.
[681] "A Chronological Collection of the Archives of St. Augustine Church, Collected and Arranged, 1932," *ANO*.
[682] George Abry, "Saint Augustine Catholic Church," *Louisiana Cultural Vistas* (Summer 2002). Plessy v. Ferguson, 163 U.S. 537 (1896).
[683] "Bishop Blanc to the Central Council of the Propagation of the Faith in Paris," 19 Oct. 1849, Propagation Files Paris F-102; Lyons F-02827 (translation and copy held in *ANO*).
[684] George Abry, "Saint Augustine Catholic Church," *Louisiana Cultural Vistas* (Summer 2002).
[685] "Sesquicentennial of Saint Augustine Catholic Church (1842-2002)," compiled 2002, *ANO*.

of successful legal arguments towards freedom, and where free people of color like Rogers could help slaves like Mary access court.

Mary's connections to a broader community of free people of color is particularly well-documented, but it does not stand alone in this set of cases. The free woman of color, Marie-Louise, sued on behalf of her daughter Josèphine.[686] A free woman of color by the last name of Cupproisse was hiring Sally out for wages during Sally's suit.[687] Voltaire Fonvergne put himself forward as the tutor of the "mulatto girl" Louisa in 1851.[688] During Fanny's trial, her brother, the free man of color William Bates, appeared as a witness on her behalf.[689] Under the *Civil Code of Louisiana*, there was no specific prohibition against free people of color testifying in court. Article 2260 required that witnesses be free, without any mention of a required race.[690] In the local legal culture, it had long been the norm that free people of color testified in legal proceedings. When this was contested in the late antebellum period, Justice George Rogers King of the Supreme Court of Louisiana opined that the free people of color of New Orleans are "enlightened by education, and the instances are by no means rare in which they are large property holders. So far from being in that degraded state which renders them unworthy of belief, they are such persons as courts and juries would not hesitate to believe under oath."[691]

Of course, the best way to understand the freedom enjoyed by people like Bernard Couvent, Marie Cirnaire, and Robert Rogers is as a matter of degree. Although they could own property, receive an education, and make contracts, they were forbidden from marrying white people or voting.[692] The first several priests of St. Augustine parish were not black men (and certainly not black women); they were white men.[693] Nevertheless, I argue that property was a crucial factor enabling enslaved girls like Mary to access justice, whether in the form of courts of law or legal representatives. Bernard Couvent used his resources to pay Mary's lawyer. He made himself liable for her security bond upon appeal. Without this a connection to Couvent, a property-owner, the slave Mary would not have been able to access justice. Couvent's support of Mary during her litigation was part of a wider trend whereby a network (not just an individual) of property-owning free people of color mobilized towards collective goals: whether building a church, a school, or assisting each other through legal proceedings.[694] As property owners, free people of color were well-versed in the notarial system and often also familiar with the court system. They "owned so as not to be owned."[695]

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[686] Marie-Louise v. Marot, No. 2748, 8 La. 475 (1835), *HASCL*; Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
[687] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[688] Louisa v. Giggo, No. 6020 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290.
[689] Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[690] Art. 2260 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 736–37.
[691] State v. Levy, 5 La. Ann. 64 (1850).
[692] Gehman, *The Free People of Color of New Orleans*, 64–83.
[693] These were: Etienne Rousselon (1841); Jamey (1842); Etienne Rousselon (1842-1845); Marie Arthur Guillaume Dequesnay (1845-1855). See C.M. Chambon, "Saint Augustine Church: Est'd. 1841," 1939, *ANO*.
[694] Neidenbach, "The Life and Legacy of Marie Couvent," 312–96.
[695] Chapter 5, "Owning so as not To Be Owned," in Aslakson, *Making Race in the Courtroom*, 127–52.

Racial Coding

Race mattered in these freedom petitions. Ian Haney López defines race as "the historically contingent social systems of meaning that attach to elements of morphology and ancestry."[696] Ariela Gross's definition similarly embraces the socio-historical construction of race. Race is, "a powerful ideology, which came into being and changed forms at particular moments in history as the product of social, economic, and psychological conditions."[697] Importantly, race is a process, not a category.[698] Gross's examination of racial identification trials in American history from the antebellum period to the 1980s in places ranging from Louisiana, to the American Southwest, to Hawai'i reveals a social anxiety to assert race as an indisputable science. Simultaneously, her examination of local court records reveals the reality of race as disputed and ever-shifting.[699] It is crucial to recognize that when race is put forward as an exact science, the interests of white privilege are served.[700]

New Orleans' local court records do not permit me to comment on how the petitioners self-identified. Self-identification, and not courts of law, should have the final say. However, the historical reality is that "in the creation of racial meaning, legal institutions often had the final word."[701] Still today, law is "the prime instrument in the construction and reinforcement of racial subordination."[702] Local court records are therefore best used as sources to demonstrate how white men—lawyers, clerks of court, and judges—coded freedom petitioners racially. Because law is so central to the process of racial subordination, how white men labeled claimants at various moments in time could drastically change lives.

In the freedom petitions he drafted, attorney Jean-Charles David almost always used the initials "c.w." after stating his client's name, or in the French version of the petition, "f.c." These abbreviations stood for "colored woman" and "femme de couleur," respectively.[703] "Colored woman" and "woman of color" appear to have been used interchangeably.[704] In a few instances, David opted for the initials "f.c.w.," or in French, "f.c.l." These abbreviations stood for "free

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[696] Haney López, *White by Law*, 14.
[697] Gross, *What Blood Won't Tell*, 8.
[698] Ian Haney López, "The Social Construction of Race," in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado and Jean Stefancic (Philadelphia: Temple University Press, 2000).
[699] Gross, *What Blood Won't Tell*.
[700] Gross, 15.
[701] Gross, 12.
[702] Haney López, "The Social Construction of Race," 164.
[703] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290; Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*; Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[704] Malotte v. Hackett, No. 2712 (1st D. Ct. New Orleans 1849), *NOCA* VSA 290. See also "First District Court (Orleans Parish) General Dockets," 1846-1850, *NOCA* VSA 350. This is an Indiana free soil suit, where the petition identifies Elvira as a free woman of color, while the docket book identifies Elvira as a colored woman.

colored woman" and "femme de couleur libre," respectively.[705] The addition of the word free is interesting, because it asserts to the court the answer to the very legal issue about to be contested: the client's freedom. In fact, plaintiff-side attorneys tended to assert free status at the outset.[706]

For the most part, clerks of court who compiled docket books accepted the racial code initially signaled by plaintiff-side attorneys. In a couple of cases, they even accepted the attorney's assertion of free status, recording the label in the title of the lawsuit.[707] In the Table of Legal Authorities, I have indicated in the long form citations which racial label clerks of court used.

I argue that asserting the label "colored woman" at the very beginning of the lawsuit was part of a legal strategy to convince courts to hear the claims of slaves in the first place. Under nineteenth century Louisiana law, "person of color" had a distinct connotation from "negro." A "negro" or "negress" was understood to be of purely African ancestry, and therefore biologically fit to be in a servile condition. Under this logic, it followed that a "negro" was presumed a slave. In contrast, a "person of color may have descended from Indians on both sides, from a white parent, or mulatto parents in possession of their freedom."[708] In the precedent-setting case *Adelle v. Beauregard* (1811), the Supreme Court of Louisiana applied this racial distinction to hold that "Considering how much probability there is in favor of the liberty of [persons of color], they ought not to be deprived of it upon mere presumption."[709] Under this legal rule, a person of color was presumed free unless proven otherwise. The Supreme Court of Louisiana reaffirmed this precedent in *Miller v. Belmonti* (1845).[710]

Kenneth Aslakson argues that *Adelle v. Beauregard* (1810) was the result of a decades-long, cumulative process whereby free people of color asserted their rights in the courts of early New Orleans. In so doing, they contributed to the formation of a three-caste system of social hierarchy based on race. Whites were still at the top, and black slaves were still at the bottom, but an intermediate category of "free people of color" existed. Although certainly not equal to whites, free persons of color bore significant rights, such as the right to own property. Aslakson even argues that people of color were understood to belong to a distinct race from "negroes."

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[705] See *Eulalie v. Blanc*, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290 (a suit asserted on the principle of English free soil); *Liza v. Puisant*, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290; *Sally v. Varney*, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[706] See, e.g., the petitions in *Ajoie v. De Marigny*, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290 (a French free soil suit argued by attorney Lewis Duvigneaud (Durigneaud)); *Barclay v. Sewell*, No. 4622, 12 La. Ann. 262 (1857), *HASCL* (an Ohio free soil suit argued by attorney Christan Roselius); *Malotte v. Hackett*, No. 2712 (1st D. Ct. New Orleans 1849), *NOCA* VSA 290 (an Indiana free soil suit argued by attorney Randall Hermit); *Louisa v. Giggo*, No. 6020 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290 (a French free soil suit argued by attorney R.C. Me. Alpasse); *Marie-Louise v. Marot*, No. 2914, 9 La. 473 (1836), *HASCL* (a French free soil suit argued by attorney E. A. Cannon); *Smith v. Smith*, No. 3314, 13 La. 441 (1839), *HASCL* (a French free soil suit argued by attorney A. Mace).

[707] See, e.g., *Eulalie v. Blanc*, No. 4904; *Sally v. Varney*, No. 906 in "First District Court (Orleans Parish) General Dockets," 1846-1850, *NOCA* VSA 350; but see, Liza v. Puisant, No. 5632 in "First District Court (Orleans Parish) General Dockets," 1846-1850, *NOCA* VSA 350," where the clerk of court labeled Liza merely as "c.w."

[708] Adelle v. Beauregard, 1 Mart. (o.s.) 183, 184 (1810).

[709] Adelle v. Beauregard, 1 Mart. (o.s.) at 184.

[710] Miller v. Belmonti, 11 Rob. 339 (1845). For a discussion of how Sally Miller successfully performed white womanhood in order to gain her freedom, see Gross, *What Blood Won't Tell*, 58–63.

The resulting legal racial hierarchy shared more with the legal culture of 18th-century Saint Domingue than it did with antebellum Southern states, whose jurisprudence was biracial.[711]

This was the ideology into which David and other attorneys played. Since the status of a person with mixed ancestry was legally contestable in Louisiana, it was in the best interest of clients to be represented as "colored women," not "negresses." When David employed these labels, he indicated to judges that these women had cases worthy of being heard. Of course, the notion that a drop of white blood may open the door to freedom should be condemned, because it leads to the dangerous logical conclusion that pure African ancestry strips an individual of any hope of freedom. Nevertheless, in the realm of legal strategy racial coding was an important element in successful litigation.

Within the paper trail on a given plaintiff, racial identifications were not consistent. The cases of Josephine and Mary are exemplary in this regard. The clerk who transcribed Josephine's trial record for the Supreme Court of Louisiana alternately identified Josephine as "a negress" and a "free colored woman." David, who testified on Josephine's behalf as a witness although he was also her lawyer, asserted, "Josephine is a griffe, but Mrs. Poultney calls her a mulatresse."[712] By the usage of the local population, a mulatresse was believed to be descended from one parent of exclusively white ancestry ("white"), and one person of exclusively African ancestry ("negro"). A "griffe" was believed to have one mulatto parent, and one "negro" parent.[713] Therefore, Josephine's lawyer pushed her further along the spectrum towards pure African ancestry than her mistress had. Although strengthening the opposing side's argument is a questionable legal strategy, David's identification of Josephine as a "griffe" demonstrates that in Louisiana legal culture, relatively little white ancestry was sufficient to spur a status contestation.

The racial identifiers "griffe," "mulatresse," and ten others that Frederick Law Olmsted observed in the 1850s demonstrate just how anxious Louisiana lawmakers were to create as variegated a system of racial categorization as their population was diverse.[714] After all, Louisiana had been at the crossroads of Atlantic and Caribbean worlds at least since French colonists first laid claim to it in 1699. In just over one century, the colony of Louisiana had changed hands four times.[715] It should be no surprise that its population in the nineteenth century could trace its roots to indigenous Americans, Africans, French, and Spaniards.

To the trial court judge who ruled against her with a clearly heavy heart, Mary was a "colored woman," portrayed as a sympathetic "minor."[716] To the Louisiana Supreme Court justice who ruled against her with no seeming compunction, Mary was a "negro woman."[717] This disjuncture at a time when these categories carried so much legal weight is particularly fascinating when there is no evidence that either of the judges in question, McHenry or Eustis,

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[711] Aslakson, *Making Race in the Courtroom*, 1–16.

[712] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*. Assuming that it was in David's monetary interest for Josephine to have a strong legal case, this was a violation of Art. 2661 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 736, stating that a competent witness "must besides be not interested, neither directly nor indirectly, in the cause."

[713] Carol Wilson, *The Two Lives of Sally Miller: A Case of Mistaken Racial Identity in Antebellum New Orleans* (New Brunswick: Rutgers University Press, 2007), 105.

[714] See Wilson, 105.

[715] Vidal, *Louisiana: Crossroads of the Atlantic World*; Nathalie Dessens, *From Saint-Domingue to New Orleans: Migration and Influences* (Gainesville: University Press of Florida, 2007).

[716] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[717] Conant [*sic*] v. Guesnard, 5 La. Ann. 696.

had ever laid eyes on Mary. Like many other freedom petitioners, Mary as a litigant was invisible to the court. Judges ascribed to her the racial label that best suited their legal reasoning.

All these examples demonstrate that racial identification was continuously constructed and contested, reconstructed and recontested. It was not the exact science that power-holders of the nineteenth century desired it to be. These examples also reveal a great deal about race and local legal knowledge in antebellum New Orleans. Although asserting the racial identification "of color" did not guarantee plaintiffs their freedom, it facilitated their entry into spaces where they could legally contest their status.

Plaintiffs in Hiding

It is remarkable that Louisiana courts heard status contestation claims at all. However, there were stark limits to the legal personhood of the claimants. Some defendants even tried to evade being sued by erasing the personhood of the enslaved people who sued them. For instance, defendant Widow Poultney initially responded that "there is no such person in being as Josephine c.w. who is put down as plaintiff in this petition."[718] Widow Poultney may have been contesting the description "c.w." which if she assented would imply an important concession in Josephine's legal standing. However, this strategy was unsuccessful. One week later, the First Judicial District Court of Louisiana overruled Poultney's request to dismiss the petition on this ground.[719] Josephine's case proceeded. In this case, a court of law was more willing than a slaveowner to recognize the human existence of a slave.

Inquiring into what a case actually looked like for a legal claimant is a question informed by legal history from below.[720] Here, the participation of enslaved women and girls in their own legal proceedings was very limited. At the very beginning, petitioners provided their attorney with valuable information regarding the facts of the case. For instance, Sally conveyed to David that she believed there was a separation of property between Mr. and Mrs. Varney. This was important because it meant that the defending party in this suit would be Mrs. Varney alone, not the couple jointly. It also shows that Sally had some understanding, however limited, of a legal process unique to civil law jurisdictions.[721] In these jurisdictions, a wife who could prove profligacy on the part of her husband could petition to dissolve fiscal (but not matrimonial) ties.[722] Later on, a witness corroborated that there was indeed a separation of property between Mr. and Mrs. Varney.[723]

At least eight enslaved women and girls left their marks somewhere on the paper trail of their case—usually on the petition. These were Aimée, Arsène, Aurore, Charlotte, Liza, Milky, Sally, and Sarah.[724] In this very limited way, they encountered legal documents. However, it is

[718] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*.
[719] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*.
[720] William Forbath, Hendrik Hartog, and Martha Minow, "Introduction: Legal Histories from Below." For examples of monographs employing this method, see Thompson, *Whigs and Hunters*; McKinley, *Fractional Freedoms*; Premo, *The Enlightenment on Trial*.
[721] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[722] Art. 2399 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 778–79; Art. 2404 Livingston, Derbigny, and Moreau Lislet, 780–81; Art. 2410 Livingston, Derbigny, and Moreau Lislet, 782–83.
[723] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[724] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA

crucial to remember that the petitions are not their voices. Other than crosses denoting illiteracy, the written records I examine are devoid of marks produced by enslaved people. Attorney Jean-Charles David translated their desires into language a court would understand and take seriously. In so doing, he used technical words they certainly would not have used, and may even have misrepresented their voices. Lawyers, along with clerks of court and judges, produced the paper trail. All of these men held considerable power in their time. Although the desires of oppressed women and girls drove the litigation, their voices have largely been silenced in the records. Applying Michel-Rolph Trouillot's anthropological theory of history here highlights the silencing that occurred in the judicial past. Echoes of the claimants' voices can be discerned from the documents, but the presumption must be that the full richness of their stories is lost because of the documented way that their history is produced.[725]

The timeline of lawsuit from beginning to end varied greatly. Tabé's suit only took one month from start to finish, probably because her former owner did not oppose her freedom petition.[726] Most other free soil suits in the First District of New Orleans concluded within nine months.[727] This was no doubt a period of great anxiety for the plaintiffs. Those whose lawsuits were appealed lived in uncertainty for even longer periods. Mary was eighteen when Bernard Couvent initially brought suit for her. By the time the Supreme Court of Louisiana declared her a slave, she was already twenty years old.[728]

During their lawsuits, many petitioners hid from authorities—whether their putative owners, putative owners' agents, or courts of law. This was not an uncommon strategy. According to family oral history, Dred Scott ensured that his children (whose freedom was also at stake) were concealed during the many years that his litigation dragged on.[729] It could be dangerous for petitioners to show themselves publicly. If slave owners perceived the legal allegations as embarrassing, they might unleash their ire on the plaintiffs. Some petitioners told their attorney they feared being whipped or jailed.[730]

Hiding from authorities also enabled enslaved women and girls to access legal representation in the first place. While living in hiding, many petitioners worked and kept their wages. Priscilla's putative owner was in France at the time of suit, but authorized a certain Mr. Musson to collect wages from Priscilla. In March 1836, Mr. Musson "lost sight of Priscilla, never saw her again, and never knew where she kept herself." Ten months later, Priscilla

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290; Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290; Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[725] Trouillot, *Silencing the Past*.

[726] Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 in "First District Court (Orleans Parish) General Dockets," 1846-1850, *NOCA* VSA 350.

[727] I determined this by looking at the start and end dates of the lawsuits in "First District Court (Orleans Parish) General Dockets," 1846-1850, *NOCA* VSA 350.

[728] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462; Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; "Sale, Jeanne-Louise Emma De Larsille, to Charles Lamarque," 23 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act no. 467.

[729] WNYC Studios, *American Pendulum II | More Perfect | WNYC Studios*, accessed May 1, 2018, https://www.wnycstudios.org/story/american-pendulum-ii-dred-scott/.

[730] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.

initiated her lawsuit against Mrs. Smith.[731] In 1846, the judge of the First District Court of New Orleans rejected Arsène's habeas corpus petition (which literally means, "you have the body,") because Louis-Aimé Pineguy did not in fact have Arsène in his custody. "The complainant has by her own act put it out of the power of the defendant to bring her before the court," Judge Preston opined.[732] Similarly, Milky "absented herself" from Laurent Millaudon and stopped forwarding him her wages three months before the onset of her suit.[733] Hiding in the populated urban center of New Orleans gave women and girls the semi-autonomy they needed to initiate lawsuits.

Willful ignorance of the whereabouts of his clients was part of David's legal strategy. When David was asked in court whether he knew where his client Josephine was, the clerk of court recorded his answer as such, "Plff is in Louisiana. does not know where she is but if he wished her before the Court she is ready to come. Would want some 20, 22, 23, or 24 hours to bring her into Court, does not know where to send but knows 2 or 3 persons who know where go to [*sic*] for her."[734] It was probably in Josephine's best interest that David not know exactly where she was, lest he accidentally reveal her hiding place to authorities. This is also a fascinating statement because it shows without a doubt that Josephine was not acting alone at law. Indeed, a freedom suit mobilized a community. Two or three people, likely members of the community of free people of color, were in regular contact with David, although his own client was not.[735]

When their identity was in question, some claimants were summoned into court, where they were spoken of as objects. Captain George L. Rogers testified that "he knows the colored woman present, her name is Sally."[736] He swore that he had both Sally the plaintiff and the defendants on board his ship headed from New Orleans to Le Havre in December 1845.[737] Priscilla was also in court when L.J. Dufiller testified that he recognized her.[738]

On other occasions, claimants were not brought into court, but their appearance was discussed. In order to convince the defending attorney that the plaintiff Arsène had indeed once been the slave of Louis-Aimé Pineguy, David testified that, "Two or three of her front teeth are missing."[739] Similarly, the attorney of defendant Laurent Millaudon brought a physician into court to testify as to Milky's ailments. The physician described her "sickness in the eyes," her "chronic disease," and "a blister on the arm."[740] During the first half of the nineteenth century, courts were just beginning to rely on medical experts. Southern physicians used the opportunity to enhance their professional reputation as experts over slaves' bodies, precisely because "it was dangerous for slaves to speak for themselves."[741]

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[731] Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*.
[732] Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290.
[733] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[734] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*.
[735] See, also, Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290 (where Jean-Charles David "showed Arsène" to witness J. Decourneau for the purposes of identification, but does not seem to have been in regular contact with her. At the time, Arsène was in the city of New Orleans).
[736] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[737] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[738] Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*.
[739] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[740] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[741] Gross, *Double Character*, 152.

Under the *Civil Code of Louisiana* , enslaved people could not testify in court.[742] Therefore, it is not entirely surprising that women and girls contesting their status were spoken of as objects rather than interrogated as witnesses in their lawsuits. Although a legal presumption of liberty allowed these women of color to initiate their lawsuits, they did not continue through the lawsuit the way that free people of color would have—as witnesses and active participants in their lawsuits.[743] Regardless of the legal presumption in favor of their freedom, the social presumption was still in favor of their enslavement.

Gender

Women and girls brought forward all of the French free soil claims to the local courts of New Orleans in the 1830s to 1850s.[744] This is in keeping with findings on manumission in other settings, such as Brazil, Suriname, and South Africa.[745] From the 1630s to 1848, women and children were manumitted significantly more often than men in the French Caribbean.[746] Similarly, women constituted the majority of freedom petitioners in antebellum Missouri.[747] What explains the predominance of women and girls as legal actors in manumission and freedom suits? I propose three possible explanations: 1) the Afro-Creole tradition in New Orleans provided women with unique opportunities to attain social status and property, 2) white male judges did not fear a small number of freed females as a violent threat, and 3) the community of free people of color preferred to support women and girls as petitioners because of the *partus sequitur ventrem* doctrine.

The Afro-Creole Tradition

In Yoruba and Igbo traditions (in present-day Nigeria), "women, especially elder women, had substantial institutional authority and political roles, as well as social autonomy."[748] In New Orleans, women of color like Marie Laveau were spiritual leaders who blended voudou with Catholicism. Enterprising women of color like Rose Nicaud dominated the marketplace.[749] The visible presence of women in the marketplace made New Orleans culturally similar to the French

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[742] Art. 2260 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 736–37.
[743] State v. Levy, 5 La. Ann. at 64 (affirming as legal rule the long-held local custom of allowing free people of color to testify in court).
[744] Of the free soil suits Schafer identified in *Becoming Free, Remaining Free*, 15–33, Marcellus Paine was the only male petitioner. Because he claimed freedom on the basis of having been to the Bahamas, not France, I have not delved into the details of his case.
[745] Kathleen Higgins, *"Licentious Liberty" in a Brazilian Gold-Mining Region: Slavery, Gender, and Social Control in Eighteenth-Century Sabará, Minas Gerais* (University Park: Pennsylvania State University Press, 1999), 145–74; Rosemary Brana Shute, "Approaching Freedom: The Manumission of Slaves in Suriname, 1760–1828," *Slavery & Abolition* 10, no. 3 (1989): 46–47; Robert Carl-Heinz Shell, *Children of Bondage: A Social History of the Slave Society at the Cape of Good Hope, 1652-1838* (Hanover: Wesleyan University Press, 1994), 384–85.
[746] Peabody, "Négresse, Mulâtresse, Citoyenne: Gender and Emancipation in the French Caribbean, 1650-1848," 57; 71n5.
[747] VanderVelde, *Redemption Songs*, 5.
[748] Scully and Paton, *Gender and Slave Emancipation in the Atlantic World*, 5.
[749] Emily Clark and Virginia Gould, "The Feminine Face of Afro-Catholicism in New Orleans, 1727-1852," *The William and Mary Quarterly* 59, no. 2 (2002): 409; Gehman, *The Free People of Color of New Orleans*, 56.

Caribbean.[750] These women were sometimes free in a formal sense, but often they experienced levels of bondage.[751] In the urban setting of New Orleans, as in towns and cities in the British Caribbean and Latin America, enslaved women outnumbered enslaved men.[752] Furthermore, they tended to perform work that was seen as gender-specific: laundering, cooking, selling food, selling sex, and taking care of children. These occupations presented possibilities to earn a *peculium*, which, if accumulated, could be used to buy or sue for one's freedom.[753] As explained above, evidence suggests that Priscilla and Milky were working for wages at the time the initiated their suits.[754]

The question may be raised whether sexual relations with white men can help explain how the women and girls in these freedom suits accessed court. I do not see evidence of sexual relations with white men in these sources, although as explained above there are several instances of nonsexual intimacy with white women and their children. Nevertheless, it can be helpful to understand the cultural context of New Orleans, where intimate relations between propertied white men and women of color were tolerated. In a New Orleans-specific practice called *plaçage*, women of color attended quadroon balls, where they showcased their daughters in the hopes of "placing" them as mistresses with white men. A white man's enslaved mistress might be offered her freedom upon his death.[755] Relations with white men could also lead to property accumulation.[756] The *Civil Code of Louisiana* (1825) specifically allowed a man to give his "concubine" up to ten percent of his wealth in the form of moveable goods.[757] Although a man was forbidden from giving his concubine real estate (immoveable goods), he had an incentive to disregard this law because he might face separation proceedings if he kept a concubine in the same house as his wife.[758]

In this sense, *plaçage* was a means of social mobility. Indeed, it derives from the French verb, "to place," which evokes a sense of one's place in society. Recent work has questioned the concubinage view of *plaçage*, arguing that *plaçées* played an active role in their destinies and were not mere pawns.[759] A *plaçée* could use wealth derived from the relationship to purchase family members or loved ones out of slavery. Although this does not necessarily explain why more women than men were manumitted, it does point to women's active involvement in the freeing of individual slaves.

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[750] Peabody, "Négresse, Mulâtresse, Citoyenne: Gender and Emancipation in the French Caribbean, 1650-1848," 58–59.
[751] Peabody, 58–59.
[752] Hanger, *Bounded Lives, Bounded Places*, 22–23; B. W. Higman, *Slave Populations of the British Caribbean, 1807-1834* (Baltimore: Johns Hopkins University Press, 1984), 118–19; Mieko Nishida, "Manumission and Ethnicity in Urban Slavery: Salvador, Brazil, 1808-1888," *The Hispanic American Historical Review* 73, no. 3 (1993): 361.
[753] Scully and Paton, *Gender and Slave Emancipation in the Atlantic World*, 7.
[754] Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[755] " 'Open and Notorious Concubinage' : The Emancipation of Slave Mistresses by Will," in Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 180–200.
[756] Hall, *Africans in Colonial Louisiana*, 240–41; Hanger, *Bounded Lives, Bounded Places*; Spear, *Race, Sex, and Social Order in Early New Orleans*; Winters, *The Mulatta Concubine*.
[757] Art. 137 Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 40–41.
[758] Art. 1468 Livingston, Derbigny, and Moreau Lislet, 474–75.
[759] "Outside the Bonds of Matrimony," in Aslakson, *Making Race in the Courtroom*.

"Helpless Females," Not Violent Men

The individual freeing of women and girls in New Orleans must be understood in the context of a history of violent revolts led by men. Louisiana had seen its share of rebellions: in 1731-32, 1795, 1811, and 1837. All of these violent uprisings were spearheaded by men.[760] It is clear that powerholders in Louisiana felt threatened by the specter of slave-led revolts. In 1809, over 9,000 Saint Domingue refugees arrived in New Orleans from Cuba. Refugees—who were evenly divided among whites, free people of color, and enslaved Africans—doubled the city's population.[761] In this way, the Haitian Revolution was firmly imprinted on the city's collective memory.[762] In 1811, authorities executed the leaders of the St. John slave revolt, which one historian has argued was the largest act of armed resistance against slavery in American history. Authorities then displayed their heads on stakes so as to dissuade other enslaved people from rising up.[763] The white population had good reason to fear for their lives. In the state as a whole, they were far outnumbered—by as much as one to one hundred in the period of the St. John slave revolt.[764]

Given this context of violent revolts led by men, it is plausible that the white male judges deciding whether to accept freedom petitions in the first place denied access to men while allowing it to women. I argue that the freeing of individual men and boys would have been unpalatable in Louisiana's political climate. Manumission for a handful of women could hardly be perceived to be as threatening as the kind of widescale emancipation that could be won through a successful violent revolt led by men. At most, an enslaved woman suing her master might be portrayed as capricious, overly emotional, or annoying. Charlotte was scolded for "giving her master trouble" and Arsène was derided as "impertinent."[765] But there is nothing in the language of the cases to suggest that the white population feared violent or destructive behavior by women petitioners.

Indeed, the language of the legal cases reveals that enslaved women could and did play into Southern notions of femininity. Popular literature at the time portrayed the tragic octoroon woman, not the tragic octoroon man.[766] Chief Justice George Mathews of the Louisiana Supreme Court sympathized with a legal action brought to "redeem a helpless female from slavery."[767] His emotional language concluded with a holding in favor of the minor Josèphine's freedom.[768] Judge John McHenry decided eleven suits in favor of freedom petitioners at the First District Court of New Orleans. His personal letters to his fiancée (later wife), along with a

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[760] Gehman, *The Free People of Color of New Orleans*.
[761] Campanella, *Bienville's Dilemma*, 27; Gehman, *The Free People of Color of New Orleans*, 51.
[762] Dessens, *From Saint-Domingue to New Orleans*; Chapters 4-5 in Arnold Hirsch and Joseph Logsdon, eds., *Creole New Orleans: Race and Americanization* (Baton Rouge: Louisiana State University Press, 1992); Lachance, "Repercussions of the Haitian Revolution in Louisiana."
[763] Daniel Rasmussen, *American Uprising: The Untold Story of America's Largest Slave Revolt* (New York: Harper, 2011).
[764] Gehman, *The Free People of Color of New Orleans*.
[765] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.
[766] See, e.g., Beaumont, *Marie, ou, l'esclavage aux États-Unis*; J. H Ingraham, *The Quadroone, Or, St. Michael's Day* (New York: Harper, 1841); Hosmer, *Adela, the Octoroon*.
[767] Louise v. Marot, 9 La. at 479.
[768] Louise v. Marot, 9 La. at 473.

speech he delivered in 1864, demonstrate his belief that men had a moral duty to protect women and children.[769] Aware of the cultural notion of a helpless, wrongfully-enslaved female, the Couvent family may have deliberately put girls like Mary and Lucille forward as petitioners because these would be the most sympathetic litigants.[770]

Exploiting the Partus Sequitur Ventrem *Doctrine*

Putting girls forward as petitioners was also a way to exploit the Louisiana law stating that children followed the condition of their mothers. Under Article 183 of the *Civil Code of Louisiana*, "children born of a mother in a state of slavery, whether married or not, follow the condition of their mother. They are consequently slaves and belong to the master of the mother."[771] Since Louisiana was deeply influenced by civil law, a major source of this law was the Roman doctrine of *partus sequitur ventrem*—literally, "the increase of the womb belongs to the master of the womb."[772] In Roman legal logic, this was a rule that determined the status of someone.[773] Indeed, Article 183 appears in the Title, "Of Master and Slave," which appears in the Book, "Of Persons."[774] Common law jurisdictions throughout the antebellum South also employed this principle, with the leading decision being *Mayho v. Sears* (1842).[775]

But in Anglo-American legal logic, this was a rule that determined the ownership of something.[776] To put it bluntly, "the increase of the womb belongs to the master of the womb."[777] In Louisiana by 1825, the legal logic on the question of a child's status was based in a mixture of two root concepts: status and property. Article 492 mirrors Article 183 of the *Civil Code of Louisiana*. It states, "the children of slaves and the young of animals belong to the proprietor of them," and appears in the Title, "Of Ownership," within the Book, "Of Things."[778]

Whether stemming from the civil law or the common law, the principle that children follow the condition of their mothers was grounded in deep racism. It also served the economic and social interests of the master class.[779] It was a way for slave owners to grow their capital in

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[769] "Letters, John McHenry to Ellen Josephine Metcalfe McHenry," 1846-1847; 1851-1865, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15; "John McHenry, speech, made in Sonoma," 1864, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.
[770] Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Couvent v. Guesnard, No. 1063, 5 La. Ann. 696 (1850), *HASCL*.
[771] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 55–56.
[772] Morris, *Southern Slavery and the Law, 1619-1860*, 43–49.
[773] Morris, 45.
[774] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*.
[775] Mayho v. Sears, 25 N.C. 224 (1842). In addition to Louisiana, only Virginia, Kentucky, Mississippi, and Florida (in that chronological order) passed legislation stating that the condition of children follow their mothers. In all other antebellum states, this rule was established through case law. Morris, *Southern Slavery and the Law, 1619-1860*, 43–49.
[776] Morris, *Southern Slavery and the Law, 1619-1860*, 45.
[777] Morris, 49 (quoting Cobb).
[778] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 150–51.
[779] Morris, *Southern Slavery and the Law, 1619-1860*, 46.

persons, and it denied enslaved black men the social rights of fatherhood.[780] In action, this was a brutal law that incentivized a pervasive culture of rape throughout the antebellum South.[781]

From the point of view of a community seeking to increase its numbers, it made sense to favor women and girls as litigants rather than men and boys. Should Mary or Lucille successfully win their freedom, any children that they might conceive in future would also be free. There is no evidence that Mary or Lucille were mothers at the time that they sued, but at least eight petitioners were mothers seeking freedom not only for themselves but also for their children.[782] Sometimes, these were adult children, as in the case of Ajoie, whose three daughters were twenty, twenty-five, and twenty-seven years old at the time of her suit. Since they had all been born after Ajoie's return from France, the Fourth District Court of New Orleans also recognized them as free.[783] This was a typical response to this fact pattern. Where a male petitioner could only hope to gain freedom for himself, a female petitioner's legal success could multiply.

The ability of women to reproduce increased their value on the slave market. When Aurore, a mother of five, sued for her freedom, she turned this norm on its head. All of her children had been born after her return from France, thus she demanded their value as part of her compensation. She asked far more for her daughters of child-bearing age than for her sons. Specifically, she demanded $1000 for her twenty year old daughter, $1000 for her eighteen year old daughter, $400 for her twelve year old daughter, $300 for her ten year old son, and $150 for her eight year old son.[784]

White male judges did not appear particularly threatened by a legal strategy which, if successful, would increase numbers of free people of color. This may be because of the scale and pace of change. Freeing a very select number of individual enslaved women and girls would gradually increase the free population of African Americans, but this change would not happen quickly. It would take generations. In comparison to widescale emancipation, the change might barely be noticeable. The key to exploiting the *partus sequitur ventrem* doctrine successfully was pushing enough women through courts to make a difference to a community, but not so many that they gain the ire or even attention of white power-holders.

In addition, there were important distinctions in Louisiana legal logic, which was less informed by case law and more informed by civilian codes. Justice Thomas Ruffin's in *State v. Mann* (1829) reaches the decision that "the power of the master must be absolute in order to render the submission of the slave perfect" by emphasizing the need for public safety in a

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[780] Scully and Paton, *Gender and Slave Emancipation in the Atlantic World*, 5.

[781] "The Sexual Dynamics of Slavery," in Catherine Clinton, *The Plantation Mistress: Woman's World in the Old South* (New York: Pantheon Books, 1982), 199–222.

[782] Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290; Ann v. Durel, No. 1281 (2d D. Ct. New Orleans 1857), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[783] Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290.

[784] Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290. More research should be done to determine whether women generally sold for a higher price, or whether these differences in evaluation are explained more by age than by gender.

population where blacks greatly outnumber whites and are therefore extremely dangerous.[785] Ruffin opines that should the population balance out, harsh laws would become less necessary.[786] Scholars have situated Ruffin's reasoning in *Mann* as part of a growing trend of instrumentalist legal reasoning.[787] Alfred Brophy has identified in William Gaston, the teacher of a man who would become the Chief Justice of the Supreme Court of Louisiana, an "alternative path" to Ruffin's.[788] When the Supreme Court of Louisiana decided to redeem the "helpless female" Josèphine from slavery, it seemed less concerned with public safety and more concerned with putting an individual in her proper social place. This points to the centrality of categories in the logic of civil law.[789] The precedent-setting French free soil case of *Marie-Louise v. Marot* (1836) reached a ruling in favor of individual liberty by employing a rhetoric of status, not of rights. As Chapter 5 demonstrates, this would give way to a more Anglicized instrumentalist legal reasoning by the 1850s.

Life After Litigation

In traditional legal histories, a "successful" freedom suit is one that results in a court declaration of freedom for the claimant.[790] In this sense, the freedom suits at the center of my study were successful by a large margin. Between 1835 and 1856, New Orleans municipal courts denied freedom to only two of twenty claimants seeking freedom on the basis of having touched French soil (
Table 3).

Newer work on law and slavery shows that a focus on judgements constricts our understanding of legal success. In her study of how enslaved litigants mobilized within the ecclesiastical courts of colonial Lima to gain a wider set of privileges than those usually associated with enslavement, Michelle McKinley argues that "we need to expand our view of what constituted 'success' or even legal efficacy."[791] McKinley reconceptualizes freedom, not as a binary good, but as fractional in nature. "Contingent liberty (or fractional freedom) was the reality that all—whether enslaved, freed, or free—accepted and to which they accommodated their lives."[792] She finds that after litigation, neither total bodily autonomy nor absolute bondage was the norm for enslaved peoples in Lima.[793] This builds on Rebecca Scott's conceptualization of freedom as existing in degrees.[794] McKinley finds that re-enslavement was a constant threat. Scott, similarly, shows that freedom once won might only be "paper thin."[795]

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[785] State v. Mann, 13 N.C. at 265-266.
[786] State v. Mann, 13 N.C. at 268.
[787] Mark Tushnet, *Slave Law in the American South: State v. Mann in History and Literature* (Lawrence: University Press of Kansas, 2003), 1–37; Alfred Brophy, *University, Court, and Slave: Pro-Slavery Thought in Southern Colleges and Courts, and the Coming of Civil War* (New York: Oxford University Press, 2016), 197–205.
[788] Brophy, *University, Court, and Slave*, 206–11.
[789] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*.
[790] In *Becoming Free, Remaining Free*, 15 Schafer calls the free soil argument "dramatically successful."
[791] McKinley, *Fractional Freedoms*, 6.
[792] McKinley, 11.
[793] McKinley, 11.
[794] Scott, *Degrees of Freedom*.
[795] McKinley, *Fractional Freedoms*, 11; Rebecca Scott, "Paper Thin: Freedom and Re-Enslavement in the Diaspora of the Haitian Revolution," *Law and History Review* 29 (2011): 1061.

By focusing instead on the early stages of a lawsuit—how enslaved people procured legal knowledge, accessed legal representation, and required owners to respond to claims in an official forum—we can demonstrate the capacity of an enslaved person, regardless of the court's final judgement.[796] This is why I have constructed this chapter the way I have—with a heavy emphasis on what preceded the lawyer's act of filing a petition. Like McKinley, I am primarily interested in the litigant's perspective.

In that vein, I conclude with an inquiry into what life looked like for litigants after litigation. Many of the claimants enjoyed significant benefits at the conclusion of their lawsuits. Assuming that a court's orders were enforced, they found themselves immune from sale. Many mothers won free status, not only for themselves, but also for their children. Under Louisiana law, as I have shown in this chapter, free status enabled people—regardless of their race—to accumulate property and thus achieve upward social mobility. With enough income, residents of New Orleans (again regardless of race) could send their children to school.[797] With sufficient property and education, the free people of color of New Orleans could and did use courts to protect and expand their rights.[798]

However, a study that only focused on these positive outcomes would do the disservice of promoting Louisiana exceptionalism and romanticizing slavery in a place that was in fact the center of a brutal domestic slave trade.[799] Like the slaves at the center of Michelle McKinley's study, the women and girls in my study faced the constant specter of re-enslavement even after the conclusion of their suits. In the late 1850s, about ten years after the conclusion of most of these freedom suits, the Louisiana legislature accelerated its attempts to rid the state of free people of color. Under an act of 1859, free persons of African descent who had not come into the state legally could stay there only if they chose a master and agreed to become slaves for life. At least fifteen free people of color did so.[800]

For the litigants here, day-to-day work as an urban wage worker was not very different from day-to-day work as an urban slave. Claimants likely continued to perform the household tasks that their lawyer inventoried in his petitions—cooking, cleaning, laundering, nursing, selling food, taking care of children and the elderly. Now, they could legally keep their wages. Furthermore, as free people of color, they could sue and be sued. No longer slaves, they were free from corporal punishment inflicted upon them by masters.

Once free, wetnurses like Milky still lived in an impoverished state. There is little reason to believe that her monthly earnings of twelve dollars per month as a slave would have increased as a free person.[801] Whether slave or free, breadsellers earned between twenty and twenty-five dollars a month.[802] On the high end, hairdressers could hope to make about thirty dollars per

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[796] McKinley, *Fractional Freedoms*, 6.
[797] Walter Stern, *Race & Education in New Orleans: Creating the Segregated City, 1764-1960* (Baton Rouge: Louisiana State University Press, 2018).
[798] Aslakson, *Making Race in the Courtroom*, 1-16.
[799] The most influential account of Louisiana exceptionalism is Dargo, *Jefferson's Louisiana*. For more recent critical accounts of Louisiana's uniqueness as a jurisdiction, see Mark Fernandez, *From Chaos to Continuity: The Evolution of Louisiana's Judicial System, 1712-1862* (Baton Rouge: Louisiana State University Press, 2001); Schafer and Billings, *An Uncommon Experience*. On New Orleans as the center of the American slave trade see Johnson, *Soul by Soul*, 4-6.
[800] Schafer, *Becoming Free, Remaining Free*, 145–62.
[801] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[802] Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

month.[803] Although some of the litigants could hope to grow their income, others eked out an existence in an impoverished state.

The lawyer and witnesses in these suits may well have inserted details about the versatility of the petitioner's skills to answer authorities' concerns over freed people who would be unable to provide for themselves. A witness in Charlotte's case questioned why Charlotte would sue her master, for he "lodged and clothed her."[804] Similarly, Laurent Millaudon testified that given Milky's bad state of health, "freedom would have been more burdensome to her than slavery."[805] This resonates with a pervasive antebellum logic of benevolent patriarchy, whereby the male head of household provides for all its members—children, slaves, and women—in exchange for their submission. Espoused by Thomas Jefferson, this logic is also evident in the Negro Law of South Carolina (1848) and *Bryan v. Walton* (1853).[806]

Conclusion

Freedom petitions were not one-time acts; they mobilized a community. Placing the claimants in the broader context of a large community of free people of color in New Orleans explains how enslaved women and girls—those with the fewest resources in their society—accessed justice. They desired both formal freedom and the right to keep their wages. An urban setting fostered the conditions under which they could transform raw desires into legal claims, share legal knowledge, and access legal representation. Status as the member of an intimate household also aided access to justice. Mary's particularly well-documented connections to free men of color signifies property as power and the church as a platform for legal networking. Race also mattered towards accessing justice. Most plaintiffs hid during their freedom suits, but attorneys represented enslaved plaintiffs not as "negroes" but as women and girls "of color." The Afro-Creole tradition, white Southern notions of femininity, and the doctrine of *partus sequitur ventrem* all help explain why women and girls predominated as legal actors here. Although the specter of re-enslavement surely haunted freed claimants, the urban environment of New Orleans more than the surrounding rural areas offered them opportunities to exist on a spectrum between autonomy and bondage, between prosperity and poverty.

[803] Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[804] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.
[805] Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[806] Annette Gordon-Reed and Peter Onuf, *"Most Blessed of the Patriarchs": Thomas Jefferson and the Empire of the Imagination* (New York: Liveright Publishing Corporation, 2016); John Belton O'Neall, *The Negro Law of South Carolina* (Columbia: J.G. Bowman, 1848); Bryan v. Walton, 14 Ga. 185 (Sup. Ct. Ga. 1853).

4. Representation at Law

Introduction

Having examined the lawsuits from the perspective of the enslaved plaintiffs, this dissertation now turns to focus on the attorneys who represented plaintiffs and defendants. Legal representatives have not generally been the focal point of existing literature on freedom suits.[807] A leading scholar of slave litigation in the Supreme Court of Louisiana wrote some time ago,

> it is clear from the record that slaves suing for their freedom used attorneys to plead their cases. How they hired and paid for counsel is a mystery. Perhaps members of the free black community, possibly blood relatives, contributed towards attorneys' fees, or perhaps attorneys served without compensation.[808]

Newer literature has begun to fill in this gap.[809] This chapter seeks to further elaborate on current understandings of legal representation in freedom suits. Attorneys at law are best understood within the history of professionalization of legal practice in nineteenth century Louisiana, which this chapter first reviews.

Two emblematic figures emerge from this set of cases: Jean-Charles David and Christian Roselius. David represented at least seventeen plaintiffs in free soil suits between 1844 and 1850.[810] Of these plaintiffs, fifteen had traveled to France and claimed freedom on that basis.[811] David was successful in these suits but on the whole was not renowned. In contrast, Roselius was an eminent jurist who defended slave owners in three of these lawsuits (Figure 10).[812]

Both David and Roselius were newcomers to Louisiana. After investigating their personal backgrounds, this chapter examines their legal education and training. Next, it posits

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[807] See Scott and Hébrard, *Freedom Papers*; Scott, "She... Refuses to Deliver up Herself as the Slave of Your Petition," 128–29; VanderVelde, *Redemption Songs*; Twitty, *Before Dred Scott* (where the attorneys of enslaved plaintiffs are named but are not the focal point).

[808] Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 221.

[809] "Advocacy," in Welch, *Black Litigants in the Antebellum American South*, 82–112; "Voleur des Nègres," in Schafer, *Becoming Free, Remaining Free*, 34-44 (describing Jean-Charles David's legal career).

[810] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290; Couvent v. Guesnard, No. 1063, 5 La. Ann. 696 (1850), *HASCL*; Eulalie v. Blanc, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[811] In contrast, Eulalie claimed freedom on the basis of having traveled to England, while Josephine claimed freedom on the basis of having traveled to Pennsylvania. See *Eulalie v. Blanc*, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; *Josephine v. Poultney*, No. 5935, 1 La. Ann. 329 (1846), *HASCL*.

[812] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*; Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.

their motives for taking on freedom suits. Notarial sources, a lecture, and a speech allow an examination of their ethics on and politics of slavery. The question of salary leads to the question of socio-economic status. What were the social consequences of advocating for society's most dispossessed? Were these attorneys ostracized, or did they achieve upward social mobility through the practice of law?

Finally, this chapter analyzes the legal arguments advanced on behalf of plaintiffs and defendants respectively. A prototypical freedom petition shows how the raw desires of enslaved plaintiffs were translated into language a court would understand and take seriously. Robin Mitchell emphasizes that representations of black women in nineteenth century French art and literature were *re*-presentations, not presentations. They should not be mistaken for the women's actual stories, which only these women are qualified to voice in all authenticity.[813] This dissertation also approaches the primary source of court records as *re*-presentations that fail fully to capture the stories of litigants. Lawyers mediated the desires of their clients—no doubt leaving out rich details, and adding terminology that was unavailable to people without legal training.

It is surprising that in order to assert the property rights of the free woman of color Ann Maria Barclay in 1854-57, Roselius employed the free soil precedent against which he had argued just ten years earlier.[814] This could be explained away as a change of heart. Alternatively, and perhaps more persuasively, it points to this chapter's central argument: the lawyers who represented African American freedom suitors were not cause lawyers but rather client-advocates.

Freedom Suits and the Professionalization of Legal Practice in Louisiana

Colonial Period (1699-1803)

In French colonial Louisiana, law was a permeable practice. "Distant settlements might need anyone who had dabbled in customary law and notarial practices," Alexandre Dubé writes of the period.[815] For example, Alexandre-Claude Duparquier was the son of a Parisian lawyer, and professed a "smattering of legal knowledge." In the colony, he floated between the occupations of notary, warehouse keeper, and planter.[816] The leading studies of manumission

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[813] "Introduction" in Mitchell, "Les Ombres Noires de Saint Domingue." See also "Researching Black Litigants," in Welch, *Black Litigants in the Antebellum American South*, 223–26.

[814] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

[815] Alexandre Dubé, "Making a Career Out of the Atlantic: Louisiana's Plume," in *Louisiana: Crossroads of the Atlantic World*, ed. Cécile Vidal (Philadelphia: University of Pennsylvania Press, 2014), 59.

[816] Dubé, 60. Here notaries (*notaires*) should not be understood in the modern context of the United States but rather in the early modern civil law context. For notaries as knowledge-keepers between creditor and debtor in an era where such information was scarce and valuable, see Philip Hoffman, Gilles Postel-Vinay, and Jean-Laurent Rosenthal, "What Do Notaries Do? Overcoming Asymmetric Information in Financial Markets: The Case of Paris, 1751," *Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift Für Die Gesamte Staatswissenschaft* 154, no. 3 (1998): 499–530. Julie Hardwick argues in her study of notaries and their families in sixteenth and seventeenth century Nantes Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park: Pennsylvania State University Press, 1998) that notaries mediated between state and subject; between literate and oral cultures; between borrowers and lenders; between men

suits in this period rarely mention legal representatives who acted at law on behalf of enslaved plaintiffs.[817] It is not impossible that enslaved people directly approached the French Superior Council with their claims, without the help of professional legal representatives.[818] Indeed, a cursory look at the records of the French Superior Council (1714-1769) shows that members of society as diverse as merchants, university-educated lawyers (*avocats*), women, and enslaved people submitted legal claims to this body.[819] For instance in 1742, Genevieve Irisse successfully won Governor General Bienville's certification that she was not a slave and therefore could marry.[820]

In 1769, Gov. Don Alexander O'Reilly formally abolished French law, introducing Spanish law in its place. Although inhabitants continued to speak French and observe the Custom of Paris, a municipal council or Cabildo replaced the French Superior Council in New Orleans.[821] Spanish judicial records from this period persistently cite the *Siete Partidas*, a seven-part Book of Laws promulgated by Alfonso the Wise in Spain in 1265.[822] The introduction of Spanish legal culture into the colony of Louisiana has been associated with an increased opportunity for manumission, not least because the *Siete Partidas* valorized freedom as a natural state and allowed slaves to buy their way out of slavery through a process called *coartación*.[823] The *Siete Partidas* even provided that "a woman may act as an attorney in delivering her relations from a state of slavery."[824] Well into the period of American statehood, the Louisiana legislature recognized this specific provision of the *Siete Partidas* as still having legal force.[825] This explains why at least twenty-four mothers formally represented their children in free status claims in various courts throughout the state of Louisiana between 1817 and 1858.[826]

Attorneys-in-Fact during the Early Period of American Statehood (1813-1830s)

There is a gap in the existing literature on Louisiana legal practice between 1803 and 1813, probably because judicial records from the Territorial period are sparse.[827] However,

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and women. For notaries in the French colony of Québec, see André Vachon, *Histoire du notariat canadien, 1621-1960* (Québec: Presses de l'Université Laval, 1962).

[817] De la Fuente and Gross, "Manumission and freedom in the Americas: Cuba, Virginia and Louisiana, 1500s-1700s"; Gross and de la Fuente, "Slaves, Free Blacks, and Race in the Legal Regimes of Cuba, Louisiana, and Virginia;" Spear, *Race, Sex, and Social Order in Early New Orleans*.

[818] The French Superior Council was the sole tribunal of the colony, exercising exclusive civil and criminal jurisdiction throughout the colony. See Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part I)," 484. Although France formally ceded Louisiana to Spain in 1762, the French Superior Council continued operating until 1769 Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part II)," 485.

[819] "Records of the French Superior Council (1714-1769)," Louisiana Digital Library, accessed June 8, 2018, http://louisianadigitallibrary.org/islandora/object/lsm-p15140coll60:collection.

[820] "Certificate of Bienville and Salmon that Geneviève Irisse is a free woman," 10 Oct. 1742, *LSM* Records of the French Superior Council 1742_10_17_WPA.

[821] Dart, "The Colonial Legal Systems of Arkansas, Louisiana and Texas (Part II)," 645.

[822] Dart, 647.

[823] Gross, "Legal Transplants."

[824] Partida III, Title V, Law 5 in Louis Moreau Lislet and Henry Carleton, eds., *The Laws of Las Siete Partidas: Which Are Still in Force in the State of Louisiana* (New Orleans: Printed by J. M'Karaher, 1820), 113.

[825] Moreau Lislet and Carleton, 113.

[826] This is based on research conducted in the Race and Slavery Petitions Project (*RSPP*) database.

[827] On this period, see Fernandez, *From Chaos to Continuity*.

manumission records in the early period of American statehood reveal the rise of a new kind of legal actor known as an "attorney-in-fact." In contrast to an attorney at law who is professionally trained to represent others, an attorney-in-fact is an amateur legal agent authorized by a private individual to act legally on behalf of another.[828] Nothing in the definition of an attorney-in-fact necessitates legal training. As such, the role has resonances with the *procureurs* of the French colonial period, when boundaries between professions were fluid.

The Race and Slavery Petitions Project, which assembles records from various municipal and county courts throughout Louisiana, points to the existence of at least thirty-five individuals who acted as attorneys-in-fact in emancipation petitions between 1813 and 1840, predominantly in the Parish Court of Orleans (Table 4**)**. It appears that all of these cases were suits brought by a slave owner (or the executor of a deceased slave owner) seeking to free favored slaves. In this way, these lawsuits are distinct from the direct actions brought by putatively enslaved plaintiffs against their owners.

In this period, professional boundaries were still permeable. John Capela and Joseph Aicard, while recognized as attorneys-in-fact, were also merchants.[829] Yves Lemonnier was a medical doctor.[830] Women (who almost certainly lacked formal legal training) at times acted at law on behalf of their family members. In 1816, Adelaïde Bonne represented her brothers in a petition asserting their desire to emancipate Felicity, their sixty-year old slave.[831] Also in 1816, Marie Claire Decosson's husband appointed his wife as his attorney-in-fact during his absence from New Orleans. She presented to the Parish Court of Orleans their desire to emancipate a thirty-seven year old slave named John.[832]

There were no apparent racial restrictions on who could act as an attorney-in-fact. It appears that any free person could fill the role. In 1825, Pierre Crocker, a free man of color, acted as attorney-in-fact for Isabelle Beauregard, also a free person of color, in order to execute her intended emancipation of Marie Egle, a woman aged 35.[833] Norman Davis was also a free man of color who was recognized by judicial authorities as an attorney-in-fact for John L. Collins, whose race is not mentioned.[834] Like Crocker, Davis only appears on record as an attorney in fact for a single case.

In contrast, the free man of color Paul Borée was a repeat player as an attorney-in-fact between 1818 and 1833. In four cases between 1818 and 1819 as well as one case in 1827, he petitioned the Parish Court of Orleans to recognize the emancipation of his own slaves. In 1825, he and Henry Guilhou, another free man of color, were appointed testamentary executors of the

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[828] Brian Garner, *Black's Law Dictionary*, 10th ed. (USA: West, 2014).

[829] "Joseph Aicard, representing Jacques Christian in an emancipation petition for Sophie," 22 Oct. 1831, NOCA, RSPP Accession Number 20883158; "John Capela, representing Peter Francis Dejoie in an emancipation petition for Rose Eulalie," 21 Feb. 1820, *NOCA*, RSPP Accession Number 20882065.

[830] "Yves Lemonnier, representing Elisabeth, Widow of Martin Lamothe, in an emancipation petition for Sannite," 15-18 Dec. 1818, *NOCA*, RSPP Accession Number 20881871.

[831] "Adelaïde Bonne, representing her brothers in an emancipation petition for Felicity," 4 Oct. 1816, *NOCA*, RSPP Accession Number 20881630.

[832] "Marie Claire Decosson, representing her husband in an emancipation petition for John," 4 Dec. 1816, *NOCA*, RSPP Accession Number 20881635.

[833] "Pierre Crocker, representing Isabelle Beauregard her emancipation of Marie Egle," 27 Oct. 1825, *NOCA*, RSPP Accession Number 20882551.

[834] "Norman Davis, representing John Collins in an emancipation of Catherine and her three children," 3 April 1840, West Feliciana Parish Court, *Center for American History, University of Texas, Austin*, RSPP Accession Number 20884010.

late Jean Charles Davio, also a free man of color. They presented to the Parish Court of Orleans that three of Davio's slaves should now be recognized as free. In that same year, Borée acted as the attorney-in-fact for a free man of color named Jean Jazon (Jason), called Bonnant, who desired to emancipate his female slave, Marguerite.

Solidification of the State Bar Association (1840s)

During the nineteenth century, law ascended as the principal and most legitimate arena for political and social decision-making in the United States. This process involved the professionalization of legal practice.[835] Applying a Foucauldian understanding of "discipline," this means that the boundaries between professional lawyer and amateur legal agent hardened.[836] In Louisiana, the practice of law came to be disciplined and patrolled by a state bar association, which was established in 1813.[837] Elizabeth Gaspard determines based on her collective biography of 565 Louisiana lawyers that the professionalization of lawyers solidified in 1840.[838] This accords with my reading of freedom suit records from the First District Court of New Orleans, where attorneys-in-fact are not absent but they are sparse. Gaspard's chronology also mirrors that of Laura Edwards, who finds that the centralization of lawyers and legal practice had occurred by 1840 in the state of North Carolina.[839]

Louisiana's bar became the "envy of the nation" in the antebellum period.[840] Frederick Law Olmsted, a landscape architect whose travelogues provide historians with rich insights into past worlds, observed that "the bar of Louisiana is more talented and respectable than that of any other Southern state, perhaps than any other state."[841] Roscoe Pound (who had just resigned from his position as dean of Harvard Law School) echoed similar sentiments of Louisiana lawyers in a four-part lecture series delivered at Tulane University on the occasion of jurist Edward Livingston's centennial.[842] In theory, therefore, slaves seeking freedom in 1840 could access better lawyers than slaves seeking freedom at any prior point in Lousiana's history.

The founding members of the Louisiana bar were a cosmopolitan group, and their influence on the profession was lasting. Gaspard recognizes that "a sizable group of European lawyers settled in Louisiana," but concludes that "they were overshadowed by the Americans, who poured into the territory in vast numbers after the Louisiana Purchase."[843] This assessment depends on numbers as a proxy for influence. Although small in number, civilian jurists were highly influential in drafting the codes that regulated law and slavery in Louisiana.

Foremost among these jurists is Louis Casimir Elisabeth Moreau Lislet, who was born in Saint Domingue, where he inherited two plantations and many slaves. He studied law at the *Ecole de droit* in Paris at the outbreak of the French Revolution. There, the jurist Médéric Louis

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[835] Mayali, "The California Wife and the Visigoth."
[836] Michel Foucault, *Discipline and punish: the birth of the prison*, 2d ed. (New York: Vintage Books, 1995).
[837] Elizabeth Gaspard, "The Rise of the Louisiana Bar: The Early Period, 1813-1839," *Louisiana History* 28, no. 2 (1987): 183–97.
[838] Elizabeth Gaspard.
[839] Edwards, *The People and Their Peace*.
[840] Schafer and Billings, *An Uncommon Experience*, 14.
[841] Haas, *Louisiana's Legal Heritage*, 6.
[842] Roscoe Pound, *The Formative Era of American Law* (Boston: Little Brown, 1938).
[843] Elizabeth Gaspard, "The Rise of the Louisiana Bar," 187.

Elie Moreau de St-Méry was his tutor.[844] He returned to Saint Domingue, where he served as public prosecutor and in other capacities in government. After fleeing Saint Domingue in 1803, he sought refuge in Cuba, only to be expelled with all other French speakers as a reaction to Napoleon's attack on the Spanish government. Like many French speakers, he ended up finally in New Orleans, where his influence on the codification of Louisiana slavery laws was substantial.[845] For instance, he drafted the *Digest of the Civil Laws Now in Force in the Territory of Orleans* (1808).[846] He revived certain thirteenth-century Spanish principles of slave law when he translated and edited *The Laws of Las Siete Partidas* (1820).[847] Along with Edward Livingston and Pierre Derbigny, he was on the committee appointed by Governor William Charles Cole Claiborne to draft the *Civil Code of the State of Louisiana* (1825).[848] All of these legal codes structured the limits and possibilities available to enslaved people.[849]

Other influential Louisiana lawyers with French Atlantic itineraries include Pierre Derbigny, a native of France who emigrated to Saint Domingue and later joined the enclave of French émigrés in Philadelphia; Eligius Fromentin, a French Jesuit and prominent member of the Louisiana bar until 1822; and François-Xavier Martin, who arrived in New Orleans via France and Martinique and during his career as Chief Justice of the Supreme Court of Louisiana decided many free soil cases.[850] The prominent Anglophone Louisiana lawyer Edward Livingston was a native of New York but was well-read in the civil law. His library of 1,500 volumes included books in French and German.[851]

The Attorneys at Law

Jean-Charles David

An individual named Jean-Charles David represented fifteen of the twenty women and girls who petitioned for freedom in the courts of New Orleans between 1844 and 1850 on the basis of having traveled to France (Table 3). He represented at least an additional two petitioners employing the free soil argument. Table 5 presents these cases in order of the date the petitions were filed at the court of first instance.

David filed his first freedom petition on behalf of Josephine, arguing that she had become free by traveling to Pennsylvania, a state whose constitution had abolished slavery and granted freedom to any enslaved person traveling there with an owner intending to reside there. He filed Josephine's petition in the First Judicial District Court of Louisiana on 3 June 1844.[852] Sixteen

[844] Born in Martinique, Moreau de St-Méry studied law in Paris. He was an apologist for legal slavery and segregation on the basis of race, as well as an advocate for colonial self-determination. See Dubois, *Avengers of the New World*. Moreau de St-Méry's collection of documents for an unfinished encyclopedia on the French Caribbean islands, held at the *Archives nationales d'outre-mer* in Aix-en-Provence is a rich resource for historians today.
[845] Palmer, *Through the Codes Darkly*.
[846] Moreau Lislet, *A Digest of the Civil Laws*.
[847] Moreau Lislet and Carleton, *The Laws of Las Siete Partidas*.
[848] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*.
[849] Gross, "Legal Transplants."
[850] Elizabeth Gaspard, "The Rise of the Louisiana Bar," 186; 195; 194.
[851] Elizabeth Gaspard, 190.
[852] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*.

days later, he filed a petition in the same court on behalf of Eugénie, who had traveled to France, where in David's words, "slavery is not tolerated."[853] The court eventually ruled in favor of both petitioners.[854] Both cases were appealed, with the Supreme Court of Louisiana first affirming Josephine's case on 25 June 1846, and then Eugénie's on 1 February 1847.[855]

Perhaps it was after the Supreme Court affirmed the decision in favor of Josephine that David recognized a potentially lucrative legal argument. When the First Judicial District Court of Louisiana dissolved and five municipal courts replaced it, David submitted a third petition on behalf of a slave, this time to the First District Court of New Orleans.[856] After the Supreme Court of Louisiana affirmed the lower court's decision in her favor on 1 June 1847, David filed, in rapid succession, a series of petitions with almost identical fact patterns (Table 5). With the exception of Charlotte's, all of the petitions were filed in the First District Court of Orleans.[857] Since each of the municipal courts exercised geographic jurisdiction over the entire parish of Orleans, lawyers had a degree of choice over legal forum. In theory, court dockets were divided according to subject matter, but in the 1840s this division was not always enforced.[858] Perhaps David chose to keep filing these civil cases in the First District Court of Orleans—a court that exercised mostly criminal jurisdiction—because Judge John McHenry had ruled in Arsène's favor in 1847.[859] All but three of David's clients received affirmative judicial recognition of their free status. After the Supreme Court of Louisiana ruled against Liza in 1852, David ceased submitting petitions based on the free soil argument to any court of first instance in New Orleans.[860] The jurisprudence of Louisiana had shifted, and the free soil argument was no longer likely to be successful.

Born in France in 1810, David arrived in New Orleans sometime in the 1830s.[861] In 1838, he first appeared in the New Orleans City Directory, advertising his services as a "teacher of the French language."[862] Although Schafer writes that this was an "occupation probably little in demand in French-speaking New Orleans," this was not necessarily the case.[863] As noted above, Gaspard finds that English-speaking Americans "poured into the territory in vast numbers after the Louisiana Purchase."[864] Although the ordinary people who submitted petitions might largely still be French-speaking in 1840, there was more and more pressure for Louisiana to assimilate to the rest of the United States by populating legislative and judicial positions with English-speakers.[865]

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[853] Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[854] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[855] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[856] "A Brief Explanation of the Orleans Parish Civil & Criminal Court System, 1804-1926." Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[857] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.
[858] "A Brief Explanation of the Orleans Parish Civil & Criminal Court System, 1804-1926."
[859] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[860] Liza v. Puissant, 7 La. Ann. 80 (1852).
[861] Schafer, *Becoming Free, Remaining Free*, 34 (citing to U.S. Census, 1850).
[862] "New Orleans City Directory," 1838, *NOCA*.
[863] Schafer, *Becoming Free, Remaining Free*, 34.
[864] Elizabeth Gaspard, "The Rise of the Louisiana Bar," 187.
[865] Dargo, *Jefferson's Louisiana*; Fernandez, *From Chaos to Continuity*.

For instance, Judge John McHenry, who was appointed Judge of the First District Court of New Orleans in 1846, was born in North Carolina and grew up in Tennessee.[866] Although he professed a reading knowledge of French, he wrote his judicial opinions and personal letters in English.[867] Indeed, it is possible that in teaching French to English-speakers, David created an opportunity for himself as newcomer not only to expand his social networks but also to learn English. In 1838, David listed his business address and residence as one and the same, further reflecting his efforts as a recent immigrant to do the most with what he had. By 1839, David had married the widow Catherine Jacques Rideau of New Orleans, thereby more firmly implanting himself in his new community.[868]

It would be very interesting to determine how David attained a legal education and whether he had practiced law in France. He gained admission to the Louisiana bar on 20 January 1840.[869] No longer conducting business out of his home, David opened a legal office at 180 Chartres Street, just steps away from the Presbytère Building where the Supreme Court of Louisiana along with all five district courts held sessions.[870]

A search for David by name in the New Orleans City Directory reveals that he was a man on the move. In just over two decades, David changed the location of his legal office at least four times and the location of his domicile at least six times.[871] This may have been due to financial uncertainty. In 1850, when David's creditors sought to seize property belonging to him and his wife, David's wife sued him for separation of property.[872] In 1859, David swore to the First District Court of New Orleans that he owned no property, movable or immovable, and was unable to pay a $50 fine charged of him.[873] David last appears in the City Directory in 1866, but is absent from New Orleans death certificates, burial records, and succession/probate records.[874] Although he may have left New Orleans shortly after the Civil War to seek his fortune elsewhere, his personal history of insolvency raises the possibility that he died penniless and was buried in a pauper's grave without a death certificate, burial record, or probate of his succession.[875]

In Schafer's view, David "emerges as the quintessential sleazy and often pathetically inept attorney."[876] Although the sources certainly bear out the conclusion that David was a divisive individual (as one might expect of advocates who represent society's most oppressed),

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[866] "Letter, John McHenry to Ellen Josephine Metcalfe McHenry," 11 Feb. 1846, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15; "Biographical Sketches of John McHenry, Written by Ellen McHenry and Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[867] See, e.g., Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; "Letters, John McHenry to Ellen McHenry," 1846-1865, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.
[868] "Sale, Jean-Charles David to Dr. Francisco Verde," 7 May 1839, *NONA*, Notary Amédée Ducatel, vol. 11, Act No. 211; Schafer, *Becoming Free, Remaining Free*, 35.
[869] Schafer, 34 (citing Supreme Court of Louisiana, Minute Book, 6:59 [1840]).
[870] The "New Orleans City Directory," 1841, *NOCA* shows that David opened an office at 180 Chartres Street. According to Amos, "Alphabetical and Numerical Index of Changes in Street Names and Numbers, Old and New, 1852 to 1938" this would have been at the corner of Chartres and St. Peter. This was the same block as the Presbytère. Schafer, *Becoming Free, Remaining Free*, xviii.
[871] "New Orleans City Directory," 1838-1859, *NOCA*.
[872] Schafer, *Becoming Free, Remaining Free*, 36.
[873] Schafer, 43.
[874] Schafer, 43–44.
[875] Schafer, 44.
[876] Schafer, 34.

they do not necessarily support the conclusion that he was "sleazy" or "inept."[877] Schafer adopts as the title of her short chapter on David the epithet one prominent slaveowner hurled at him, "Voleur de Nègres," or "Thief of Negroes."[878] However, this runs the risk of adopting the slave owner's view without critically examining it. Whatever the assessment of his personal character, it remains the case that David enabled certain black people to translate their raw desires into successful legal claims. The story of how he did so deserves to be taken seriously.

It is difficult to comment on David's ethics of slavery. Unlike his more prominent counterpart Christian Roselius, David did not leave a written record expressing his views on slavery as a legal institution. In contrast to certain attorneys who sought to dismantle slavery in piecemeal fashion through litigation, David's ethical motives are murky.[879] Notarial records give some indication of his behavior, however. Almost immediately upon arriving in New Orleans, he participated in the trade in human property. In 1838, he bought a twenty-one-year-old slave named Emma who could cook, launder clothes, and iron. Just over a year later, David sold Emma for $800.[880] Likely using the $800 he earned from this sale, David bought two slaves soon thereafter, both of whom were sold without full warranty because of what purported "vices and illnesses."[881] While the twenty-eight-year-old Monday was a former runaway, the fifty-three-year-old Phoebe was known for drunkenness.[882] Even as he became involved in freedom suits as an attorney for enslaved people, David continued to participate in the trade in human property both as buyer and as seller.[883]

Clearly, David was not categorically opposed to the institution of slavery. However, David was willing to put both his pocketbook and his life on the line to advocate for the freedom of certain slaves. David agreed to be held liable for the court costs of certain clients should they lose their appeals. In the appeal petition of Eugénie (who had been granted her request to sue *in forma pauperis* at the first instance level) David declared, "I am security for the costs before the Honorable the Supreme Court."[884] Similarly, when the minor Mary appealed, David put himself up as security should Mary's tutor Bernard Couvent fail to pay the costs of a lost appeal.[885]

David suffered social and physical consequences for having applied legal skills to undermine the rights of certain slaveholders. Ten days after he filed a petition for the freedom of

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[877] Schafer, 34.
[878] Schafer, 34; 40.
[879] For a counter-example, see Alfred Brophy, "The Nat Turner Trials," *North Carolina Law Review* 91, no. 5 (2013 2012): 1817–80 (discussing the anti-slavery lawyers who represented the rebels in the pro-slavery South). See also Harriet Beecher Stowe, "The Legal Decision," in *Dred: A Tale of the Great Dismal Swamp*, ed. Robert Levine (Chapel Hill: University of North Carolina Press, 1856), 350–59 (for the character of an anti-slavery lawyer who resigns from the practice of law when he loses a case against a man who abused a slave).
[880] "Sale, Jean-Charles David to Dr. Francisco Verde," 7 May 1839, *NONA*, Notary Amédée Ducatel, Vol. 11, Act 211 (citing "Sale, Françoise Montegut to Jean-Charles David," 25 Oct. 1838, *NONA*, Notary Amédée Ducatel).
[881] "Sale, Emile Sainet to Jean-Charles David," 17 May 1839, *NONA*, Notary Charles Bousousquié, Vol. 3, Act 17; "Sale, Antoine Villars (Villard) f.m.c. to Jean-Charles David," 13 June 1839, *NONA*, Notary Joseph Cuvellier, Vol. 21, Act 82.
[882] "Sale, Emile Sainet to Jean-Charles David," 17 May 1839, *NONA*, Notary Charles Bousousquié, Vol. 3, Act 17; "Sale, Antoine Villars (Villard) f.m.c. to Jean-Charles David," 13 June 1839, *NONA*, Notary Joseph Cuvellier, Vol. 21, Act 82.
[883] "Sale, Jean-Charles David to Joseph Webre," 21 Oct. 1845, *NONA*, Notary Louis T. Caire; "Sale, Mrs. Victorine Robouam, Widow Louis Magioni, to Jean-Charles David," 31 July 1849, *NONA*, Notary Antoine Doriocourt.
[884] Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[885] Couvent v. Guesnard, No. 1063, 5 La. Ann. 696 (1850), *HASCL*.

Liza in the First District Court of New Orleans, David encountered Liza's putative owner, Dr. Puissant, on the Elysian Fields streetcar. In a fit of rage, Puissant exclaimed that David was a "thief of Negroes."[886] Puissant warned David to arm himself, because Puissant would gladly kill him. When Puissant saw David again in the meat market one month later, he hit David on the shoulder. Although David brought charges for assault and battery, the court did not pursue the case.[887] Later, he was derided by a local newspaper as an "eccentric lawyer."[888] Social ostracization that David faced as a result of Liza's case may explain why this was his final freedom suit. By 1851, David had taken to carrying a knife in self-defense as he claimed that "his life had been repeatedly threatened."[889]

The binary notion of "anti-slavery" versus "pro-slavery" does not capture the spectrum of views that slave owners in New Orleans themselves held. Rather than trying to fit David into one of these categories, it is more appropriate to compare him with slave-owning free people of color in his own time and place. For instance, the free woman of color Marie Justine Cirnaire Couvent is in many ways is remembered as a philanthropist because in 1837 she bequeathed property on which to build a school to educate orphans of color.[890] She purchased out of slavery the man who would become her husband, and formally emancipated three slaves during her lifetime.[891] However, it would be incorrect to describe Cirnaire as "anti-slavery." She sold at least twenty-five slaves over the course of three decades.[892] She certainly profited from both their labor and their sale.[893] Cirnaire did seek to protect certain slaves as kin, treating them like biological family, even as they remained her slaves.[894] However, this was not always the case. In her will, Cirnaire instructed executors to sell two of her slaves in order to pay for her debts.[895] This suggests that she had little sentimental attachment to these particular slaves.[896]

Seemingly conflicting roles within the system of slavery were not unique to New Orleans. Slave owners in other societies also operated along a continuum of protection: protecting certain slaves as their kin (or in David's case, as their clients) while profiting from the labor and sale of other slaves. The former slave William Ellison—who, once freed, bought a plantation and sixty-three slaves in antebellum Stateburg, South Carolina—is one example.[897] Rachael Pringle Polgreen, a freed woman who owned slaves and likely ran a brothel in

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[886] Qtd. in Schafer, Becoming Free, Remaining Free, 40 (citing *State v. Puissant*, No. 6005, 1st D. Ct. New Orleans, 27 Feb. 1851; *New Orleans Daily Picayune*, 12 Aug. 1858).
[887] Schafer, 40.
[888] Qtd. in Schafer, 41 (citing *New Orleans Daily Picayune*, 12 Aug. 1858).
[889] Schafer, Becoming Free, Remaining Free, 41 (citing Minute Book, 2d D. Ct. New Orleans, 10, 11 March 1851; *New Orleans Bee*, 11, 12 March, 24 April 1851; *New Orleans Daily Picayune*, 24 April 1851).
[890] For the traditional interpretation of Cirnaire as a philanthropist, see Rodolphe Desdunes, *Nos hommes et notre histoire* (Montréal: Arbour & Dupont, 1911). "Will of Marie Justine Cirnaire Couvent," 10 July 1837, *NOCA* Louisiana Wills and Probate Records, vol. 5, pp. 492-494 (where she expresses her dying wish that one of her properties be used in perpetuity to educate orphans of color).
[891] Neidenbach, "'Mes dernières volontés,'" 5.
[892] Neidenbach, "The Life and Legacy of Marie Couvent," 3.
[893] Neidenbach, 483.
[894] Neidenbach, "'Mes dernières volontés,'" 8. On kinship as familial but not necessarily biological ties, see Penningroth, *The Claims of Kinfolk*, 8-10.
[895] "Will of Marie Justine Cirnaire Couvent," 10 July 1837, *NOCA* Louisiana Wills and Probate Records, vol. 5, pp. 492-494.
[896] Neidenbach, "'Mes dernières volontés,'" 5.
[897] Johnson and Roark, *Black Masters*.

nineteenth century Barbados, is another.[898] In Gold Coast Africa, property and family were much more tightly—and unabashedly—interwoven into the ideology of slavery than was race.[899] It was not uncommon for slaves to intermarry into their masters' families as junior wives.[900] Although this bears some similarities to the example of Marie Cirnaire buying her husband out of slavery, it is interesting that in the New Orleans example, the mistress and not the master bought her spouse out of slavery.[901] This reflects a distinctive matriarchal power structure typical of nineteenth century New Orleans, but distinct from many other societies.[902]

In other ways, New Orleans was distinct on a national scale but not so distinct on a global scale. Although masters in the American South tended to go to great lengths to deny biological ties to their slaves, Cirnaire integrated her former slave and his kin into her family.[903] For instance, in her will she bequeathed $200 to her deceased husband's illegitimate son from a previous relationship. She effectively recognized him as her stepson.[904] In this way, her practices reveal an ideology that was closer to ideologies of slavery in nineteenth century Gold Coast Africa, where a slave "could become one of the family," and claiming rather than denying kinship often made more sense.[905]

It would be easy to simply condemn slave owners like David and Cirnaire. However, seeking to understand how they navigated ownership reveals much about the hierarchical social system of "racial and gendered domination" within which they lived."[906] Ownership is embedded in changing notions of social relationships, and in this way property is a window onto past social worlds.[907] Even as David and Cirnaire participated in the trade in human property, they mitigated harms for certain enslaved people. In the 1990s, a school that had been named in Marie Justine Cirnaire Couvent's honor came under fire when it came to light that she had owned slaves. Previously praised as a philanthropist for free people of color, Cirnaire was criticized and the school was renamed. Rather than disposing of the history of Marie Justine Cirnaire Couvent, a wiser public policy would be to teach children attending that school the complicated relationship between slave ownership and free people of color in nineteenth century New Orleans.[908] Similarly, David should not be dismissed as "a bad and corrupt lawyer" but understood in his time and place.[909] It is all the more remarkable that a man who bought and

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[898] Marisa Fuentes, "Power and Historical Figuring: Rachael Pringle Polgreen's Troubled Archive," in *Historicising Gender and Sexuality*, ed. Kevin Murphy and Jennifer Spear (Malden, MA: Wiley-Blackwell, 2011), 38–58.
[899] Dylan Penningroth, "The Claims of Slaves and Ex-Slaves to Family and Property: A Transatlantic Comparison," *The American Historical Review* 112, no. 4 (2007): 1046–47.
[900] Gareth Austin, *Labour, Land, and Capital in Ghana: From Slavery to Free Labour in Asante, 1807-1956* (Rochester: University of Rochester Press, 2005), 119; 175-179.
[901] Neidenbach, "The Life and Legacy of Marie Couvent," 3.
[902] Clark and Gould, "The Feminine Face of Afro-Catholicism in New Orleans, 1727-1852."
[903] Penningroth, "The Claims of Slaves and Ex-Slaves to Family and Property," 1067 (discussing American masters who only whispered about affairs or violent rapes); Neidenbach, "'Mes dernières volontés,'" 5 (discussing Cirnaire's relationship with Couvent and three other slaves she emancipated).
[904] "Will of Marie Justine Cirnaire Couvent," 10 July 1837, *NOCA* Louisiana Wills and Probate Records, vol. 5, pp. 492-494.
[905] Penningroth, "The Claims of Slaves and Ex-Slaves to Family and Property," 1067.
[906] Fuentes, "Power and Historical Figuring: Rachael Pringle Polgreen's Troubled Archive," 54.
[907] Carol Rose, *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership* (Boulder: Westview Press, 1994).
[908] Neidenbach, "The Life and Legacy of Marie Couvent," 482–86.
[909] Schafer, *Becoming Free, Remaining Free*, 44.

sold certain slaves instrumentally would risk social ostracization to advocate zealously for others.

Shortly after he arrived in New Orleans, David established commercial connections with members of the community of free people of color. This deepens my argument that this slave-owning defender of enslaved litigants should be assessed on the same plane as slave-owning free people of color in his society. David purchased the twenty-one-year-old Emma (discussed above) from the free woman of color Françoise Montegut in October 1838.[910] Similarly, he purchased the fifty-three-year-old Phoebe (discussed above) from the free man of color Antoine Villars in 1839.[911] Perhaps these business transactions explain why propertied free people of color like the Couvent family (who as shown in Chapter 3 aided the slave Mary) knew to seek out the services of David.[912] David's commercial transactions with free people of color were persistent over time. As late as 1859, a free woman of color hired him to represent her in litigation.[913]

Furthermore, freedom suits were not the only examples of David offering legal aid to enslaved people. In May 1847, just months before the bulk of French free soil claims that David litigated in the First District Court of New Orleans, this same court (with John McHenry at its head) appointed David tutor ad hoc for the black man François Paillasset. Paillasset claimed that his mother, having gained her freedom, had then proceeded to buy him out of slavery. Since then, he had lived as a free person, but now his status was being questioned and he was threatened with deportation from the state of Louisiana. Paillasset's former owner Mrs. Louis Castein swore before the court that all these allegations were correct, and that she never would have sold him to anyone but his mother "for any price whatsoever."[914] Once appointed tutor of Paillasset, David petitioned that Paillasset had "always been respectful towards whites, had never committed a crime nor offense," and could support himself.[915] In 1850, David's efforts finally resulted in a notarial act formally emancipating Paillaset and stating that as such he could enjoy all the rights, privileges, and immunities accorded to free people of color under Louisiana laws.[916]

Several years after the flurry of French free soil suits in the First District Court of New Orleans, David attempted to win James Madison his freedom, claiming that he had been born a free person of color and wrongfully enslaved as a child. The suit was unsuccessful, leading only

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[910] "Sale, Jean-Charles David to Dr. Francisco Verde," 7 May 1839, *NONA*, Notary Amédée Ducatel, Vol. 11, Act 211 (citing "Sale, Françoise Montegut to Jean-Charles David," 25 Oct. 1838, *NONA*, Notary Amédée Ducatel).
[911] "Sale, Antoine Villars (Villard) f.m.c. to Jean-Charles David," 13 June 1839, *NONA*, Notary Joseph Cuvellier, Vol. 21, Act 82.
[912] Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[913] Judith Schafer, *Becoming Free, Remaining Free*, 40 (citing *State v. David*, No. 14,304, 1st D. Ct. New Orleans, 18 Jan. 1860).
[914] "Emancipation de François Paillasset par J.C. David tuteur ad hoc," 25 June 1850, *NONA*, Notary Pierre Charles Cuvellier, Vol. 1, Act 28 (with copy of *Emancipation Petition of François Paillasset by J.C. David*, 1st D. Ct. New Orleans, 14 May 1847-4 April 1848).
[915] "Emancipation de François Paillasset par J.C. David tuteur ad hoc," 25 June 1850, *NONA*, Notary Pierre Charles Cuvellier, Vol. 1, Act 28 (with copy of *Emancipation Petition of François Paillasset by J.C. David*, 1st D. Ct. New Orleans, 14 May 1847-4 April 1848).
[916] "Emancipation de François Paillasset par J.C. David tuteur ad hoc," 25 June 1850, *NONA*, Notary Pierre Charles Cuvellier, Vol. 1, Act 28.

to David's criminal conviction for furnishing a slave with false freedom papers.[917] Although it is not impossible that David falsified documents, his conviction may indicate a judicial and political climate increasingly adverse to manumissions.

David's initial strategy for securing payment from enslaved clients was to petition the court to assign the plaintiff counsel. For instance, in the petition that David submitted to the First Judicial District Court of Louisiana on behalf of Eugénie, David wrote,

> Your petitioner further represents that she is detained as a slave, that she has nothing, that she is unable to pay the tax and costs of this suit, therefore she humbly prays to be authorised by this Honorable Court to prosecute this suit *in forma pauperis*.[918]

In both Josephine and Eugénie's cases, the court granted this request.[919] The term *in forma pauperis* appears neither in the index of the *Civil Code of Louisiana* (1825), nor of the *Lousiana Digest of Laws* (1804-1841), nor of the *Code of Practice* (1844).[920] Article 174 of the *Civil Code* provided that, "The slave is incapable of making any kind of contract, except those which relate to his own emancipation."[921] The *Code of Practice* took this one step further, stating that, "slaves cannot sue, either as plaintiffs or defendants, except as relates to their emancipation" (citing Article 174 of the Civil Code as support).[922] Legislation laid out the specific procedure by which emancipations would take place, but did not require courts to assign enslaved petitioners counsel.[923]

The assignment of counsel to an impoverished litigant here is interesting. Although there is a movement towards a "civil *Gideon*" (whereby the government would provide counsel for indigent people in civil proceedings where "basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody,") this is not an established constitutional right.[924] It is surprising that in nineteenth century Louisiana, local courts would provide counsel for impoverished slaves seeking their freedom in civil proceedings. It suggests that judges recognized the basic human needs at stake in such suits. Suing *in forma pauperis* was not an uncommon strategy in freedom suits brought to the local courts of St. Louis, Missouri.[925]

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[917] Schafer, 38–39 (citing *State v. David*, No. 13,188, 1st D. Ct. New Orleans, 26 Nov. 1857; *New Orleans Daily Picayune*, 29 Sept.; 1, 21 Nov. 1857).
[918] Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[919] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[920] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*; Meinrad Greiner, *Louisiana Digest, Embracing the Laws of the Legislature of a General Nature, Enacted from the Year 1804 to 1841, Inclusive, and in Force at This Last Period* (New Orleans: Benjamin Levy, 1841); Meinrad Greiner, *Code of Practice of the State of Louisiana Containing Rules of Procedure in Civil Actions* (New Orleans: J.B. Steel, 1844).
[921] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52–53.
[922] Art. 103 in Greiner, *Code of Practice*, 44.
[923] Arts. 3421 et seq. in Greiner, *Louisiana Digest*, 509.
[924] American Bar Association House of Delegates, "Resolution 112A," Report, August 7, 2006, https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_resolution_06a112a.authcheckdam.pdf; Gideon v. Wainwright, 372 U.S. 335 (1963) (establishing the right to counsel for indigent defendants in criminal trials).
[925] VanderVelde, *Redemption Songs*, 8–9.

After these two suits, David typically drafted petitions requesting that defendants be condemned to pay the costs of suit should they lose the case. Perhaps by this point David knew his clients would be likely to win. In most cases, defendants were condemned to pay the costs of suit. However, David did not earn a great deal of money from these cases. For instance David represented Arsène for a total of nine months, but earned only $33.40 at the conclusion of her case.[926] Considering that a domestic wage laborer could expect to earn this sum in three months, this is hardly a lucrative pay out from one case.[927] However, as I discuss below, these were not David's only cases.

Schafer argues that David "manufactured his cases and solicited his slave clients."[928] To a certain degree, David must have played a role in the legal awakening of his clients. That he represented seventeen of twenty women studied here lends some support this claim. However, the examples Schafer cites are less than fully convincing of the argument that David manufactured cases. Her primary source of support is *Charlotte v. Cazelar*, which David litigated in the Third District Court of New Orleans between 1848 and 1849.[929] Schafer suggests that this was a frivolous suit from which David wrongfully profited because Pierre Cazelar "did not contest her free status."[930] However, Cazelar actually claimed that "he *would not have* contested Charlotte's liberty *if she had asked for it*."[931] There is an important distinction here. Unlike Widow Blanche Vidal, who did not contest Tabé's claim and therefore requested that judgement be rendered in Tabé's favor, Cazelar claimed *he would not have* contested Charlotte's liberty, but in actuality *he did* contest Charlotte's liberty and requested that the court dismiss her claim.

Cazelar construed Charlotte as having missed her opportunity to gain liberty by failing to formally request it of him when they returned from France. However, the jurisprudence of Louisiana did not require formerly enslaved people returning from free territory formally to reclaim their liberty in order to enjoy free status. Rather, the jurisprudence emphasized immediate emancipation upon setting foot on free soil—an emancipation which slave owners were powerless to revoke.[932] When considering that four years after their return from France, Charlotte had been jailed and whipped upon Cazelar's command, and had on a separate occasion been whipped on Cazelar's plantation, it is unsurprising that Charlotte did not dare request her freedom of him. Cazelar does not seem the benevolent patriarch or "natural protector" that his attorneys insisted he was.[933] It is entirely understandable that Charlotte would seek out the help

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[926] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[927] See, e.g., Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL* (showing that Priscilla's services were valued at eleven dollars per month); Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290 (whose services were valued at ten dollars per month); Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290 (showing that Mary's services were valued at twelve dollars per month).
[928] Schafer, *Becoming Free, Remaining Free*, 35.
[929] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.
[930] Schafer, *Becoming Free, Remaining Free*, 24.
[931] "la demanderesse, avant d'instituer cette action, n'a jamais demandé une liberté, que ce répondant *ne lui aurait en aucune façon contestée* [emphasis added]"
[932] Louise v. Marot, 9 La. at 476. See also *Lunsford v. Coquillon*, 2 Mart. (n.s.) 401; *Louis v. Cabarrus*, 7 La. 170; *Smith v. Smith*, 13 La. 441 (1839); Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 220–88. See also Art. 189 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 29.
[933] Charlotte v. Cazelar, No. 1078 (3d D. Ct. New Orleans 1849), *NOCA* VSA 290.

of a different protector—a legal professional whose duty it was to devotedly advocate on her behalf.

The court did not dismiss Charlotte's claim but let it proceed. At the time of trial, one witness insinuated that David had solicited Charlotte's business against her will. This witness had seen Charlotte three months prior, and had scolded her for giving "trouble to her master."[934] The witness alleged that Charlotte responded, "it was not me, it was my lawyer to whom I have already given $60…I am properly satisfied and do not know what my lawyer wants more."[935] This allegation should not be taken at face value, but understood in the context of vast power imbalances between master and slave. It is not unexpected that when reprimanded by a friend of her putative owner, Charlotte would seek to shift the blame upon her lawyer. After all, Charlotte had more to lose. David might lose his honorable reputation among certain members of New Orleans society, but it is unlikely he would face the risk of being whipped or sold into slavery. In any case, another witness who had seen Charlotte more recently alleged that she had told David "to go on with the suit."[936] This was one of the rare cases where the enslaved plaintiff's courtroom presence is recorded. No doubt seeking to clear the issue, the judge called Charlotte into court and asked whether she consented to Mr. David's continuation with the suit. She did "not deny Mr. David's authority to prosecute the suit."[937] Charlotte's own words are more credible than a witness testimony of her words three months prior.

In a similar vein, Schafer writes that some of David's cases were "laughably easy to win because the owner did not contest the suit."[938] This depends on a narrow definition of winning as a final judgement in the protagonist's favor. A richer definition of "legal success," however, recognizes a spectrum of legal and social victories in freedom litigation.[939] It is true that Vidal did not contest Tabé's freedom. But placing Vidal's affirmation of Tabé's free status in the public record was priceless. It could protect Tabé from the very real risk of re-enslavement upon Vidal's death. It could also protect Tabé from the chance that during her lifetime Vidal would change her mind. Newer literature takes seriously the need of a once-enslaved person to back their status up with a paper trail.[940] Desire to formalize an informal freedom was a legitimate reason to litigate, not a cause manufactured by a greedy lawyer.

David's petitions did suffer from lack of precision. In form, his petitions were punctuated with the grammatical and stylistic errors of a non-Native English speaker. For instance, he persistently wrote that "*the* slavery is not tolerated in France [emphasis added]."[941] Although an article in front of the word slavery is common usage in French (*l'esclavage*), none of David's contemporaries referred to "*the* slavery" in English.

However, it is not entirely credible that "the business of slaves was about the only business [David] could get."[942] As shown in Chapter 3, enslaved plaintiffs were not necessarily penniless. Many had worked for wages for several months before instituting suit. Even if they

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[934] Charlotte v. Cazelar.
[935] Charlotte v. Cazelar.
[936] Charlotte v. Cazelar.
[937] Charlotte v. Cazelar.
[938] Schafer, *Becoming Free, Remaining Free*, 34.
[939] McKinley, *Fractional Freedoms*, 6.
[940] Scott and Hébrard, *Freedom Papers*; Scott, "Social Facts, Legal Fictions, and the Attribution of Slave Status."
[941] See, e.g., *Smith v. Preval*, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[942] Schafer, *Becoming Free, Remaining Free*, 44.

were themselves destitute, they were often backed by wealthy free people of color. Furthermore, these were not David's only cases. A sample survey of the First District Court docket books around the time of Arsène's case and Mary's case shows that David was a repeat attorney in this court.[943]

It seems David was prone to violent outbursts. During a courtroom brawl with opposing counsel in 1851, David drew a knife in self-defense, accidentally cutting the hand of the court clerk. For this, David was jailed for five hours and fined $10.[944] Violence was not unusual in the antebellum Southern courtroom.[945] Nor did judicially-imposed punishment for courtroom impropriety necessarily smear an attorney's reputation. Judge McHenry even imprisoned the distinguished attorney Pierre Soulé. An obituary of McHenry published in California claimed that "upon being released from prison Soulé extended his hand to McHenry and apologized. Ever afterward the two men were fast friends."[946] This is not to say that David's violent behavior should be excused. Shockingly, he was also convicted of assaulting a small boy outside the court building in 1859.[947]

Christian Roselius

Like David, Christian Roselius was an immigrant. Both men sought to use the practice of law as a means of social mobility, but Roselius was much more successful in this endeavor. Born near Bremen, Germany, Roselius arrived in New Orleans in July 1820 as a sixteen year-old indentured servant. He established and edited the first literary journal of Louisiana but when this proved not to be remunerative he abandoned it for the practice of law. Having achieved fluency in English and French, Roselius was admitted to the bar of the state of Louisiana in March 1828.[948] Thus he had been practicing for twelve years longer than David. When David was only beginning to appear in court on behalf of clients, Roselius had already been appointed attorney general of Louisiana, a position in which he would serve between 1841 and 1843.[949] Roselius later became a professor of civil law at the University of Louisiana, Faculty of Law (today known as Tulane University Law School) appointed shortly after the school's founding in 1847.[950] By 1854 he was dean of the school.[951] When he delivered a lecture to the incoming class, they were so impressed by its great value that they requested a copy of it for publication in pamphlet form so that "others of their fellow-citizens should participate in the pleasure and profit of its perusal."[952] The lecture was even re-published in Montréal, thus making its readership

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[943] "First District Court (Orleans Parish) General Dockets," 9 Sept.—9 Dec. 1846; 17 Nov. 1847—17 Feb. 1848; *NOCA* VSA 350.
[944] Schafer, *Becoming Free, Remaining Free*, 41.
[945] Schafer, 42. See also Gross, *Double Character*, 35.
[946] "Obituary—John McHenry," 17 Nov. 1880, *The Daily Examiner*, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.
[947] Schafer, *Becoming Free, Remaining Free*, 43.
[948] "Roselius, Christian" in James Grant Wilson and John Fiske, eds., *Appletons' Cyclopædia of American Biography* (New York: D. Appleton & Co., 1898).
[949] Wilson and Fiske.
[950] Wilson and Fiske.
[951] Christian Roselius, *Introductory Lecture of Christian Roselius Delivered before the Law Class of 1854-55* (New Orleans: Daily Delta Steam Job Printing House, 1854).
[952] Roselius, 3.

international.[953] When offered a position as the Chief Justice of the Supreme Court of Louisiana during Reconstruction, Roselius declined it in anticipation of military interference with judicial decision-making. Roselius continued in his role as professor of civil law at the University of Louisiana until his death in 1873.[954]

Roselius is relatively well-known in secondary literature. In Louisiana legal history, he is often referred to as a prominent New Orleans-based lawyer.[955] He is also remembered for his stature within the Louisiana civil law tradition.[956] An erudite man, he possessed a voluminous library, specializing in works of civil law.[957] Finally, he is known as the legal representative of Sally Miller in her lawsuit against Louis Belmonti.[958] In the early 1840s, a German-American woman entered a coffee shop in New Orleans. When a slave, Salomé Mueller, served her, she thought she recognized a long-lost relative who had traversed the Atlantic with her.[959] A drawn-out legal battle ensued over Sally's true identify. The Supreme Court of Louisiana sought to determine whether Sally should remain in slavery or be freed.[960] John Bailey highlights the centrality of the German diaspora community in New Orleans, who hired Roselius to represent Sally, and celebrated him extravagantly when he won the case.[961]

Ariela Gross emphasizes that Roselius's legal argument hardened the racial presumption of enslavement.[962] To convince the jury and the court that Sally should be freed because she was not black, Roselius sought to convince the jury of Sally's "sterling performance of white womanhood."[963] Roselius declared,

> The Quatronne is idle, reckless, and extravagant, this woman is industrious, careful and prudent—the Quartronne is fond of dress, of finery and display—this woman is neat in her person, simple in her array, and with no ornament upon her not even a ring on her fingers.[964]

With these words, Roselius played into the notion that Sally should be pitied not because enslavement of human beings was wrong, but because enslavement of white human beings—and especially of white women—was wrong. His oral argument implied that the million other young women enslaved in the South in the 1850s were somehow less worthy of sympathy.[965]

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[953] Christian Roselius, "Introductory Lecture to the Study of the Law," *Revue Critique de Legislation et de Jurisprudence Du Canada* 1 (1871): 273–92.
[954] Wilson and Fiske, *Appletons' Cyclopædia of American Biography*.
[955] Haas, *Louisiana's Legal Heritage*, 6; Kathryn Page, "A First-Born Child of Liberty: The Constitution of 1864," Warren Billings and Edward Haas, eds., *In Search of Fundamental Law: Louisiana's Constitutions,1812-1974* (Lafayette: University of Southwestern Louisiana, 1993), 55–56; Palmer, *Louisiana*, 142; 149; Schafer, *Becoming Free, Remaining Free*, 17–18; 32; 35; 95; 111.
[956] Mitchell Franklin, "Introductory Lecture of Christian Roselius on November 13, 1854," *Tulane Law Review* 32 (1958 1957): 573–94.
[957] Mitchell Franklin, "The Library of Christian Roselius and Alfred Phillips," *Louisiana Law Review* 23, no. 4 (June 1963): 704–21.
[958] Miller v. Belmonti, 11 Rob 339.
[959] "Introduction" and "Chapter 1" in Wilson, *The Two Lives of Sally Miller*.
[960] Miller v. Belmonti, 11 Rob 339.
[961] John Bailey, *The Lost German Slave Girl: The Extraordinary True Story of Sally Miller and Her Fight for Freedom in Old New Orleans* (New York: Atlantic Monthly Press, 2005), 213–17.
[962] Gross, *What Blood Won't Tell*, 63.
[963] Gross, 59.
[964] Qtd. in Gross, 60.
[965] Gross, 63.

The Legal Arguments

Arsène's Petition as Prototype for the French Free Soil Argument

When Arsène approached David in 1846 desirous of her freedom and her wages, he initially translated her desires into a habeas corpus claim.[966] As I explain in Chapter 5, the judge of the First District Court of New Orleans rejected this petition in part because Arsène's putative master, Louis-Aimé Pineguy, did not in fact have Arsène in his custody. Rather than leaving Arsène without a remedy, however, the judge signaled to her attorney that under Louisiana law she retained "the right to sue for her freedom in a direct action."[967]

Another legal argument was available. Because the petitions David subsequently submitted so closely resemble Arsène's, it can be examined as a prototype for the French free soil argument in the First District Court of New Orleans between 1847 and 1850 (Appendix, Petition of Arsène). This was not the first time David developed a free soil argument for an enslaved client. In June 1844, he had submitted free soil petitions on behalf of Josephine and Eugénie, respectively.[968] But these petitions were submitted to a different court—the First Judicial District Court of Louisiana, which no longer existed in 1847. Furthermore, David drafted Josephine and Eugénie's petitions before the passage of the Act of 1846. This legislation stated that

> from the passage of this act, no slave shall be entitled to his or her freedom, under the pretence that he or she has been, with or without the consent of his or her owner, in a country where slavery does not exist, or in any of the States where slavery is prohibited.[969]

Although the legislation did not succeed in deterring all enslaved people from suing, it did require their attorneys to develop a more sophisticated legal reasoning to justify their lawsuits.

In constructing the legal argument in Arsène's case, David set out two facts: first, that Arsène had been to France with her master; second, that she had come back to New Orleans. All of the petitions that David subsequently filed share this fact pattern. David also set out two presumptions about French law. First, he explained that "the slavery [*sic*] is not tolerated there."[970] David's word choice is worth reflection. In the English language today, "toleration" connotes "recognition and respect of the rights, beliefs, and practices of others."[971] But in the nineteenth century, the English verb "to tolerate" was more closely connected with the French verb, *tolérer*, which sounds almost exactly the same but carries a distinct meaning that is more closely connected with the legal world. To this day, *tolérer* in French is defined as "permitting

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[966] Unlike most petitioners, Arsène signed her petition. This serves as positive evidence that she encountered her attorney. Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290. See also *Arsène v. Pineguy*, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[967] Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290.

[968] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.

[969] "An Act to Protect the Rights of Slave Holders in the State of Louisiana," 30 May 1846, Louisiana Acts, p. 163.

[970] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[971] *The American Heritage Dictionary of the English Language* (Boston: Houghton Mifflin, 1996), 1884.

something even if it does not conform to regulation, statute, or law."[972] According to *Black's Law Dictionary*, the word "toleration" originates in the sixteenth century. By archaic usage, it means "legal permission or authorization."[973] Both in English and in French, the verb furthermore implies that the behavior being tolerated is not wholly approved of, and should perhaps be punished.[974]

David's persistent use of the phrase "tolerating slavery" helped him create a sympathetic impression of the petitioner as a victim of a practice not wholly approved of on the international scale. Indeed, in 1846 the United States legal system was an outlier in permitting slavery. Slavery had been abolished in the British Empire, and as I describe in Chapter 2 the Abolitionist movement was well under way in France's colonies.[975] Following American abolition, only Cuba and Brazil were left to practice slavery, eventually abolishing the institution in 1886 and 1888 respectively.[976] David did not pioneer the use of the phrase "tolerating slavery" in Louisiana jurisprudence. In *Louise v. Marot* (1835) Chief Justice George Mathews had referred to "France, a country whose institutions do not tolerate slavery or involuntary servitude in any manner."[977] Although Mathews repeatedly employed the term "tolerating slavery" in this case and the subsequent case concerning the same petitioner, the Supreme Court of Louisiana had not employed the term at all in its opinions on free soil cases where the petitioner had traveled to another state within the United States.[978] This distinction suggests that Louisiana judges were aware of the international consensus that slavery should not be condoned by law, while also recognizing that within the United States, the legality of slavery was not settled.

Second, David asserted that the petitioner "became free *ipso facto*," or free by the very nature of the situation.[979] Although David regularly stated an approximate length of time the petitioner had spent in France, legally this made no difference. It merely mattered that she had set foot there. As I elaborate in Chapter 5, the doctrine of "immediate emancipation" upon touching free soil was indeed a feature of Louisiana jurisprudence that distinguished it from neighboring Anglo-American common law jurisdictions.[980]

Next, David argued that "the law of this state passed in 1846 is contrary to law of nations [*sic*] & to the constitution of the United States."[981] At first glance, the Act of 1846 targeted Arsène and others in her situation, stripping them of a legal cause of action. When state law no longer worked in his client's favor, David's response was to reach for higher law. David's lack of sophisticated legal training is clear. Unlike Roselius whose legal briefs were very precise, David cited neither to specific sources of international law nor to specific clauses of

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[972] "permettre quelquechose bien que ce ne soit pas conforme au règlement, au statut, à la loi," in "Définitions : Tolérer," Dictionnaire de français Larousse, accessed June 20, 2018, https://www.larousse.fr/dictionnaires/francais/tol%c3%a9rer/78316?q=tol%c3%a9rer#77393.
[973] Garner, *Black's Law Dictionary*, 1716.
[974] "to permit or endure something not wholly approved of," in Garner, *Black's Law Dictionary*; "considérer avec indulgence quelquechose, un comportement, ne pas le punir, le laisser passer," in "Définitions : Tolérer."
[975] See, e.g., Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*; Jennings, *French Anti-Slavery*; Schmidt, *Abolitionnistes de l'esclavage et réformateurs des colonies, 1820-1851*.
[976] Tannenbaum, *Slave and Citizen*.
[977] Louise v. Marot, 8 La. at 479.
[978] Louise v. Marot, 9 La. at 476; Lunsford v. Coquillon, 2 Mart. (n.s.) 401; Louis v. Cabarrus, 7 La. 170.
[979] Garner, *Black's Law Dictionary*, 957.
[980] Louise v. Marot, 9 La. at 476; See also Lunsford v. Coquillon, 2 Mart. (n.s.) 401; Louis v. Cabarrus, 7 La. 170; Smith v. Smith, 13 La.; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 220–88.
[981] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

constitutional law. However, his substantive claims were not false. Under the principle of national sovereignty, which I discuss in greater detail in Chapter 5, it was not within the power of a state's institutions—whether its legislature or its supreme court—to overturn the laws of a sovereign nation. Furthermore, under the Constitution of the United States, as well as under federal legislation which followed in 1808 and 1818, anyone who imported a person into the United States as a slave would be liable to criminal prosecution.[982]

David concluded the petition with a plea that the court decree the petitioner free, condemn the defendant to pay back-wages, condemn the defendant to pay the costs of suit, and summon the defendant to answer three interrogatories. These were: 1) whether and when the defendant had been to France with the plaintiff, 2) whether the defendant knew that slavery did not exist in France and 3) whether the defendant had returned from France with the plaintiff.[983] All subsequent petitions resembled Arsène's in this way.

Responses: Law as Tool to Uphold Social Stability and Defend Slavery

Roselius represented five defendants in three of the freedom suits David initiated at the First District Court of New Orleans. Louis-Aimé Pineguy, the owner of a livery stable, was the defendant in Arsène's case.[984] Adolphe Pluché, the owner of a dry goods store, and J.B. Bousquet, a grocer, were the defendants in Aimée's lawsuit.[985] Mr. Oliver Blineau, a soap and candle manufacturer, joined his wife as the defendant in Hélène's case.[986] These professions are similar to those of other defendants, who included a tobacco inspector; a baker; a professor of music; and a dealer in wood, brick, and lumber.[987] All of the defendants Roselius represented lost their cases to the plaintiffs suing for freedom.

Because Roselius appealed it, Arsène's case record is the lengthiest, and therefore the best source to demonstrate the substance and form of Roselius's legal analysis. The record on Hélène is shorter, but suggests more about Roselius's personal views of slavery. Roselius's 1854

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[982] U.S. Const., art. I, § 9, cl. 9 (promising a ban on U.S. participation in the international slave trade in 1808); "2 Stat. 426 Chapter 22, 9 Congress, Session 2, An Act: To Prohibit the Importation of Slaves into Any Port or Place within the Jurisdiction of the United States, from and after the First Day of January, in the Year of Our Lord One Thousand Eight Hundred and Eight." (1807); "3 Stat. 447 Chapter 88, 15 Congress, Session 1, An Act: In Addition to the 'Act for the Punishment of Certain Crimes against the United States,' and to Repeal the Acts Therein Mentioned." (1818).

[983] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[984] Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290; Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*; "New Orleans City Directory," 1846, *NOCA*.

[985] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290. ; "New Orleans City Directory," 1846, *NOCA*.

[986] Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; "New Orleans City Directory," 1846, *NOCA*.

[987] Ann v. Durel, No. 1281 (2d D. Ct. New Orleans 1857), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Eulalie v. Blanc, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; "New Orleans City Directory," 1846, *NOCA*. For the full names of these defendants, see the Table of Legal Authorities.

lecture, along with an 1865 speech, provide further evidence that this once impoverished German immigrant viewed law as a tool to uphold social stability and defend slavery.[988]

In 1854, Roselius explained to the incoming law students of the University of Louisiana that slaves "are legal persons only in a limited sense of the term, inasmuch as a slave can incur no civil obligation, nor acquire any legal right, *with the exception of the right to his freedom* [emphasis added]."[989] Therefore, when Pineguy hired Roselius in 1846, Roselius would have recognized a slave's right to contract for her individual emancipation under Articles 174 and 1783 of the *Civil Code of Louisiana* (1825).[990] As Pineguy's legal representative, Roselius's challenge was to persuade a judge that Arsène did not fall under these provisions, nor under the recent jurisprudence of the Supreme Court of Louisiana recognizing a slave's right to sue for her freedom.[991]

Roselius's first strategy was to help his client evade suit on a technicality. In response to the habeas corpus petition, Roselius asserted that Arsène did not belong to his client, but to his client's wife, who resided in France. This was a clever attempt, but it failed. However, the judge of the First District Court of New Orleans accepted Roselius's argument that "the writ of habeas corpus is not a proper remedy in this case" because "the said slave is now a runaway and is not in [Pineguy's] custody."[992]

When David filed a direct action against Pineguy three days later, Roselius responded denying all the allegations "so far as they have any tendency to entitle the said plaintiff to her freedom," because the plaintiff "was born in a slave and has never been emancipated, and belongs as a slave for life to the wife of this respondent as part of her paraphernal property."[993] When the court ruled in favor of Arsène's freedom on the basis of having been to France, Roselius promptly appealed to the Supreme Court of Louisiana, claiming that "there is error in said judgment."[994]

In form, Roselius's briefs are precise and his handwriting is clear–not an unimportant quality in an era before printed brief submissions were the norm. In this way, he comes across as more professional than David, whose appeal brief for Arsène was only one vague paragraph, and whose handwriting is generally difficult to read. A skilled attorney, Roselius first set out the facts in a light favorable to his client. He conceded that "the defendant and his wife left the state sometime in 1836, on a temporary visit to Paris, taking with them the present plaintiff."[995] Roselius's task now was to challenge the lower court's opinion that

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[988] Roselius, *Introductory Lecture*; Christian Roselius and J.S. Whitaker, *Louisiana's Tribute to the Memory of Abraham Lincoln, President of the United States* (New Orleans: Picayune Office Job Print, 1865).
[989] Roselius, *Introductory Lecture*, 10.
[990] Arts. 174; 1783 Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 52-53; 568-569.
[991] Louis v. Cabarrus, 7 La. 170; Lunsford v. Coquillon, 2 Mart. (n.s.) 401; Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*; Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[992] Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290.
[993] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[994] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[995] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*.

> the operation of the laws of France upon the personal condition of the plaintiff and the right of the defendant, by a residence of the parties in France, released the plaintiff from the dominion which the defendant had over her person as a slave in Louisiana.[996]

Roselius denied the presumption that Arsène and Pineguy had ever acquired a residence in France. In this way, his legal reasoning more closely resembles Anglo-American jurisprudence, where the deciding factor in free soil suits was often how long the defendant and plaintiff had remained in a place where slavery was not legally recognized.[997] Roselius construed Pineguy's voyage to France as but a temporary visit, not a permanent move. He alleged that Pineguy "never lost his residence in Louisiana where his property remained and his business continued to be carried on."[998] In other words, this was a respectable citizen of Louisiana who contributed to the local economy despite a brief absence. This allegation also underscored that Pineguy did not intend to move any property (slaves) to France. Roselius continued,

> the former Supreme Court carried too far the doctrine of constructive manumission by the effect of the laws of foreign countries.…The only effect of taking a slave into a country where slavery is not tolerated is to suspend his servile condition, not to change it.[999]

Roselius urged the court to look instead to its more recent cases, *Josephine v. Poultney* (1846), and *Smith v. Preval* (1847).[1000] Although David had successfully argued for Josephine and Eugénie's individual liberty in these cases, Roselius emphasized that under the precedent of *Poultney*, which was reaffirmed in *Preval*, the plaintiff had been released from the defendant's dominion only because they had both acquired domicile in a jurisdiction whose laws did not tolerate slavery. In contrast, Pineguy and Arsène were merely visitors to Paris, who should remain subject to the laws of their domicile, Louisiana.

Unfortunately for Roselius, the court rejected these arguments and held that "we cannot expect that foreign nations will consent to the suspension of the operation of their fundamental laws."[1001] If by "fundamental laws" the Supreme Court of Louisiana meant unwritten natural law, Roselius would have bristled at this ruling.[1002] A legal formalist, Roselius regarded law as a "science."[1003] Influenced by the German Historical School of Law, Roselius sought during his lifetime to preserve the place of Roman law in Louisiana by reorganizing the civil code in what he regarded as a more scientific manner.[1004] The German Historical School of Law must be understood in the context of the nineteenth century, when dominant intellectual trends glorified observation in the material world that would lead to repeatable, objective conclusions. In this school of thought, it was believed that law, if properly designed and organized, could also lead to

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[996] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[997] Somerset v. Stewart, 98 Eng. Rep. 499; Steiner, *An Honest Calling*, 119 (providing an example of the application of the Somerset rule in an Illinois court).
[998] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*.
[999] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*.
[1000] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*; Smith v. Preval, No. 99, 2 La. Ann. 180 (1847), *HASCL*.
[1001] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*.
[1002] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*.
[1003] Roselius, *Introductory Lecture*, 5, 11, 24; On legal formalism, see Gordon, "Critical Legal Histories."
[1004] Franklin, "The Library of Christian Roselius and Alfred Phillips," 704.

repeatable, objective, and therefore just outcomes.[1005] Roselius was somewhat of an outlier among his Louisiana law colleagues in his technical approach to law.[1006] In his 1854 lecture, he described law as a "beautiful and harmonious system, devised by the profoundest wisdom and foresight, to regulate the multifarious rights and obligations arising from the complex relations of social life."[1007] Roselius opposed natural law because it threatened social order. "If every individual could interpose his own crude notions of natural rights between the law of the land and its execution," he predicted that "a total subversion of the whole social fabric" would ensue.[1008] Specifically, when discussing the Fugitive Slave Bill of 1850, he critiqued the "unintelligible jargon of the Northern fanatic about *anterior* or *higher* laws."[1009]

Instead, Roselius advocated a hierarchical organization of society to preserve social order. In his view, certain wise men were particularly qualified to design the legal system for the benefit of the public. It is clear through the examples he gave that he believed elite white men should be the spokespeople of the entire public.[1010] Roselius's lecture has in fact been used as evidence for the argument that legal professionalization in the United States between 1850 and 1920 was dominated by white men who sought to exclude minorities and women.[1011]

Roselius's response on behalf of Mr. and Mrs. Oliver Blineau in Hélène's case is even more suggestive of his personal views on slavery. Requesting that the case be dismissed, Roselius added that according to his clients, the plaintiff was "a drunken, worthless wretch, unwilling and unable to render any valuable services, or to support herself."[1012] This ad hominem was certainly not necessary towards winning the legal case, but perhaps Roselius hoped it would influence the judge's opinion. If a judge calculated that freeing this particular slave would only produce a drain on society, then perhaps the judge would rule in favor of Roselius's clients. Next, Mr. Blineau appeared in court to answer the interrogatories posed of him. Roselius recorded Blineau's responses. Blineau insisted that he had

> requested Mr. Voisin to inform the plaintiff that I had no claim on her, and that she might go where, and do what she pleased. I permitted her to board and lodge in my house from motives of ;

Here, Mr. Blineau portrayed himself, and perhaps even believed himself to be, a benevolent patriarch. He claimed not to derive value from Hélène's services but to support her out of pity. Of course, these are not Roselius's own words, but the words of his client. But it is telling that Roselius chose to record these particular words.

In his own speeches Roselius communicated that he was not at all opposed to a society with slaves. For Roselius, liberty was a desirable good, but liberty meant freedom from despotism, not a society without slaves. In fact, a slave society was completely congruous with a free society as long as the leader was not a despot, as implied in his discussion of tyrannical

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[1005] Mayali, "The California Wife and the Visigoth."
[1006] Franklin, "The Library of Christian Roselius and Alfred Phillips," 704.
[1007] Roselius, *Introductory Lecture*, 5.
[1008] Roselius, 6; 8.
[1009] Roselius, 4.
[1010] Roselius, 5 (using examples of Roman legislators) 10 (describing the limited legal personhood of slaves, minors, and women).
[1011] Stephen Lilley, "The Hard Work of 'Hard Work:' The Legal Elite's Rhetoric of Diligence and the Professionalization of the Law, 1850-1920," *Widener Law Journal* 17, no. 1 (2007): 176; 180-181; 189; 237.
[1012] Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.

Roman leaders.[1013] Furthermore, Roselius viewed law as the proper means to defend slavery. Much as in 1854 he had derided "Northern fanatics" for disrupting the social order, Roselius in 1865 lamented the "fanaticism, folly, and crimes of Southern men themselves."[1014] According to Roselius, Confederates were not wrong to protect what he referred to as the "peculiar institution" of the South.[1015] However, in his view the Confederates had sought to protect slavery through an improper means: violent rebellion against the Union. Roselius asserted that slavery "could only be continued under the protecting aegis of the Constitution of the United States. The moment the first gun was fired on Fort Sumter, this institution was gone, annihilated forever."[1016] We may today heartily disagree with the institution that Roselius sought to preserve through law, but it is clear that he believed in the rule of law. He may have been influenced by Roman law's conception of slavery as a creation of the *ius gentium*, or the law of nations.[1017] Furthermore, his speech shows that there were Republicans who sought to protect the institution of slavery through law. It is an exaggeration to say that "anti-slavery was one of the few policies which united all Republicans."[1018]

Roselius Employs Free Soil Precedent in *Barclay v. Sewell* (1857)

In 1854, a free woman of color named Ann Maria Barclay (also known as Nancy) hired Roselius to represent her in a property dispute. The white man that Barclay had lived with as her domestic partner, George Botts, had died.[1019] Fifteen years prior, Botts had traveled with Barclay to Cincinnati, Ohio, where he emancipated Barclay. Botts had provided her with a deed of emancipation, which she still possessed. It identified her as a "quateroon girl named Nancy, aged about sixteen years," and "discharged her forever hereafter from all and every involuntary servitude of said Geo. A. Botts."[1020] As a free woman of color, Barclay purchased two lots of ground in Delassize, a suburb of New Orleans, in 1850. When Botts passed away, the curator of his succession (or the executor of his estate), the lawyer Edward W. Sewell, sought to sell Barclay's property as part of Botts's estate. Barclay first tried to amicably settle the dispute out of court, but Sewell refused.[1021]

In the petition Roselius submitted on behalf of Barclay to the Second District Court of New Orleans, Roselius nowhere mentioned Barclay's racial identification. This was no doubt part of a strategy to maximize the rights and privileges to which his client would be entitled. Instead of making this a case about race and slavery, Roselius instead cast it as a question of property rights. He asserted, "your petitioner is the sole and bona fide owner of said lots of

[1013] Roselius, *Introductory Lecture*, 7.
[1014] Roselius, 7; Roselius and Whitaker, *Louisiana's Tribute to the Memory of Abraham Lincoln*, 27.
[1015] Roselius and Whitaker, *Louisiana's Tribute to the Memory of Abraham Lincoln*, 27.
[1016] Roselius and Whitaker, 27.
[1017] Watson, *Roman Slave Law*.
[1018] Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (Oxford; New York: Oxford University Press, 1995), 304.
[1019] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.
[1020] "Deed of Emancipation," 9 Aug. 1839, Hamilton County, Ohio, reproduced in *Barclay v. Sewell*, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.
[1021] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

ground and improvements, piano forte, and household furniture."[1022] To support the ownership claim, Roselius provided the court with the deed of sale and building contract. By emphasizing that Barclay had "caused the buildings and improvements to be erected thereon at her own cost and expense," Roselius played into a foundational value of the American property law system that was used to justify colonial conquest: "improvement" or "development" of land.[1023]

Although not legally determinative, Roselius's mention of the "piano forte" helped create atmospherics that would push the court to rule in Barclay's favor.[1024] He portrayed Barclay as a sophisticated, respectable member of New Orleans society, deserving to enjoy her property. Unlike even the affluent Marie Justine Cirnaire Couvent, Barclay was literate: she signed both the deed of sale and the building contract. Neither the deed of sale nor the building contract revealed that Barclay was a woman of color.[1025] In her examination of rural county court records in the nearby Natchez District, Kimberly Welch similarly finds plentiful examples of free people of color using property claims to expand their civic rights, often without revealing their racial identification in the property claim documentation.[1026]

It was only once the defendant responded that questions of race and slavery arose. When the court used the identification "f.w.c." after Barclay's name, it was already making a presumption about the issue to be decided: whether Barclay's status was free or slave.[1027] When the lower court held in Barclay's favor, the defendant appealed. Upon appeal, Roselius elegantly argued that "As far back as the 9th August 1839, the Plaintiff was formally emancipated by her former master, Botts, whose succession the Defendant administers."[1028] He continued, "there is nothing in the laws or policy of this State, which forbids the master of a slave from taking him to another State for the purpose of emancipation."[1029]

Indeed, the Act of 1846 forbade slaves from claiming freedom on the basis that they had been to a country or state where slavery did not exist.[1030] It did not forbid masters from granting freedom to slaves on this basis. That Botts had expressly in writing emancipated Barclay only helped the case. Much as David had claimed that a French emancipation carried the force of law in Louisiana, Roselius argued that Barclay's emancipation, performed in Ohio, was valid in Louisiana. Roselius even rested his case on sources to which David had often referred and indeed had helped create. Roselius first cited to the statutory source of the Act of 1830, sect. 16, p. 94, which expressly sanctioned emancipations in other states. He next referred to two early cases on which David had also rested his arguments: *Smith v. Smith* (1839) (which required owners traveling to other states in order to emancipate their slaves to do so "not according to the laws of Louisiana but according to the laws of the country where the emancipation takes place,") and *Marie-Louise v. Marot* (1836) (which established the precedent of immediate emancipation).

[1022] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

[1023] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*. On law (and particularly the legal notion of land "improvement") as a tool of colonial conquest, see Tomlins, *Freedom Bound*, 21–190.

[1024] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

[1025] "Sale of Property, Edgard Montegut and Omer? Gaillard to Ann Maria Barclay, 24 July 1850, Notary Theodore Guyol," and "Building Contract, Ann Maria Barclay and Wilson Wurtz?, 28 Feb. 1850, Notary Theodore Osborn Starke," reproduced in *Barclay v. Sewell*, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

[1026] Welch, *Black Litigants in the Antebellum American South*, 193–218.

[1027] Trial court record, reproduced in *Barclay v. Sewell*, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

[1028] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

[1029] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

[1030] "An Act to Protect the Rights of Slave Holders in the State of Louisiana," 30 May 1846, Louisiana Acts, p. 163.

Finally, Roselius referred to the first two freedom suits that David litigated up to the Supreme Court of Louisiana: *Josephine v. Poultney* (1847) and *Smith v. Preval* (1847). Roselius added that "*a number of other cases* [emphasis in original]" had also recently been decided in favor of freedom for the formerly enslaved person—perhaps a vague reference to David's cases.[1031]

But rather than emphasize the rights of the person whose status was in question, Roselius emphasized the rights of the master. By drawing attention away from Barclay as the litigant and instead placing it on the rights of a deceased white man, Roselius succeeded in achieving what his client wanted: to keep her property. This was a clever strategy because by this point the court in *Liza v. Puissant* (1852) had already rejected the more capacious interpretation of the free soil principle and conflict of laws that had enabled at least twenty women and girls to gain freedom.[1032] In Roselius's cultural and political climate, a white man—even a deceased white man—was more likely to garner the court's sympathy than was a free woman of color.[1033]

The Supreme Court of Louisiana affirmed the decision, focusing on the right of masters to manumit rather than the right of slaves to claim freedom. The court reiterated that "no law of Louisiana in existence in 1839, placed any restraint upon the power of the master domiciled here, to manumit a slave in a foreign State who had been carried thither for that purpose."[1034] In the court's opinion, "even the act of 1846 does not prohibit an express emancipation of a slave in a foreign state by a master resident in Louisiana."[1035] Looking at the plaintiff's appeal brief, it is clear that the court adopted the very subtle distinction that Roselius had identified.

David had failed to note this distinction when arguing on behalf of his clients who had traveled to countries or states where slavery was not lawful. Although an emphasis on the master's express desire to manumit the slave was not a legal argument that would have been available to David in all cases, it could have helped him in cases such as *Tabé v. Vidal* (1847), and *Hélène v. Blineau* (1850), where the former owner had expressly told the plaintiff she could act as if free.[1036] Perhaps it was as opposing counsel in Hélène's case that this argument first occurred to Roselius.

Roselius's emphasis on the right of a deceased white man helps explain why the Supreme Court of Louisiana held in favor of Barclay even though the Supreme Court of the United States had one month earlier opined in *Scott v. Sandford* that descendants of Africans imported as slaves "had no rights which the white man was bound to respect, and the negro might justly and lawfully be reduced to slavery for his benefit."[1037] Botts was not bound to respect the rights of his slave, but this did not preclude him from granting her rights of his own volition. He *might* lawfully enslave her, but this did not mean that he *must* lawfully enslave her.

[1031] Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL*.

[1032] Liza v. Puissant, 7 La. Ann. 80 (1852).

[1033] Similarly, in "The Private Law of Race and Sex: An Antebellum Perspective," *Stanford Law Review* 51, no. 2 (1999): 221–88, Adrienne Davis examines intestate succession and testamentary transfers of property from white slave owners to formerly enslaved black women and their children. Rhetorically, these claims emphasized the "testamentary freedom" of the deceased (250-268). The article reveals that private law and the dead may have played as big a role as public law and the living in the construction of racial and sexual relationships in the antebellum South (223).

[1034] Barclay v. Sewell, 12 La. Ann. 262 (1857).

[1035] Barclay v. Sewell, 12 La. Ann. at 264.

[1036] Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.

[1037] Scott v. Sandford, 60 U.S. at 407.

Chief Justice Roger Taney's core holding was that Dred Scott, as a man descended from Africans, could never be a citizen of the United States and therefore did not have legal standing to sue in a federal court.[1038] In contrast, the Supreme Court of Louisiana never addressed the issue of whether Barclay had standing to sue in a state court. Where the Supreme Court of the United States never arrived at the question of Dred Scott's freedom, the Supreme Court of Louisiana presumed the plaintiff's legal standing and dove right into the "the only question submitted and to be decided by the court: whether the plaintiff has the legal capacity of holding property."[1039] On the eve of the Civil War, it is surprising that of all courts that might presume a former slave's legal standing, it would be the supreme court of a state in the Deep South with the country's largest slave market.[1040]

A Professional Ethics of Dissociation

Roselius was entirely capable of employing the free soil argument when it helped his client. Of course, he did not blatantly present it as a free soil claim, but the fact pattern between David's free soil cases and *Barclay* is strikingly similar. A woman who was a slave in Louisiana was taken to a jurisdiction whose laws did not condone slavery, she was emancipated there, and she returned to New Orleans desirous of continuing to enjoy this change in status. Roselius's switch in roles—between advocate for putative slave owners and advocate for former slaves asserting their freed status—demonstrates that above all he was committed to his clients.

At this time, the field of legal professional ethics was just coming into existence. David Hoffman, known as the founder of this field, disapproved of lawyers who practiced one set of beliefs in their personal lives and another in their professional lives. He reflected that "what is morally wrong, cannot be professionally right."[1041] George Sharswood countered that lawyers should not judge their clients, for that is the province of judges.[1042] Sharswood predicted that if each party to a legal dispute was ensured zealous advocacy, judges would have the best opportunity to arrive at a just outcome.[1043] The evidence suggests that both David and Roselius would have sided more with Sharswood than with Hoffmann, by separating their personal from their professional ethics. This dissociation is known as "role morality."[1044] Although it originated in the 1830's, the Sharswood-Hoffmann debate continues in the legal profession to this day and has not decisively been resolved.

A role misused, John Noonan has argued, is a professional mask. A mask, as opposed to a role, is a "legal construct suppressing the humanity of the participant in the process."[1045] Noonan admonishes legal educators for referring to anonymous plaintiffs and defendants (or worse, P's and D's); judges, for referring not to their personal opinions but to the opinion of "the

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[1038] Scott v. Sandford, 60 U.S. at 405.
[1039] Barclay v. Sewell, 12 La. Ann. at 262.
[1040] Johnson, *Soul by Soul*, 4-6.
[1041] Steiner, *An Honest Calling*, 132 (referring to Hoffmann's *Course of Study* [2d ed., 1836]).
[1042] Steiner, 133 (referring to Sharswood's *A Compound of Lectures on the Aims and Duties of the Profession of Law* [1854]).
[1043] Steiner, 133.
[1044] Steiner, 132–33.
[1045] John Noonan, *Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks* (Berkeley: University of California Press, 2002), 20.

court."[1046] These labels, Noonan argues, function to suppress humanity.[1047] The lesson of his book is perhaps not so surprising to socio-legal historians: that people are participants in the processes that create law. Nevertheless, Noonan's discussion of the distinction between professional roles and professional masks is instructive here. David's assumption of the role of client-advocate was a necessary step in the process of arriving at a just outcome: or at least the desired outcome for the protagonists of this dissertation. Roselius's assumption of the role of advocate led to the desired outcome for his client, the free woman of color Ann Maria Barclay. The dissociation of professional from personal roles allowed Roselius to be a successful lawyer, law professor, and well-respected member of his social group of free white people, even as he advocated for the property rights of a woman of color. By comparison, David's unsuccessful social climbing (particularly his dispute with Dr. Puissant) suggests that he was ultimately less successful in dissociating his professional role from his social one.

Where the assumption of a role promises to lead to a just outcome, the donning of a professional mask runs the risk of arriving at an unjust outcome.[1048] For instance, the young lawyer, Abraham Lincoln hid behind the professional mask of the law. He "troubled and grieved" over the slavery question as far back as 1836, stating that he personally believed slavery to be "morally wrong but constitutionally protected."[1049] However, when Abolitionists in Illinois approached him requesting his legal services to help the formerly enslaved Jane Bryant sue for her freedom on the basis of having resided in Illinois (whose laws did not recognize slavery), Lincoln told the Abolitionists that he could not work for them because he had already counseled the defendant slave-owner Robert Matson.[1050] Thus Lincoln, who would go on to give the Gettysburg Address and issue the Emancipation Proclamation, in 1847 worked with an extreme anti-Abolitionist as co-counsel.[1051] The legal logic he presented in his defense of Matson is the same that Chief Justice Roger Taney would advance in *Scott v. Sandford* (1857), which Lincoln would condemn.[1052]

Conclusion

Understood in the context of the history of the professionalization of legal practice in Louisiana, it can be seen that enslaved plaintiffs had access to better lawyers than at any prior point in the history of freedom litigation in the state. Prior to 1840, professional boundaries were permeable. Laypeople known as attorneys-in-fact might occasionally submit petitions that would result in an individual slave's emancipation. But the record suggests that direct actions by slaves against masters were very rare in this period. The solidification of the state bar by 1840 helps explain why a series of direct actions by slaves against slave owners cropped up during the 1830s and were in full force by the late 1840s. Enslaved people could now access skilled professional attorneys whose duty it was to represent the interests of their clients to the best of their abilities. Although not an illustrious lawyer, Jean-Charles David was nevertheless an attorney at law. A repeat player in the First District Court of New Orleans, he was better versed in legal arguments

[1046] Noonan, 20.
[1047] Noonan, 20.
[1048] Noonan, 20–21.
[1049] Steiner, *An Honest Calling*, 125.
[1050] Steiner, 113.
[1051] Foner, *The Fiery Trial*, 49.
[1052] Foner, 49.

and legal procedure than a layperson who might at an earlier period have emerged as a nonce-lawyer. A newcomer, he produced petitions that revealed less than fluent English and at times want of detail. Nevertheless, his perspective as a French person may explain both his awareness of and his innovative use of French law in American courts.

Emblematic of the defendants' attorneys, Christian Roselius was also an immigrant. Unlike David, he rose in the ranks of Louisiana society to become a renowned jurist, professor of civil law, and law school dean. The responses he drafted as opposing counsel to David, along with his 1854 and 1865 speech, reveal that Roselius viewed law as a tool to uphold social stability and defend slavery. Roselius was consistent in upholding rule of law values. While he excoriated the "unintelligible jargon of the Northern fanatic about *anterior* or *higher* laws,"[1053] he also condemned the Confederates who (in his view) self-destructed when they fired the first shot at Fort Sumter.

Although David's professional work resulted in freedom for many women and girls, he should not be categorized as an anti-slavery lawyer or a cause lawyer. In fact, he traded in human property throughout his recorded time in Louisiana. Instead, his story signifies that before Emancipation, there was money to be had in freeing slaves. Even Roselius, who suggested in his 1854 lecture that the institution of slavery was good for social order, that same year initiated a suit on behalf of a formerly enslaved woman whose status was contested. One month after the *Scott v. Sandford* (1857) holding, the Supreme Court of Louisiana did not even pause to consider rejecting Barclay's suit on the notion that as an African American she could not have standing to sue. Role morality, or a split between personal and professional ethics, further helps explain how enslaved people accessed professional legal representatives.

[1053] Roselius, *Introductory Lecture*, 4.

5. JUDGMENT

Introduction

Having examined claimants, their communities, and their attorneys, I turn to focus on judges and judicial opinions. The structure of this dissertation intentionally reflects the legal process the way that claimants would have experienced it, beginning with their real life situation, then the actual circumstances from which their litigative opportunities arose, then their interactions with attorneys. The most public trace of the legal proceedings under examination, judgement, comes only as the very end of a long, arduous process. In building up to the determination of the plaintiffs' cases in this way, my project is a legal history from below.[1054]

In May 1846, the state legislature passed an act reacting to successful free soil suits, and clearly designed to limit the ability of enslaved persons to sue their former owners on the basis of having been to a nation, territory, or state where slavery was illegal. Nevertheless, between 1847 and 1850, Judge John McHenry of the First District Court of New Orleans continued to hear a total of fourteen claims on this basis (Figure 11). A young upstart, McHenry's judicial appointment had been contentious. Applying the fundamental legal principle against retroactivity of the laws, McHenry found in favor of freedom for Arsène. A flurry of free soil suits followed in his court. McHenry continued to find in favor of freedom for eleven petitioners. These were all women and girls: Arsène, Sally, Milky, Fanny, Tabé, Aimée, Lucille, Aurore, Souri, Hélène, and Eulalie.[1055] With the exception of Eulalie who had been to England, all of these women and girls had traveled to France.

Mary's was a test case and signifies a judicial-legislative divide in antebellum Louisiana on the question of slave transit. McHenry's departure for California in 1850 coincided with the end of the flurry of free soil suits in New Orleans. McHenry's civilian legal training under the Louisiana founding jurist François-Xavier Martin explains McHenry's reverence for the laws of sovereign nations, including France. His prior experience as a criminal defense attorney, as well as his patriarchal values, also help explain why he sided with particular enslaved women and girls. An examination of his complicated and evolving politics of slavery show that although

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[1054] See, e.g., William Forbath, Hendrik Hartog, and Martha Minow, "Introduction: Legal Histories from Below," *Wisconsin Law Review* 1985, no. 4 (1985): 759–66; E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon Books, 1975); Michelle McKinley, *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600-1700* (New York: Cambridge University Press, 2016).

[1055] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1846-1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1847-1848), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1847-1848), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1847-1848), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1849-1850), *NOCA* VSA 290; Eulalie v. Blanc, No. 4904 (1st D. Ct. New Orleans), *NOCA* VSA 290. The remaining three are: Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290 (dismissed); Sarah v. Guillaume, No. 1898 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290 (no extant disposition); Malotte v. Hackett, No. 2712 (1st D. Ct. New Orleans), *NOCA* VSA 290 (no extant disposition). Schafer posits that in *Sarah v. Guillaume* (1848), the enslaved petitioner was sold as a slave out of state as the legal decision was pending. Judith Schafer, *Becoming Free, Remaining Free*, 23.

most of his holdings resulted in freedom for individual petitioners, his opinions should not be interpreted as categorically anti-slavery. A commitment to the rule of law rather than a commitment to ending slavery explains his opinions.

Legislative Protection for the Rights of Slave Owners (1846)

In 1845, the First Judicial Court of Louisiana granted Josephine freedom on the grounds that her mistress, the Widow Poultney, had willingly moved to and established residency in Pennsylvania, a state whose constitution did not recognize slavery.[1056] Approximately one year later, attorneys on either side filed briefs at the Supreme Court of Louisiana.[1057] This delay on the part of both attorneys provided ample opportunity for the public and the legislature to discuss the legal question of whether a slave freed in another territory would still be recognized as free upon return to Louisiana.

While the supreme court was deliberating, the legislature passed an act aiming to settle the legal question. Passage of the act signifies the existence of a power struggle between the legislative and judicial branches of the same slave state. On May 30, 1846, the Senate and the House of Representatives of the State of Louisiana convened in General Assembly to pass an act "to protect the rights of slave holders in the State of Louisiana."[1058] In choosing this title, the members of Louisiana's legislative body unabashedly announced that the law's role was not to abolish or erode slavery but to entrench further the rights of slave owners. The legislature ruled that "no slave shall be entitled to his or her freedom, under the pretence that he or she has been, with or without the consent of his or her owner, in a country where slavery does not exist, or in any of the States where slavery is prohibited."[1059] Governor Isaac Johnson, House Speaker David Randall, and Senate President Trasimon Landry, all members of the Democratic party, signed their names to this law.[1060]

The language of the act reads as a reaction to successful free soil petitions in previous years. His "or her" was not common linguistic usage in the nineteenth century legal world. "His" was implicitly understood to encompass both men and women. But here the legislature found the need to emphasize that this law would apply to enslaved men and women alike. This indicates that the act was a direct reaction to free soil petitions, which tended to be brought by women and girls rather than men.

The Supreme Court of Louisiana (under the leadership of Justice François-Xavier Martin) had already held in favor of women and girls such as Josèphine and Priscilla because they had touched the free soil of France.[1061] Legal professionals at the time suspected that the legislature passed its act in reaction to successful free soil petitions. For instance, Jean-Charles David requested that Jules Remit, who had been a member of the legislature in 1846 and allegedly

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[1056] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*. A.M. Buchanan decided this case at the first instance.

[1057] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*, pp. 1220-21.

[1058] "An Act to Protect the Rights of Slave Holders in the State of Louisiana," 30 May 1846, Louisiana Acts, 163.

[1059] "An Act to Protect the Rights of Slave Holders in the State of Louisiana," 163.

[1060] "An Act to Protect the Rights of Slave Holders in the State of Louisiana," 163.

[1061] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*; Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*. These cases built on the precedent of *Lunsford v. Coquillon*, 2 Mart. (n.s.) 401, and *Louis v. Cabarrus*, 7 La. 170 (both cases where the slave had traveled to Ohio, whose constitution outlawed slavery).

played a leading role in the passage of this act, appear before the First District Court of New Orleans to explain which free soil suit had prompted him to write this law.[1062] Historians since have likewise understood this act as a direct reaction to successful free soil suits.[1063]

Yet almost one month after the legislature passed its act, Chief Justice George Eustis handed down a contrary opinion on Josephine's freedom suit. He affirmed the lower court's decision to declare the plaintiff Josephine free, and condemned the defendant Widow Poultney to pay costs in both courts. He rested his opinion on several different legal grounds. First, Article 9 of the Constitution of Pennsylvania abolished slavery and declared slaves brought into the state and remaining there six months to be free. It also declared slaves brought by persons intending to reside there to be free immediately. Widow Poultney fell into both categories, because she had earlier testified that it was her intent to establish residency in Pennsylvania, and because she remained there for at least two years. Eustis reasoned that the laws of Pennsylvania had operated upon both the personal condition of the slave Josephine and the ownership rights of the mistress Poultney when they acquired residency in Louisiana.[1064] Eustis also relied on three earlier cases decided by the Supreme Court of Louisiana under the leadership of Justice Martin: *Lunsford v. Coquillon* (1824), *Louis v. Cabarrus* (1834), and *Smith v. Smith* (1839).[1065] Together, these cases had established the legal rule that once a slave's personal condition was fixed (that is, had switched from slave to free), that former slave could no longer be reduced to an enslaved condition.[1066] I discuss below the possible reasons why Justice Martin had ruled in this way.

The French Consul in New Orleans, Aimé Roger, noticed a judicial-legislative divide when he reported to the Ministry of Foreign Affairs in Paris on the Act of 1846. Although he had earlier "had the honor" of reporting that the Supreme Court of Louisiana had consecrated the free soil principle, he now remarked that the Louisiana legislature, mostly made up of slave owners, had created a law with the intention of putting an end to successful freedom litigation.[1067] He noted, "tribunals loyal to their precedent have not yet applied this law."[1068]

Judge John McHenry

Judge John McHenry was at the head of one of these tribunals loyal to precedent, the First District Court of New Orleans, where most of the women and girls I examine in previous chapters brought their petitions. Little is written about McHenry in existing literature, perhaps

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[1062] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1063] Judith Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 264, 277–79; Schafer, *Becoming Free, Remaining Free*, 22. Schafer writes that a witness in Mary Guesnard's case testified that "he had authored the Act of 1846 as a result of hearing of the case of Arsène." However, I do not see this in the record. Rather, David asked Jules Remit whether the Act was a reaction to Arsène's case, but this timing does not make sense. Arsène did not even submit her habeas corpus petition to the First District Court of New Orleans until 24 Oct. 1846, five months after the Act of 1846 had been passed into law. Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290. Thus, I use this primary source only to show that lawyers suspected the law was passed in reaction to a freedom suit, but not to Arsène's suit specifically.
[1064] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*.
[1065] Louis v. Cabarrus, 7 La. 170; Lunsford v. Coquillon, 2 Mart. (n.s.) 401; Smith v. Smith, No. 3314, 13 La. 441 (1839), *HASCL*.
[1066] Josephine v. Poultney, No. 5935, 1 La. Ann. 329 (1846), *HASCL*.
[1067] "Correspondence politique des consuls, Etats-Unis," 10 December 1848, *MAE*-Paris 16CPC/2, fol. 150.
[1068] "Correspondence politique des consuls, Etats-Unis," fol. 150.

because his personal and legal papers are found not in Louisiana but in California, where he migrated before the Civil War.

In December 1846, the same governor who had signed the Act to Protect the Rights of Slave Holders in the State of Louisiana offered John McHenry the office of judge of the First District Court of New Orleans. McHenry bragged to his then-fiancée Ellen Josephine Metcalfe that the position was "regarded as being one of the highest Judicial Stations in the State."[1069] In 1846, a new system of courts replaced the first state system which had been in place since Louisiana's accession to the Union as a state in 1813. Under the second state system, which would continue in place until 1880, New Orleans had a system of numbered district courts. Each of the courts had geographic jurisdiction over the entire parish of Orleans, which included New Orleans and immediate surrounding areas.[1070] In theory, each court was to exercise different subject matter jurisdiction. The First District Court had predominantly criminal jurisdiction, as McHenry's letters confirm.[1071] Probate matters were sent to the Second District Court; family matters, to the Third; and all remaining general civil law matters were sent to the Fourth or Fifth District Courts.[1072] Given that the parish of Orleans was one of forty-eight parishes in the state, there is reason to believe that McHenry's statement to his fiancée was something of an exaggeration.[1073] However, it is true that New Orleans was the most important commercial center and the site of the state's supreme court sessions.[1074]

Whether or not the position of First District Court Judge was indeed "one of the highest" in the state, it was certainly a move up for McHenry. He was thirty-seven years old at the time, and had been practicing law as a licensed attorney in New Orleans since at least 1834.[1075] He was clearly ambitious. At twenty-eight, he had already written to President Martin Van Buren inquiring about his application for the vacant judgeship in the U.S. District Court for the District of Louisiana.[1076] This was not the first personal connection he had had to a United States president. In his childhood, he lived next door to General Andrew Jackson's Tennessee plantation, called the Hermitage. Jackson referred to his friendship with McHenry as "long and tried."[1077] All this suggests that McHenry was socially well-connected.

Despite these connections, or perhaps because of them, McHenry's appointment to the bench was far from smooth. He described the "harassing perplexities" of his judicial nomination

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[1069] "Letter, John McHenry to Ellen Josephine Metcalfe McHenry," 17 Dec. 1846, Keith-McHenry-Pond Family Papers, The Bancroft Library [hereafter BANC], MSS C-B 595, Box 15.
[1070] A parish is an administrative area that is roughly the equivalent of a county.
[1071] Ibid; "A Brief Explanation of the Orleans Parish Civil & Criminal Court System, 1804-1926," New Orleans Public Library, City Archives, Special Collections, accessed March 2, 2018, http://nutrias.org/~nopl/inv/courtsystem.htm.
[1072] "A Brief Explanation of the Orleans Parish Civil & Criminal Court System, 1804-1926."
[1073] "Louisiana," 1840-1845, *LRC*, Tulane University, C4-D3-F7 (showing forty-eight counties).
[1074] Schafer, *Becoming Free, Remaining Free*, xviii.
[1075] "Biographical Sketches of John McHenry, Written by Ellen McHenry and Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14; "New Orleans City Directory," 1834, *NOCA*; "Letter, John M. Peltore to John McHenry," 10 Feb. 1835, John McHenry Legal Papers Portfolio, BANC MSS C-B 308.
[1076] "A Copy of a Letter to the President," 16 Sept. 1838, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1077] "Biographical Sketches of John McHenry, Written by Ellen McHenry and Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.

process.[1078] Governor Johnson formally sent his nomination to the state senate on Jan. 15, 1846. Some insisted he was too young for the post, while others smeared his reputation in ways McHenry did not disclose to his then-fiancée Ellen, who as the daughter of a plantation-owning physician and scholar of Classics came from a family with considerable prestige.[1079] In fact, he worried much about how the words of his detractors would affect his marriage prospects with Ellen. Ultimately, he was deemed fit for the post, a "cavalier sans reproche."[1080] By unanimous vote, he was affirmed.[1081]

McHenry's contentious appointment should be understood in a broader political context. In the nineteenth century, the judiciary was under attack as the undemocratic branch of a representative government. A debate raged over whether judges should be accountable to the people directly through popular elections, or indirectly through election or appointment by the state legislature.[1082] Louisiana had chosen the latter for the municipal judges of New Orleans.[1083] Furthermore, McHenry was limited to a term of years.[1084] This meant that he was directly accountable to the legislature, most of whose members owned slaves. There was no structural incentive for him to rush to the aid of society's most oppressed: enslaved women and girls.[1085]

Arsène: An Interpretation in Favor of Liberty

As reviewed in Chapter 3, the case of Arsène (otherwise known as Cora) set off a flurry of freedom suits between 1846 to 1850 in the First District Court of New Orleans. Jean-Charles David, the same attorney who had successfully represented Josephine at the First Judicial District Court of Louisiana in 1845, represented Arsène at the First District Court of New Orleans in 1846-47. (The First Judicial District Court of Louisiana was part of the first state system of courts, which was overhauled in 1846. It should not be confused with the First District Court of New Orleans).[1086] In the petition David wrote for her, Arsène admitted that she had been the slave of the defendant Louis-Aimé Pineguy, but claimed that "she had become free by being taken by her master to the Kingdom of France."[1087] She alleged that the defendant still held her as a slave, and thus applied for a writ of habeas corpus.[1088]

[1078] "Letter, John McHenry to Ellen Josephine Metcalfe McHenry," 11 Feb. 1846, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15 (where McHenry describes his nomination difficulties); "Miscellany," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 16 (on Ellen's father: a physician who had been a scholar of Classics and who owned a plantation).

[1079] "Letter, Mrs. John McHenry to John McHenry," 6 Jan. 1847, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.

[1080] "Letter, Mrs. John McHenry to John McHenry," 6 Jan. 1847, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.

[1081] "Letter, Mrs. John McHenry to John McHenry."

[1082] Robert Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), 131.

[1083] "Letter, John McHenry to Ellen Josephine Metcalfe McHenry," 11 Feb. 1846, Keith-McHenry-Pond Family Papers, The Bancroft Library [hereafter BANC], MSS C-B 595, Box 15.

[1084] "Biographical Sketches of John McHenry, Written by Ellen McHenry and Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.

[1085] "Correspondence politique des consuls, Etats-Unis," 10 December 1848, *MAE*-Paris 16CPC/2, fol. 150.

[1086] "A Brief Explanation of the Orleans Parish Civil & Criminal Court System, 1804-1926."

[1087] Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), *NOCA* VSA 290.

[1088] Arsène v. Pineguy, No. 395.

Arsène's case came before the First District Court of New Orleans in November 1846. It was heard by McHenry's predecessor as judge, Isaac T. Preston. Judge Preston reasoned that Arsène's habeas corpus petition was "substantially a suit for freedom by a person actually in slavery."[1089] Therefore, a writ of habeas corpus was "not the proper remedy in this case."[1090] David had cited to the case of *Lucien Colly v. Charles Kock* to justify submitting a habeas corpus petition on behalf of an enslaved person who usually would have no legal standing. However, Preston had determined based on his own research that Lucien Colly, who had previously been a slave, "was a free man when the imprisonment occurred."[1091] In order to apply for a writ of habeas corpus, the petitioner "must at all events, have been in the actual enjoyment of his [*sic*] freedom before the illegal detention or imprisonment of which she complains."[1092] This switch between male and female pronouns appears in the original source, again demonstrating the prevalence of freedom petitioners who were women and girls, not men and boys. Arsène's enslaved status disabled her from applying for a writ of habeas corpus. However, Judge Preston did not leave Arsène without a remedy. Instead, he opined that, "the application ought to be dismissed, leaving the plaintiff the right to sue for her freedom in a direct action."[1093]

Shortly after Judge Preston penned these words, the court adjourned for winter holidays. In January 1847, McHenry replaced Preston.[1094] Thus when attorney David submitted a new claim on behalf of Arsène, this time as a direct lawsuit against her alleged master, the newly-appointed Judge John McHenry decided the case.[1095] Not only was this one of McHenry's first decisions on the bench, it addressed a contentious social and political issue. In the period 1836-1861, the legality of slavery became an increasingly political issue throughout the United States. This political context further complicated legal questions of slave transit to free jurisdictions.[1096]

McHenry explained that under Louisiana law, an enslaved person "remains in the condition of a slave until her freedom is established by law."[1097] While courts were deciding a petitioner's lawful status, the presumption weighed in favor of slavery, not freedom. During this time, a petitioner would be "incapable of making any contracts but such as relate to her own emancipation."[1098] As support for this opinion, McHenry cited to the *Civil Code of Louisiana*, Article 174.[1099] This provision established Arsène's legal cause of action. To contest her enslavement, and only to contest her enslavement, Arsène could temporarily act as a free person with legal standing in civil matters. Thus freedom suits fell in the area of civil law, not criminal

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[1089] Arsène v. Pineguy, No. 395.
[1090] Arsène v. Pineguy, No. 395.
[1091] Arsène v. Pineguy, No. 395.
[1092] Arsène v. Pineguy, No. 395.
[1093] Arsène v. Pineguy, No. 395.
[1094] "Letter, John McHenry to Ellen Josephine Metcalfe McHenry," 11 Feb. 1846, Keith-McHenry-Pond Family Papers, BANC kMSS C-B 595, Box 15.
[1095] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1846-1847), *NOCA* VSA 290.
[1096] Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Praess, 1981), 16.
[1097] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1846-1847), *NOCA* VSA 290.
[1098] Arsène v. Pineguy, No. 434.
[1099] Edward Livingston, Pierre Derbigny, and Louis Moreau Lislet, eds., *Civil Code of the State of Louisiana* (New Orleans: Printed by J. C. de St. Romes, 1825), 52–53 (reading, "The slave is incapable of making any kind of contract, except those which relate to his own emancipation," and in French, "L'esclave est incapable de toute espèce de contrats, sauf ceux qui ont pour objet son affranchissement.").

law. That David initially submitted Arsène's claim as a habeas corpus petition, and not as a freedom suit, explains why a civil matter ended up in a court that largely exercised jurisdiction over criminal matters.

McHenry formulated the legal issue as such: Should the First District Court of New Orleans establish Arsène's freedom on the basis that her master had taken her "to the Kingdom of France, where neither slavery nor involuntary servitude exists?"[1100] For McHenry, several cases recently decided by the Supreme Court of Louisiana "settled" the following principle:

> The operation of the laws of France upon the personal condition of the Plaintiff and the right of the Defendant by a residence of the parties in France, released the Plaintiff from the dominion which the Defendant had over her person as a slave in Louisiana.[1101]

As support, McHenry cited *Lunsford v. Coquillon* (1824) and *Marie-Louise v. Marot* (1836), but not *Josephine v. Poultney* (1846).[1102]

In deciding the contentious political issue of whether a slave owner's trip abroad would jeopardize his property rights, McHenry applied a fundamental legal principle: no retroactive application of the laws unless otherwise specified by statute. As support, McHenry cited to Article 8 of the *Civil Code of Louisiana*, which read that "a law can prescribe only for the future : it can have no retrospective operation, nor can it impair the obligation of contracts."[1103] One factor in interpreting legal codes is the order in which articles are presented. In a code totaling 3,522 articles, the provision against retroactivity is clearly fundamental to all the other rules that follow.

Arsène was taken to France in 1836, and returned to Louisiana about two years later. The Act Protecting the Rights of Slave Holders was not approved until May 30, 1846. McHenry reasoned, "Its enactment, therefore, cannot affect in the slightest degree, or change the rights accruing to the Plaintiff by her residence in France. A law can prescribe only for the future : It can have no retrospective operation."[1104] Although his decision had the effect of freeing one slave from the dominion of her master, it was not necessarily an anti-slavery argument. Rather, it was a rule of law argument, whereby there could be no retroactive application of laws. This would not only be illegal but also inherently unjust.

McHenry thus had reason to expect that the Supreme Court of Louisiana would affirm his decision, which indeed it did about six months later. Chief Justice Eustis, along with Associate Justices P.A. Rost, George R. King, and Thomas Slidell rejected the defendant's argument that in order to gain freedom through residence in France, Arsène should have to show that her master had acquired domicile there. Even though Pineguy's absence from Louisiana was "but temporary," and he had never lost his original residence in Louisiana, Arsène could sue for her freedom.[1105] The justices exemplified respect for another fundamental legal principle—national sovereignty—when they reasoned, "we cannot expect that foreign nations will consent to the

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[1100] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1846-1847), *NOCA* VSA 290.
[1101] Arsène v. Pineguy, No. 434.
[1102] Lunsford v. Coquillon, 2 Mart. (n.s.) 401.
[1103] Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 4–5 (in French, "La loi ne dispose que pour l'avenir ; elle ne peut avoir d'effet rétroactif, ni altérer les obligations contenues dans les contrats").
[1104] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1846-1847), *NOCA* VSA 290.
[1105] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*.

suspension of the operation of their fundamental laws as to persons voluntarily sojourning within their jurisdiction for such a length of time."[1106]

By setting aside the sojourn/transit distinction that was so crucial in freedom suits elsewhere in the United States at this time, the Supreme Court of Louisiana departed from the general trend of Anglo-American jurisdictions.[1107] The Supreme Court of Louisiana's deference to the fundamental laws of foreign nations contrasts sharply to Chief Justice Roger B. Taney's opinion in *United States v. Garonne* ten years earlier that the French free soil principle was "not material to the decision" of whether the French ships *Garonne* and *Lafortune* had violated the 1808 and 1818 federal statutes prohibiting the importation of slaves when they allowed Widow Marie Antoinette Rillieux Smith to bring her domestic servant Priscilla back to New Orleans as a slave.[1108] For Taney, the deciding factor in these kinds of cases was whether the slave owner intended to establish permanent residency in a jurisdiction whose laws forbade slavery, or was only temporarily passing through.[1109] In contrast, the Supreme Court of Louisiana had held one year earlier that slaves touching the soil of France experienced "immediate emancipation."[1110] That the Supreme Court of Louisiana affirmed McHenry's decision in favor of Arsène demonstrates a local legal culture that ran counter to the prevailing legal opinion handed down by the Supreme Court of the United States.

A Flurry of Freedom Suits Follows

The Supreme Court of Louisiana's affirmation of McHenry's reasoning in Arsène's case helps explain why in cases with similar fact patterns, McHenry simply held in favor of the enslaved petitioner without issuing a detailed account of his reasoning in these decisions.[1111] With a busy case load, it sufficed to write something like,

> for the reasons given in the case of Arsène alias Cora c.w. vs. Louis Pigneguy No. 434, It is therefore ordered, adjudged and decreed that the plaintiff be released from the bonds of slavery, and be deemed free, and it is further ordered that the defendant pay costs of suit.[1112]

[1106] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*.

[1107] See, e.g., *Somerset v. Stewart*, 98 Eng. Rep. 499 (K.B. 1772); and Mark Steiner's discussion in *An Honest Calling: The Law Practice of Abraham Lincoln* (DeKalb: Northern Illinois University Press, 2006) of *Bryant v. Matson* (1847), a free soil case argued in an Illinois county court .

[1108] United States v. Garonne, 36 U.S. 73.

[1109] United States v. Garonne, 36 U.S. at 77.

[1110] Louise v. Marot, 9 La. at 473 (1836).

[1111] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Eulalie v. Blanc, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290. I do not see a record of McHenry's holding in Fanny's case, but the sheriff's order refers to a judgement McHenry issued on May 25, 1848 in favor of Fanny.

[1112] Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.

In keeping with the Supreme Court's ruling in Arsène's case, which corrected McHenry for not granting Arsène backwages, McHenry usually also granted a successful plaintiff back-wages from the date the suit was initiated, to the conclusion of the suit.[1113]

However, the precedent set in Arsène's case was narrow: only slaves who had been to France before May 30, 1846, could benefit from it.[1114] This may explain why attorney David generally represented clients who had been to France before this time. Indeed, all but one of the fourteen freedom petitions that McHenry heard in the First District Court of New Orleans involved plaintiffs who had arrived in a free soil jurisdiction before the passage of the Act Protecting the Rights of Slave Holders (Table 1). Certain plaintiffs, such as Sally, Lucille, and Hélène, may have returned to Louisiana as late as 1847.[1115] This shows that the deciding factor was not when a plaintiff left free soil, but when they first touched free soil.

Mary: A Test Case

Unlike Arsène, Mary had traveled to France after the passage of the Act of May 30, 1846.[1116] Mary's case is particularly well-documented, and I have already made extensive reference to the case in earlier chapters. Chapter 1 uses Mary's case to demonstrate the reasons why slave owners would risk both their property rights in Louisiana and their citizenship rights in France by traveling with slaves. Chapter 2 uses details from Mary's case to assist in reconstructing the lived experience of domestic slaves like her in Paris. Once Mary returned to New Orleans, not one but two free men of color rushed to Mary's aid to help her legally contest her re-enslavement. Her case is therefore a touchstone of Chapter 3, where it shows how a freedom suit mobilized a community. Here in Chapter 5, I will briefly summarize the facts presented in preceding chapters, and then focus on the judicial opinions in Mary's case.

Attorney David would certainly have understood this case for what it meant legally: an opportunity to test the limits of how far the courts would stretch after the passage of the Act of 1846. At the time, David had successfully petitioned for freedom on behalf of five former slaves (Arsène, Sally, Milky, Fanny, and Tabé) in Judge McHenry's court.[1117] Like many of these plaintiffs, Mary had traveled to France with her mistress, who was in poor health. Desperate to escape seasonal disease in the semi-tropical city of New Orleans, Jeanne-Louise Emma De Larsille took the enslaved Mary with her to attend to her during the transatlantic voyage.[1118]

[1113] Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL*. See also, e.g., *Souri v. Vincent*, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.

[1114] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1846-1847), *NOCA* VSA 290; Arsène v. Pineguy, No. 459, 2 La. Ann. 620 (1847), *HASCL* (affirming McHenry's ruling against the retroactive application of the Act of 1846).

[1115] Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.

[1116] Couvent v. Guesnard, No. 1063, 5 La. Ann. 696 (1850), *HASCL*.

[1117] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Sally v. Varney, No. 906 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Milky v. Millaudon, No. 1201 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290; Fanny v. Poincy, No. 1421 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Tabé v. Vidal, No. 1584 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[1118] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

Mary was about eighteen years old at the time.[1119] In Paris, De Larsille, who was the daughter of a prominent lawyer, recorded with a notary her intent to send Mary back to New Orleans to be sold as a slave.[1120]

Mary was sent back, but upon her return the free man of color Bernard Couvent immediately requested that the First District Court recognize him as the ad hoc tutor (or legal guardian) of Mary so that he could petition for her freedom.[1121] A clerk of the court granted the request on 7 December 1847.[1122] The petition that David drew up demanded Mary's freedom, back wages in the amount of $12 per month, and the costs of suit. No doubt recognizing a similar fact pattern to Arsène's, McHenry ordered that for the reasons on record, "the petitioner Mary c.w. be restored to her liberty and that the defendant pay costs of suit."[1123]

However, there is no date on this ruling. The court must not have enforced its ruling, because as early as 17 January 1848, Couvent initiated a second suit on Mary's behalf. Here, the argument in the petition was stronger. As in preceding freedom petitions, David argued that the court should recognize Mary as free "because the slavery [*sic*] is not tolerated in France, and being once free she can not fall again in slavery by her involuntary return from France to New Orleans."[1124] David added that notwithstanding the Act of 1846, Mary was free. He argued that the act was unconstitutional because it impaired the "contract of freedom obtained by the said Mary c.w. in France."[1125] He further asserted that the Act of 1846, which had no effect in France, could not "render slave a person who has been freed in France."[1126] David did not cite a specific article or clause of the United States Constitution, perhaps preferring to refer to a vague principle. Preceding petitions had not addressed the constitutionality of the Act of 1846. Of course, there had been no need to do so, because it had been established that the act could not apply to people who had been to France before May 30, 1846.

In between Couvent's two petitions, a free man of color named Robert Rogers hired David to submit to the same court a different argument on Mary's behalf. Rogers first attested that he was the godfather of Mary, a claim that demonstrates the importance of the church as a forum for legal networking.[1127] The presence of Rogers's signature on the petition attests to his literacy, another factor that enhanced access to justice.[1128] In this petition, David argued that when Mrs. Jeanne Louise Emma De Larsille and her husband Dr. William Guesnard sent Mary, who had been freed by her presence in France, back to New Orleans, they violated the Act of

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[1119] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462.
[1120] "Pouvoir, Jean-Louis de Larsille, avocat et appliquant au juge," 9 June 1812, *AN*-Paris MC/ET/XII/821, Notary Pierre Lienard. "Sale, Jeanne-Louise Emma De Larsille, to Charles Lamarque," 23 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act no. 467 (reproducing a power of attorney notarized by the Parisian notary Cyprien Saint-Hubert Thomassin on 23 November 1847).
[1121] On tutorship, see p. 78 et seq. in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*.
[1122] Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290. Since Mr. and Mrs. Guesnard were still in Paris, Couvent sued their agent, Pierre Lemoine.
[1123] Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1124] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1125] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), NOCA VSA 290.
[1126] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), NOCA VSA 290.
[1127] Rogers v. Guesnard, No. 2362 (1st D. Ct. New Orleans 1848-1849), *NOCA* VSA 290.
[1128] Rogers v. Guesnard, No. 2362 (1st D. Ct. New Orleans 1848-1849), NOCA VSA 290.

1830, which forbade freed slaves from re-entering Louisiana.[1129] Any violator of this law was liable to pay $1000.[1130]

The motive behind the Act of 1830 was, of course, to limit the growth of Louisiana's already sizable free black population.[1131] Here a free person of color was cleverly exploiting a law that was initially designed to oppress. Rogers and David clearly hoped that the court would recognize Mary to be free on the basis of the French free soil principle. Under the Act 1830, they could then sue Mr. and Mrs. Guesnard in a civil lawsuit, or they could ask the District Attorney or Attorney General to initiate a criminal prosecution against the Guesnards for bringing a free person of color into the state. In the case of a civil suit, it is possible that Mary would have been paid $1000. At the time, $1000 would have been more than enough to purchase an enslaved girl like Mary. De Larsille had originally bought Mary, her mother, and her brother for $1200 in 1840.[1132]

McHenry did not issue an order in Mary's case until May 29, 1848.[1133] For a transcription of his entire opinion, see Appendix, Opinion of Judge John McHenry. Unlike cases where the plaintiff had been to France before May 30, 1846, it no longer sufficed to hold summarily that for the reasons in *Arsène v. Pineguy* (1847), Mary was free.[1134] So, despite his busy case load, McHenry wrote a detailed opinion on the distinctions between Mary's case and the preceding freedom petitions. His pace was deliberate; his tone extremely reluctant.

McHenry first asked whether the laws of France had operated upon Mary so as to produce an immediate emancipation. He held that of course they did. After reviewing cases such as *Marie-Louise v. Marot* (1836) and *Arsène v. Pineguy* (1847),[1135] McHenry declared, "it is therefore certain that according to the jurisprudence of Louisiana, as settled by her highest tribunals, the minor Mary c.w. is entitled to her freedom."[1136] Notably, McHenry added the modifier, "as settled by her highest tribunals" so as to underline that this was the state of the law according to the best opinion of the state's courts, although not according to the legislature of Louisiana.[1137]

The defendant's lawyer protested that De Larsille had brought Mary to France after 1846, and had therefore acted under the authority of Act of 1846, which protected her property claim in Mary. McHenry's answer was clear:

> This court feels no hesitation in declaring if the plaintiff by the operation of laws of France upon her personal condition did become free for one moment, then it was neither in the power of her former owner or the legislature of Louisiana to reduce her again to slavery, and any law passed with such a design, is against the plain and obvious principles of common right and common

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[1129] Rogers v. Guesnard, No. 2362 (1st D. Ct. New Orleans 1848-1849), NOCA VSA 290.
[1130] "An Act to Prevent Free Persons of Color from Entering into this State, and for Other Purposes," 16 March 1830, Louisiana Acts, 1830, pp. 90-96.
[1131] Finkelman, *An Imperfect Union*, 211; Schafer, *Becoming Free, Remaining Free*, 6–7.
[1132] "Sale, Emmeline Baylé, Widow of William Hurd Masson, to Emma Delarzille," 23 July 1840, *NONA*, Notary Louis Thimelet Caire, vol. 77a, act no. 462.
[1133] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1134] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[1135] Marie-Louise v. Marot, No. 2914, 9 La. 473 (1836), *HASCL*; Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.
[1136] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1137] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

reason and is null and void.[1138]

However, he continued, if by its act the legislature had intended to take away from the courts their power to decide such cases, it was within their scope of power to do so.[1139] After all, the legislature had established McHenry's court only two years prior.[1140] The Act of 1846, which "denie[d] the right to a person who has once been in a state of slavery to stand in judgment for his or her freedom," clearly "inhibit[ed] the courts of this State from passing upon the merits of such claims."[1141] Where McHenry had clearly been willing to recognize the legal personhood of those slaves who had been to France before 1846, now he felt "constrained" and "compelled" to dismiss the case on the grounds that his court had no authority to pass upon the merits of Mary's claim.[1142]

Although functionally this was the end of Mary's claim to freedom in the First District Court, McHenry did not stop there. Rather, he pontificated on the question raised in Robert Rogers's petition. Could the Act of 1830 help Mary? Having become free in France, but subsequently returned into Louisiana, could Mary (through civil action) or could the state (on her behalf) criminally prosecute the person who had brought her back into Louisiana? Again, McHenry expressed extreme reluctance, observing, "the plaintiff was brought to this state in contravention of this provision of our law, and cannot be legally retained in bondage, but the court under the circumstances can do nothing more than dismiss her claim."[1143]

In his opinion on Mary's case, McHenry employed a rhetorical device that Robert Cover calls "the judicial can't."[1144] The anti-slavery judges Cover examines in his study knew that the results they reached were morally indefensible, but they wished their readers to understand the sense in which they had been compelled to reach it.[1145] This is closely tied to another strategy that nineteenth century anti-slavery judges used when they felt compelled in their professional role to apply a law that conflicted with their personal morality: they ascribed responsibility elsewhere.[1146] Judges such as Joseph Story, who were publicly anti-slavery but conceived of the fugitive slave clause as an indispensable element in the formation of the Union, would portray themselves as helpless to change the laws.[1147] Under the doctrine of separation of powers, they reasoned, it was up to the people through their legislators to overturn unjust laws.[1148] Likewise, McHenry portrayed himself as constrained by a legislature that had passed a clearly unjust law.[1149]

However, it should not be assumed that McHenry believed the law to be unjust because he was categorically opposed to slavery. McHenry's personal and legal papers, which I examine below, demonstrate that his attitude towards slavery was much more complicated than this.

[1138] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1139] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1140] "A Brief Explanation of the Orleans Parish Civil & Criminal Court System, 1804-1926."
[1141] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1142] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1143] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1144] Cover, *Justice Accused*, 119.
[1145] Cover, 119.
[1146] Cover, 236.
[1147] Cover, 236–43; Prigg v. Pennsylvania, 41 U.S. 539 (1842).
[1148] Cover, *Justice Accused*, 236.
[1149] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

After McHenry handed down his decision in Mary's case, David continued to take on freedom petitions, but only on behalf of slaves who had been to France before the passage of the law on May 30, 1846. Between 1848 and 1850, McHenry held in favor of freedom for six more petitioners: Aimée, Lucille, Aurore, Souri, Hélène, and Eulalie.[1150] Unlike Mary, all of these women and girls had first touched free soil before 1846. At the conclusion of Mary's case, David knew exactly where the limits of the law lay.

Mary's Appeal at the Supreme Court of Louisiana

Mary's legal auxiliaries—her tutor, her godfather, and her attorney—did not give up. They appealed to the Supreme Court of Louisiana. There, however, Chief Justice Eustis affirmed McHenry's judgement to dismiss Mary's case.[1151] By the time Eustis handed down his decision in November 1850, McHenry had already departed New Orleans for California. Eustis explained that in cases of slaves traveling to a country of state where slavery does not exist, since the passage of the Act of 1846, the legislation would be "imperative."[1152] Unlike McHenry who deliberated at length before he came to his decision to dismiss Mary's case and condemned the legislation as being "against plain and obvious principles of common right and common reason," Eustis easily deferred to the legislature without any indication of moral qualms.[1153] He asserted, "there can be no question as to the legislative power to regulate the condition of this class of persons within its jurisdiction."[1154] As support for this assertion, he cited several cases from Mississippi.[1155] Because this was jurisprudence handed down by the supreme court of another state, it did not control the Supreme Court of Louisiana. It was merely persuasive authority. That Eustis chose nonetheless to cite the case law of a state where it was more difficult than in Louisiana for slaves to gain freedom on the basis of having traveled to free soil demonstrates that the desire to tighten restrictions on pathways to freedom was now present in Louisiana's courts, and not just in the legislature.[1156]

Eustis explained, "The statute merely enacts and establishes as law the rule laid down by Lord Stowell, in the case of the *Slave, Grace*, determined in the High Court of Admiralty of England."[1157] Eustis had cited the case of the *Slave, Grace* before in *dicta*.[1158] But here it functioned to help him reach his legal decision. The slave Grace James had accompanied her

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[1150] Aimée v. Pluché, No. 1650 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Lucille v. Maspereau, No. 1692 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Aurore v. Décuir, No. 1919 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290; Souri v. Vincent, No. 2660 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Hélène v. Blineau, No. 4126 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290; Eulalie v. Blanc, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.

[1151] Couvent v. Guesnard, No. 1063, 5 La. Ann. 696 (1850), *HASCL*; Conant [*sic*] v. Guesnard, 5 La. Ann. 696; Rogers v. Guesnard, No. 1507, Unreported case (1850), *HASCL*.

[1152] Conant [*sic*] v. Guesnard, 5 La. Ann. 696.

[1153] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[1154] Conant [*sic*] v. Guesnard, 5 La. Ann. at 697.

[1155] These are *Hinds v. Brazeale*, 2 Howard's Miss. Rep. 837, and *Vick v. McDaniel*, 3 Howard's Miss. Rep. 337, cited in *Conant [sic] v. Guesnard*, 5 La. Ann. at 697.

[1156] Paul Finkelman argues in his comparative study that Louisiana was more liberal than Mississippi and Missouri on questions of slave transit Finkelman, *An Imperfect Union*, 216.

[1157] Conant [*sic*] v. Guesnard, 5 La. Ann. at 696.

[1158] Josephine v. Poultney, 1 La. Ann. 329 (1846); Eugénie v. Preval, 2 La. Ann. 180 (1847).

mistress Mrs. Allan from Antigua to England in 1822, resided with her there one year, and had then voluntarily returned with her to Antigua in 1823.[1159] With the support of Abolitionists in both Antigua and England, the Crown prosecuted Mrs. Allan for seizure.[1160] For Lord William Scott Stowell of the High Court of Admiralty of England, the legal question became whether, upon return to Antigua, Grace returned to her original state of involuntary servitude.[1161] He held that she did.[1162] *Somerset* had established long before that so long as slaves resided on English soil, their masters had no authority over them.[1163] No one could force them to return to a place where slavery existed, and they could submit habeas corpus petitions if anyone tried.[1164] However, *Somerset* had left unanswered the question whether, upon return to a slave jurisdiction, slaves could initiate legal suits.[1165] Did they have the legal standing to do so as free persons?[1166] Stowell held that they did not, because the freedom they temporarily enjoyed while residing in England, "totally expired when that residence ceased."[1167]

Stowell presented several rationalizations for this opinion. First, slavery was good for the economy of the British Empire.[1168] Second, the growth of a free black population was "highly dangerous" to the security of that empire.[1169] Finally, like McHenry, Eustis, and the antebellum anti-slavery judges that Cover investigates, Stowell placed responsibility elsewhere: on the legislature.[1170] But where McHenry had clearly done so with a heavy heart, Eustis and Stowell asserted the principle of legislative deference confidently. Stowell declared, "it is a known and universal rule in the interpretation of laws, that that sense is to be put on those laws which is the sense affixed to them by the legislature."[1171] When Stowell examined the laws of Antigua, he found that they had "uniformly resisted the notion that a freedom gained in England continues with return to the colonies."[1172] Of course, this contrasted sharply with the legal culture of Louisiana in the 1820s and 1830s, which emphasized "immediate emancipation,"[1173] that "once perfected, was irrevocable."[1174]

Although Stowell's decision was met with public opposition in England, where Abolitionism was growing, his reasoning continued to grow in popularity among judges in the United States, particularly in the years preceding the Civil War.[1175] This coincides with a broader trend of antebellum courts explicitly renouncing the principle articulated in *Marie-*

[1159] The Slave, Grace, 2 Hagg. 94 (High Ct. Admiralty 1827).
[1160] Stephen Waddams, "The Case of Grace James (1827)," *Texas Wesleyan Law Review* 13 (2007-2006): 783–94.
[1161] The Slave, Grace, 2 Hagg. at 94.
[1162] The Slave, Grace, 2 Hagg. at 94.
[1163] Somerset v. Stewart, 98 Eng. Rep. 499.
[1164] Somerset v. Stewart, 98 Eng. Rep. 499; reaffirmed in The Slave, Grace, 2 Hagg. at 106; 117.
[1165] Somerset v. Stewart, 98 Eng. Rep. 499; reaffirmed in The Slave, Grace, 2 Hagg. at 110.
[1166] The Slave, Grace, 2 Hagg. at 110.
[1167] The Slave, Grace, 2 Hagg. at 101.
[1168] The Slave, Grace, 2 Hagg. at 115.
[1169] The Slave, Grace, 2 Hagg. at 116.
[1170] Cover, *Justice Accused*, 236.
[1171] The Slave, Grace, 2 Hagg. at 125.
[1172] The Slave, Grace, 2 Hagg. at 124.
[1173] Louise v. Marot, 9 La. at 476. See also *Lunsford v. Coquillon*, 2 Mart. (n.s.) 401; *Louis v. Cabarrus*, 7 La. 170; *Smith v. Smith*, 13 La. 441 (1839); Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 220–88.
[1174] Art. 189 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 29.
[1175] Waddams, "The Case of Grace James (1827)."

Louise v. Marot (1836), that jurists should always interpret the law so as to favor liberty.[1176] Where in *Marot* the Supreme Court of Louisiana had deferred to the laws of France in order to reach an outcome favoring liberty, here in *Couvent* the court switched to a deference to English law in order to restrict Mary's personal liberty.

With the stroke of a pen, Chief Justice Eustis deployed violence.[1177] As I discuss below, Eustis would later side with the Confederates during the Civil War. Although law is often understood as a nonviolent solution to social disputes, this is a striking example of what Robert Cover calls the violence of the word.[1178] Mary's life changed dramatically after this. Six months after Eustis penned these words, Mr. and Mrs. Guesnard, who were still in Paris, arranged for their agent Pierre Lemoine to sell Mary to the professional slave broker Charles Lamarque, Jr. for $450.[1179] Eight days later, Lamarque sold her for $740. That Lamarque made a profit of $290 in just over one week demonstrates that the Guesnards gladly rid themselves of Mary at a lesser amount than they could have sold her for. Mary was sold "fully guaranteed against the vices and maladies prescribed by law and free from all incumbrance in the name of said Seller."[1180] That Mary had traveled to France where slavery was not tolerated, was no longer an encumbrance to slave owners under the laws of Louisiana.

The switch from deference to French law, to deference to English law, carried with it other restrictions: not only for slaves, but also for women. In *Smith v. Preval*, the question was whether the slave owner Rosalba Preval (who had left Louisiana for France in May 1830 with her slave Eugénie) would be subject to the laws of France, or to the laws of Louisiana. Once in France, Preval had married Adolphe Faure, an officer in the French army. She later returned to New Orleans, but Eugénie followed only in 1838. Eustis concluded that Preval had agreed to subject herself to the laws of France by taking up residence and domicile there.[1181]

From Eugénie's point of view, this would have been a successful outcome. However, this was a restrictive precedent. Although it resulted in freedom for the individual slave in this case, not all slaves traveling to France would find themselves in the lucky situation that their mistresses would marry French men, thereby explicitly indicating that they had subjected themselves to French laws. More than establishing or protecting the rights of slaves, the reasoning restricted the rights of women to own property. *Smith v. Preval* (1847) therefore demonstrates tightening limitations on white women's rights to own separate property—a right that became especially precarious if they established residency in foreign nations.

A Judicial-Legislative Divide

Mary's case signifies a judicial-legislative divide. In it, McHenry confidently declared that "according to the jurisprudence of Louisiana, *as settled by her highest tribunals* [emphasis

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[1176] Louise v. Marot, 9 La. 473; Cover, *Justice Accused*, 62; 96-99.
[1177] Robert Cover, "Violence and the Word," *Yale Law Journal* 95 (1986): 1601–30.
[1178] Cover.
[1179] "Sale, Jeanne-Louise Emma De Larsille, to Charles Lamarque," 23 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act no. 467.
[1180] "Sale, Charles Lamarque Jr to Casimir Villeneuve," 31 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act 493.
[1181] Smith v. Preval, 2 La. Ann. 180.

added], the minor Mary c.w. is entitled to her freedom."[1182] He then excoriated the Louisiana legislature for taking away from Mary her right to sue in Louisiana courts, a power grab that was "against plain and obvious principles of common right and common reason," and should be "null and void."[1183] Schafer describes the state supreme court as "clearly reluctant" and "obviously disgruntled," but this confuses the supreme court decision with that of McHenry in the district court.[1184] There is a major difference in the tone of the two opinions. Although McHenry at the district court was clearly reluctant to rule against Mary, Eustis at the supreme court exhibited no hesitation in deferring to the legislature.

Legislative opposition to McHenry was evident from the very beginning of his ascent to the bench. His fiancé Ellen wrote to him,

> Had your enemies succeeded in their nefarious designs, and defeated your appointment, they could not have changed you *[sic]* principles or upright integrity of purpose….The kind heart, the cultivated and upright principles, which I believe you, dearest, to possess, are not dependant [*sic*] on the whims and caprices of Governors or Legislators.[1185]

Clearly, Ellen admired McHenry for an unwavering commitment to principles of justice, just as she derided legislators for their whims and caprices.

In contrast to judicial rulings protecting the manumission rights of slaves, the Act of 1846 was clearly an effort to shut down lawful pathways to freedom. This fits into a broader context of hardening laws on slavery. For instance, in 1830 freed slaves were to be sent out of Louisiana; by 1857 all emancipations were prohibited.[1186] By the eve of the Civil War, Louisiana was no longer the relative liberator of individual slaves it had once been.[1187]

Still, we should not put McHenry on the extreme opposite of the pro/anti-slavery political spectrum. In Louisiana, legislators and jurists alike endorsed slavery, but where legislators sought to preserve the institution through stricter and stricter laws, jurists like John McHenry and Christian Roselius effectively preserved the institution by safeguarding outlets for some. Perhaps they reasoned that this would make the institution more durable in the long-run.[1188]

[1182] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1183] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1184] Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 277–79.
[1185] "Letter, Ellen McHenry to John McHenry," 28 February 1847, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1186] "An Act to Prevent Free Persons of Color from Entering into this State, and for Other Purposes," 16 March 1830, Louisiana Acts, 1830, pp. 90-96. "An Act to Prohibit the Emancipation of Slaves," Act of 6 March, 1857, Louisiana Acts, p. 55. For a precise overview of all the relevant laws, see "Laws Governing Slavery and Manumission" in Schafer, *Becoming Free, Remaining Free*, 1–14. For a comprehensive chronology, see Vernon Palmer, *Through the Codes Darkly: Slave Law and Civil Law in Louisiana* (Clark, N.J.: The Lawbook Exchange, 2012).
[1187] Finkelman, *An Imperfect Union*, 216; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 288.
[1188] Frank Tannenbaum, *Slave and Citizen* (Boston: Beacon Press, 1992); Alejandro de la Fuente, "Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited," *Law and History Review* 22, no. 2 (2004): 339.

McHenry Departs for California

The last freedom suit McHenry decided was *Eulalie v. Blanc* (1850). Since Eulalie had been to free soil before 1846, this was an easy decision with the same stock reference to "the reasons delivered in the case of *Cora alias Arsène vs. L.A. Pigneguy*."[1189] By this time, McHenry had made enemies in Louisiana. He wrote to his wife, "the order of arrest issued against me, after a little contest I succeeded in having it set aside, to the great discomfiture of some of my enemies."[1190] It is unclear whether the reason for his arrest had anything to do with his judicial decisions. It is possible that the order for his arrest stemmed from creditors, as McHenry explains in the next sentence, "I have settled with Messrs Maunsel White & Co. and with nearly all, to whom I am in any manner indebted, but I am without money."[1191]

On 26 June, McHenry was still in New Orleans, but by 22 July, he was on a boat to San Francisco.[1192] He sought both fame and fortune in California. His father-in-law, who was already in California similarly in pursuit of the fortune he had lost, observed,

> As to the question of Mr. McHenry being made Chief Justice, in case he comes to California, I can only say, that I think he is one of those go ahead sort of men, who are most apt to become Chiefs in whatever business they engage in, but everything in California depends on chance, and no one can tell today what tomorrow will bring forth.[1193]

In California, McHenry's worldly fortune gradually increased. A venture in the importation of prefabricated housing undertaken with James Van Ness and Mr. Rutherford yielded disappointing results, leaving him with a net profit of $500 on an original investment of $6,700.[1194] In August 1850, he abandoned his friendship and business partnership with Mr. Rutherford, and instead posted a sign outside a rented office in San Francisco where he could begin practicing law.[1195] By the end of September, he had already made $700 and was able to rent a room at San Francisco's most luxurious hotel, the St. Francis.[1196] This contrasts favorably to his days as a young judge in New Orleans, when he warned his fiancée, "I am without fortune, yet I hope to be able to provide for you."[1197]

[1189] Eulalie v. Blanc, No. 4904 (1st D. Ct. New Orleans 1850), *NOCA* VSA 290.
[1190] "Letter, John McHenry to Ellen McHenry," 15 June 1850, Keith-McHenry-Pond Family Papers BANC MSS C-B 595, Box 15.
[1191] "Letter, John McHenry to Ellen McHenry," 15 June 1850, Keith-McHenry-Pond Family Papers BANC MSS C-B 595, Box 15.
[1192] "Letter, Ellen McHenry to John McHenry," 26 June 1850, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14; "Letter, John McHenry to Ellen McHenry," 22 July 1850, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.
[1193] "Letter, Asa Baldwin Metcalfe to Ellen Metcalfe McHenry," 30 Dec. 1849, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 16.
[1194] "Letters, John McHenry to Ellen McHenry," 22 July 1850, 31 Aug. 1850, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.
[1195] "Letter, John McHenry to Ellen McHenry," 31 Aug. 1850, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.
[1196] "Letter, John McHenry to Ellen McHenry," 29 Sept. 1850, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.
[1197] "Letter, John McHenry to Ellen McHenry," 24 Feb. 1847, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.

Once in California, McHenry was reportedly called upon to help frame the constitution of the new state.[1198] His dream of becoming Chief Justice of the Supreme Court of California never did come to fruition. He practiced in the areas of commercial law, estate planning, probate, property law, and tax law, property law—clearly a career shift away from criminal law.[1199] In 1868, he retired from the practice of law, selling thousands of his legal books at public auction.[1200] However, he maintained social ties with esteemed figures of the San Francisco legal scene, such as Judge Serranus Clinton Hastings, founder of the Hastings College of the Law.[1201]

Upon his death, even "men who differed widely from him in politics and policies" eulogized him.[1202] Judge C.T. Botts proclaimed,

> He possessed a vigorous and highly cultivated intellect, and he pursued the cause he espouses (which to his mind, at least, was always the cause of justice) with an earnestness, a zeal, and an ardour seldom equaled, and never, in my opinion, surpassed.[1203]

Rev. Dr. William Scott, who had fled Louisiana during the Civil War and proclaimed that, "Jefferson Davis was no more a traitor than George Washington," officiated McHenry's funeral.[1204] McHenry is buried at Mountainview Cemetery in Oakland, California.

Liza: The End of a Flurry of Free Soil Suits

After McHenry's departure, attorney Jean-Charles David submitted a new freedom petition to the First District Court on behalf of the slave Liza. Liza's claim would have been successful in McHenry's court. Liza had been to France well before 1846, in 1820 or 1821. However, McHenry's successor John C. Larue quickly rejected the claim that Liza "became free by setting her foot on French soil."[1205] In a sharp departure from previous cases, he stated that the key question was whether the slaveowner had intended to establish domicile in the nation

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[1198] "Biographical sketch by Judge C.T. Botts, addressing the U.S. Circuit Court on McHenry's death," 1880, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14. Although McHenry's name does not appear as a signatory to the Constitution of California (1849), C.T. Botts's does, so it is mildly credible that Botts had consulted with McHenry informally, but it must have been before McHenry's arrival in California.
[1199] "Receipts," 1846-1877, John McHenry Legal Papers, Box 1, BANC MSS C-B 308.
[1200] "John McHenry—papers re: his law library," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1201] "Biographical Sketches of John McHenry, Written by Ellen McHenry and Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14; "McHenry Family—Invitations," Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1202] "Biographical Sketches of John McHenry, Written by Ellen McHenry and Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1203] "Biographical sketch by Judge C.T. Botts, addressing the U.S. Circuit Court on McHenry's death," 1880, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1204] "Dr. Scott, of California, Rev. Dr. Scott," 18 Oct. 1861, *The New York Times*; "Biographical Sketches of John McHenry, Writoten by Ellen McHenry and Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1205] Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290.

where slavery did not exist. He found that Liza's owner at the time had gone to France with a specific purpose: not to establish residency, but to pick up his wife and relations there. He did not linger in France any longer than was absolutely necessary to accomplish this purpose. Larue reasoned that "as Louisiana was not at that time a French colony," he could not even "acknowledge" the laws of France on the subject of slavery.[1206] Instead, Larue turned to the case of the *Slave, Grace* to support his assertion that "the mere fact of her having been there, [would not] work such a permanent change in her status."[1207] Larue also cited *Commonwealth v. Aves* (1836) and *Strader v. Graham* (1850) as support for the general principle that "the laws regulating the status of the individual are confined to the territory over which they are operative, and the laws of France should have no more effect in emancipating a slave in Louisiana."[1208]

David and his client would no doubt have been surprised at the outcome of this case: Liza's was a stock claim. But upon appeal, the Supreme Court of Louisiana affirmed Larue's decision. Writing for the court, Associate Justice Pierre Adolphe Rost affirmed Larue's emphasis on the length of the master's stay, as well as Larue's reliance on Anglo-American jurisprudence.[1209] In a concurring opinion, Chief Justice Eustis stated his reasons for departing from *Marie-Louise v. Marot* (1836) and related cases, which had established the principle of immediate emancipation.[1210] He explicitly placed blame on Chief Justice François-Xavier Martin for faulty reasoning in *Smith v. Smith* (1839).[1211] Although Eustis would have reached the same decision in favor of Priscilla's freedom, it was not because the laws of France were at all relevant, but merely because Mrs. Smith had no intention of returning to Louisiana, where slavery was recognized.[1212]

Liza's case was a major turning point in the Supreme Court of Louisiana's jurisprudence on slavery.[1213] It was the first time the court had applied the Act of 1846 retroactively.[1214] It also signifies a growing harmonization of Louisiana jurisprudence with the Supreme Court of the United States.[1215] No longer did the court adhere to another nation's legal principle (which of course, it had no obligation to follow). Instead, the court looked to the binding authority of the Supreme Court of the United States that it had previously disregarded in *Smith v. Smith* (1839), and to persuasive authority from the English common law state of Massachusetts.[1216]

Eustis's opinion in this case has been described as a nearly inexplicable departure from his previous opinions.[1217] Indeed, Eustis engaged in "judicial cheating" typical of other

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[1206] Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290.
[1207] Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290.
[1208] Liza v. Puisant, No. 5632 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290; Commonwealth v. Aves, 35 Mass. 193 (1836); Strader v. Graham, 51 U.S. 82 (1850).
[1209] Liza v. Puissant, 7 La. Ann. at 81.
[1210] Liza v. Puissant, 7 La. Ann. at 80; Louise v. Marot, 9 La. at 473.
[1211] Liza v. Puissant, 7 La. Ann. at 82; Smith v. Smith, 13 La. at 441.
[1212] Liza v. Puissant, 7 La. Ann. at 82.
[1213] Helen Catterall, *Judicial Cases Concerning American Slavery and the Negro* (Washington, D.C.: Carnegie Institution of Washington, 1926), vols. 3, 389–391; Finkelman, *An Imperfect Union*, 212–14; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 277–88; Schafer, *Becoming Free, Remaining Free*, 27–28.
[1214] Finkelman, *An Imperfect Union*, 214; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 279.
[1215] Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 287; Schafer, *Becoming Free, Remaining Free*, 28.
[1216] Smith v. Smith, 13 La. at 441; Commonwealth v. Aves, 35 Mass. 193.
[1217] Finkelman, *An Imperfect Union*, 213.

antebellum judges on questions relating to slavery.[1218] The emphasis on the length of the master's stay was a sharp departure from the immediate emancipation precedent, but Eustis cast his opinion here as consistent with his previous opinions in *Josephine v. Poultney* (1846), *Arsène v. Pineguy* (1847), and *Smith v. Preval* (1847).[1219] In fact, it was not. It was consistent with Anglo-American jurisprudence from other jurisdictions, but not with the court's own line of reasoning.

McHenry's departure from the bench adds another layer of explanation. Although of course Eustis was never bound by McHenry's opinions, McHenry's receptiveness to freedom petitions led to circumstances in which a community could mobilize to push freedom petitions through the courts. McHenry's precise articulation of the Supreme Court of Louisiana's principle of immediate, irrevocable emancipation, and his refusal to apply the Act of 1846 retroactively, would have been difficult to overturn with professional integrity.[1220] But when a new first-instance judge presented Eustis with different reasoning, based on Anglo-American common law rather than French and international law, Eustis seized the opportunity to affirm a new set of rules on slavery and freedom. In addition to symbolizing a harmonization with the Supreme Court of the United States, in other words, Eustis's decision signified a growing Anglicization of Louisiana law. This is part of a general trend in Louisiana legal history.[1221] But of course complete Anglicization was never achieved, because Louisiana to this day is a mixed civil law-common law jurisdiction. After this blow, David took no more free soil suits to the First District Court. A sparse number of freedom petitions made it to the First, Third, Fourth, and Fifth District Courts after this time, but different attorneys represented the claimants.[1222]

Explaining McHenry's Opinions

McHenry's Civilian Legal Training

Judges who see themselves as captives of the law decide which laws are inviolable principles, and which laws are mere rules bendable for achieving the law's greater purpose. For California judges hearing the cases of Chinese petitioners, Anglo-American principles of habeas

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[1218] Cover, *Justice Accused*, 6.

[1219] Liza v. Puissant, 7 La. Ann. at 82; Arsene v. Pigneguy, 2 La. Ann. 620 (1847); Josephine v. Poultney, 1 La. Ann. at 329; Eugénie v. Preval, 2 La. Ann. at 180.

[1220] Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

[1221] For the classic clash of cultures thesis, see George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions* (Cambridge: Harvard University Press, 1975); Judith Schafer and Warren Billings, *An Uncommon Experience: Law and Judicial Institutions in Louisiana, 1803-2003* (Lafayette: University of Southwestern Louisiana, 1997), 6; For revisions which seek to see Louisiana as more than "exotic or curiously amusing," see Mark Fernandez, *From Chaos to Continuity: The Evolution of Louisiana's Judicial System, 1712-1862* (Baton Rouge: Louisiana State University Press, 2001).

[1222] Louisa v. Giggo, No. 6020 (1st D. Ct. New Orleans 1851), *NOCA* VSA 290 (represented by R.C. Me. Alpasse); Haynes v. Fornozals, No. 7091 (1st D. Ct. New Orleans 1852), *NOCA* VSA 290; Ajoie v. De Marigny, No. 10,443 (4th D. Ct. New Orleans 1856), *NOCA* VSA 290 (represented by Lewis Duvigneaud (Durigneaud)); Paine v. Lambeth, No. 2884 (5th D. Ct. New Orleans 1857), *NOCA* VSA 290; Barclay v. Sewell, No. 4622, 12 La. Ann. 262 (1857), *HASCL* (represented by Christian Roselius, on appeal from the Second District Court of New Orleans). For the case of Lucy Brown (1853), see Schafer, *Becoming Free, Remaining Free*, 29.

corpus and evidentiary standards were sacrosanct.[1223] For McHenry, the laws of France stood superior to both the individual rights of Louisiana property owners, and to the power of the Louisiana legislature.[1224] Why was McHenry particularly influenced by the laws of France?

McHenry's last name does not suggest any personal connection to French culture. However, he received his legal training under the personal tutorship of François-Xavier Martin, at whose home he lived while studying law.[1225] Martin is today remembered as a founding jurist of Louisiana who helped synchronize the state's many legal cultures.[1226] His cosmopolitan life experience helps explain why he was particularly well-suited for this task. Born in 1762 in Marseille to an established Provençal family, Martin learned Latin and studied Classics early in life. At about the age of eighteen, he moved to the French colony of Martinique to join his uncle on a business venture. The venture failed and Martin left Martinique destitute. He migrated to North Carolina, where he opened a printing press.[1227]

Martin later studied law under the tutorship of Abner Nash and William Gaston.[1228] In 1832, Gaston delivered an address to the graduating students of the University of North Carolina, urging them to take action against slavery. In 1833, Gaston was appointed to the Supreme Court of North Carolina.[1229] Alfred Brophy argues that Gaston's jurisprudence signifies an "alternative vision of slavery" within Thomas Ruffin's own time and place.[1230] Martin's course of study under Gaston helps explain why he too wrote decisions which limited the power of slave owners.

Martin's training in a common law jurisdiction, along with his fluency in French made him an attractive judicial candidate for the Territory of Orleans, a post to which President James Madison appointed him in 1809. He sat on the court for thirty years, through Louisiana's transition to statehood. Between 1836 and 1846, he served as the presiding judge of the court. He developed a clear expertise on the conflict of laws, otherwise known as choice of laws. This was an issue that arose perhaps more often in Louisiana than any other state because of its status as a mixed common-civil law jurisdiction. Upon his death, Martin was recognized as the eminent jurist whose decisions "threw great light upon the subject" of conflict of laws.[1231]

In American history, choice of law questions frequently arose in disputes concerning slaves.[1232] It has been argued that "courts were the principal forms in which societal values

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[1223] Lucy Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995), 91–92.
[1224] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1225] "Biographical Sketches of John McHenry, Written by Ellen McHenry and Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1226] Glenn Conrad, *A Dictionary of Louisiana Biography* (New Orleans: Louisiana Historical Association, 1988), 1:551; Fernandez, *From Chaos to Continuity*; Janice Shull, "Francois-Xavier Martin," ed. David Johnson, *Encyclopedia of Louisiana* (Louisiana Endowment for the Humanities, November 4, 2014), http://www.knowlouisiana.org/entry/franois-xavier-martin.
[1227] Bullard, Henry Adams, "A Discourse on the Life, Character, and Writings of the Hon. François Xavier-Martin," in *Historical Collections of Louisiana*, ed. Benjamin Franklin French, vol. 2 (New York: Wiley and Putnam, 1846), 3–40.
[1228] Bullard, Henry Adams; Janice Shull, "Francois-Xavier Martin."
[1229] Alfred Brophy, *University, Court, and Slave: Pro-Slavery Thought in Southern Colleges and Courts, and the Coming of Civil War* (New York: Oxford University Press, 2016), 206.
[1230] Brophy, 206.
[1231] Bullard, Henry Adams, "A Discourse on the Life, Character, and Writings of the Hon. François Xavier-Martin," 29.
[1232] Note, "American Slavery and the Conflict of Laws," *Columbia Law Review* 71 (1971): 75.

concerning slavery were expressed."[1233] There were two situations where conflict of laws questions typically arose within the context of slavery: 1) a slave owner had spent time in a jurisdiction where slavery was not legal and the slave brought a freedom suit; 2) a slave owner had willingly manumitted a slave in a free state, for some reason the promise had not been carried out, and the former slave brought suit to enforce that manumission.[1234] In the antebellum United States, the authoritative source on choice of laws tended to be Joseph Story's *Commentaries on the Conflict of Laws* (1834).[1235] In this treatise, Story directly addressed the question of slave transit, concluding that slaves traveling to free territory were subject to the laws of that territory and therefore enjoyed freedom while there.[1236] He implied that this freedom, however, was merely temporary: a "parenthesis," much as it had been for Lord Stowell in the case of the *Slave, Grace*.[1237]

Although the Louisiana Supreme Court eventually adopted this line of jurisprudence, it is clear that Martin was well-read in alternative approaches. In continental Europe, a major guidepost for conflict of laws was the experience of the Holy Roman Empire. When it dissolved in the fourteenth century, certain principles arose to guide legal decision-makers. Divine law and natural law came to be seen as superior, universally applicable legal sources. Under natural law, slavery was abhorrent. Roman law (particularly as codified in *Justinian's Institutes*), was persuasive authority. The law of nations came next on the hierarchy. Finally, there was municipal, national, and state law. In this tradition, natural law could negate municipal laws on slavery.[1238] But in the Anglo-American legal tradition, "concepts of 'natural law' and 'law of nations' were weak weapons with which to attack the institution [of slavery.]"[1239]

It is unclear when McHenry studied with Martin, but it must have been before 1834, at which time McHenry had already opened his own law practice in New Orleans.[1240] McHenry's legal training under this leading civilian is reflected in his law library. Although McHenry sold most of the thousands of volumes his law library in 1868, a catalogue of a remnant of his library shows a significant representation of books on civil and international law, such as the *Code Napoleon or French Civil Code* (New York: 1841), the *Institutes of Justinian* (1841), and Henry Wheaton's *Elements of International Law* (Philadelphia: 1836).[1241]

The slave transit cases for which Martin wrote the opinion, such as *Lunsford v. Coquillon* (1824), *Louis v. Cabarrus* (1834), and *Smith v. Smith* (1839), show deference not only to the laws of slavery in France, but also in other American states.[1242] Compared to judges deciding slave transit cases in other states, Martin took the comity of nations to another level. For Martin, respecting the laws of other jurisdictions was more than a mere courtesy: it was the solemn obligation of any jurisdiction participating in a smoothly functioning system of interstate or

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[1233] Note, 75.
[1234] Note, 75.
[1235] Note, 76.
[1236] Chapter 4, Section 96 in Joseph Story, *Commentaries on the Conflict of Laws, Foreign and Domestic* (Boston: Hilliard, Gray, and Company, 1834), 92–93.
[1237] Chapter 4, Section 106 in Story, 98–99; The Slave, Grace, 2 Hagg. at 131.
[1238] Note, "American Slavery and the Conflict of Laws," 80–85.
[1239] Note, 87.
[1240] "New Orleans City Directory," 1834, *NOCA*.
[1241] "John McHenry—papers re: his law library," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1242] Lunsford v. Coquillon, 2 Mart. (n.s.) 401; Louis v. Cabarrus, 7 La. 170; Smith v. Smith, 13 La. 441.

international law.[1243] Martin was also on the court when Chief Justice Mathews decided *Marie-Louise v. Marot* (1836), the case that established the obligation of Louisiana courts to recognize a slave's "immediate emancipation" upon touching free soil.[1244]

All of these cases show that as long as Martin was on the court, the Supreme Court of Louisiana embraced a distinct jurisprudence on slave transit that stood in sharp contrast to the more restrictive laws of Anglo-American jurisdictions.[1245] As Lord Stowell observed in the case of the *Slave, Grace* (1827), "France did not therefore do as [England] had done, put their liberty, as it were, in a sort of parenthesis."[1246] In Martin's Supreme Court of Louisiana, the freedom that slaves had experienced in France would not be treated as temporary or fleeting, but as permanent and irrevocable.[1247] Judge McHenry's training under Martin contextualizes his special deference to the laws of France.

Like McHenry, Martin's opinions on race-related questions suggest that his decisions in favor of freedom claimants was dictated more by his rule of law commitments–in his case to international law–than to aiding slaves. In *Adelle v. Beauregard* (1810), the court drew a distinction between "persons of color," who "may have descended from Indians on both sides, from a white parent, or mulatto parent," and persons of purely African descent.[1248] Persons of color were presumed to be free—a principle that many Southerners at the time derided as too liberal, and scholars today interpret as progressive.[1249] But this is an incomplete interpretation, for it was accompanied by the presumption that persons judged to be purely of African descent—that is, persons with a darker complexion—were presumed to be slaves. The court further hardened this racial dividing line when it reasoned in *Miller v. Belmonti* (1845) that, "Slavery itself is an exception to the condition of the great mass of mankind, and except as to Africans in the slave-holding States, the presumption is in favor of freedom."[1250] The principle of *in favorem libertatis* has deep roots in both Roman law and canon law.[1251] Martin authored neither *Adelle* nor *Miller*, but was on the court when they were decided.

Martin's decisions in race and slavery cases may have impelled the Louisiana legislature to search for a way to be rid of him. Shortly after the controversial *Miller v. Belmonti* decision in 1845, a new constitution was adopted. It dissolved the court, reinstituting it almost immediately without Martin as a member. Always a man who had lived to work, he now had little to live for and died shortly thereafter.[1252] Nevertheless, there are other possible explanations for Martin's ouster. His management style was both idiosyncratic and inefficient. He insisted upon meeting

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[1243] Finkelman, *An Imperfect Union*, 209.
[1244] Louise v. Marot, 9 La. at 476.
[1245] See, e.g., Commonwealth v. Aves, 35 Mass. 193; Prigg v. Pennsylvania, 41 U.S. 539.
[1246] The Slave, Grace, 2 Hagg. at 131.
[1247] Art. 189 in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*.
[1248] Adelle v. Beauregard, 1 Mart. (o.s.) 183 (1810).
[1249] John Bailey, *The Lost German Slave Girl: The Extraordinary True Story of Sally Miller and Her Fight for Freedom in Old New Orleans* (New York: Atlantic Monthly Press, 2005); Carol Wilson, *The Two Lives of Sally Miller: A Case of Mistaken Racial Identity in Antebellum New Orleans* (New Brunswick: Rutgers University Press, 2007).
[1250] Miller v. Belmonti, 11 Rob. 339 (1845). For a critical interpretation of the decision focusing on how Sally Miller won her freedom by successfully performing the trope of white womanhood in court, see Ariela Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South.," *Yale Law Journal* 108, no. 1 (1998): 166–71.
[1251] Finkelman, *An Imperfect Union*, 187–90.
[1252] Janice Shull, "Francois-Xavier Martin."

litigants in person at a time when appellate courts were moving away from this tradition. This may have led to a better emotional understanding of the dispute, and is also understandable when we consider that Martin was functionally blind from at least 1836.[1253] However, along with the financial crisis of 1837, Martin's insistence upon trial-style deliberations led to a hopeless backlog of cases. In 1839, every judge except Martin abandoned the court. Four others were eventually recruited, but with the exception of Henry Bullard who had studied at Harvard School of Law, they were not among the top lawyers in the state.[1254]

Whatever the reasons for Martin's ouster, both his and McHenry's departures from the Louisiana legal scene signify a growing Anglicization of Louisiana legal culture, which coincided with a closure of pathways to freedom. It was the newly reconstituted court that reversed Martin's decisions honoring the freedom of French soil, first in *Couvent v. Guesnard* (1850) and then in *Liza v. Puissant* (1852).[1255] Unlike Martin, the new presiding justice of the court, George Eustis, was Boston-born, Harvard-educated, and sided with the Confederacy during the Civil War.[1256] Eustis had served as associate justice on the court between 1838 and 1839, but he abandoned Martin's court in 1839.[1257] When the legislature disbanded Martin's court, they reappointed Eustis, this time as Chief Justice, in May 1846.[1258] Eustis could now proceed unfettered to overturn the French free soil precedent while embracing Anglo-American precedents such as the case of the *Slave, Grace* (1827).[1259] Eustis thus brought Louisiana into line with neighboring Southern common law states. Other historical works on the Louisiana slave transit cases have not linked the restrictive turn in Louisiana jurisprudence to the departures of either Martin or his student McHenry.[1260] Both deserve a place in explanations of the course of Louisiana law.

Criminality, Honor, and Masculinity

McHenry's opinions are best appreciated in the broader context of his professional life. Before he was appointed judge of the First District Court of New Orleans, McHenry practiced criminal defense. For example Frances Mitchell hired McHenry to defend her son, who had been charged with manslaughter by a New Orleans court in 1846.[1261] McHenry's professional experience representing alleged criminals further explains why he ruled the way he did in so many freedom suits. Representing an alleged criminal requires empathizing with some of society's most marginalized people. Branded by the state as deviants, convicted criminals were

[1253] Janice Shull.
[1254] Bailey, *The Lost German Slave Girl*, 201.
[1255] Conant [*sic*] v. Guesnard, 5 La. Ann. at 696; Liza v. Puissant, 7 La. Ann. at 80.
[1256] Conrad, *A Dictionary of Louisiana Biography*.
[1257] Conrad; Bailey, *The Lost German Slave Girl*, 201.
[1258] Conrad, *A Dictionary of Louisiana Biography*.
[1259] The Slave, Grace, 2 Hagg. 94.
[1260] See, e.g., Cover, *Justice Accused*, 96–97; Finkelman, *An Imperfect Union*, 216.
[1261] "Agreement, Frances Mitchell and John McHenry," 23 Sept. 1846, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.

cut off from social ties in ways that undermine their personhood.[1262] They experienced a form of the social death that Orlando Patterson argues is the hallmark of slavery.[1263]

That McHenry shared the values of a patriarchal society helps explain why certain wealthy French planters beseeched him to stay rather than leaving for California in 1850. When he warned, "I might have to decide against you again," they responded, "No matter, we need a man like you on the Bench."[1264] Early in his judicial career, McHenry decided,

> a case of some importance, and one which excited considerable interest at the time….A beautiful woman who had been horsewhipped in the streets by an individual sufficiently prominent to employ as his counsel Pierre Soulé, at that time a leading member of the Bar and of the State Legislature, and afterwards a United States senator from Louisiana.[1265]

This was the case of *State v. Carter, alias Manly*.[1266] The fact that McHenry's court heard this prosecution at all is remarkable. In North Carolina, Judge Thomas Ruffin had already held that the state had no power to charge John Mann with a crime when he maimed the slave he was renting, named Lydia. Because slaves were considered property, not persons, the only recourse for Lydia's owner, Elizabeth Jones, was a civil suit against Mann for property damage.[1267] However, in Louisiana, "a beautiful woman" garnered public attention as a sympathetic human victim.[1268] Although the *Examiner* mentions neither this woman's race nor personal status, it seems likely that the victim of a horsewhipping would have been a slave. The description of the woman as beautiful suggests that like many cases in the antebellum South, this one played into tropes of tragic octoroons.[1269] They were portrayed as almost "purely" white, suffering tragic fates because of their African blood.[1270] That McHenry heard the case at all suggests that unlike Ruffin, he believed a master's power over his slave should be limited, but not dismantled, by the state.

[1262] On crime as behavior that the state labels as "abnormal" such that the unaccused behave "normally," see Émile Durkheim, "The Normality of Crime," in *Classic Readings in Sociology*, ed. Eve Howard (Belmont, CA: Thomson Higher Education, 2007). On prisons as total institutions that strip inmates of personhood, see Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Chicago: Aldine Publishing Company, 1962).

[1263] Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 13.

[1264] "Biographical sketch by his daughter, Mary McHenry Keith," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.

[1265] "Obituary—John McHenry," 17 Nov. 1880, *The Daily Examiner*, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.

[1266] "City Intelligence," 17 March 1848, *The Daily Picayune*.

[1267] State v. Mann, 13 N.C. 263.

[1268] "Obituary—John McHenry," 17 Nov. 1880, *The Daily Examiner*, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.

[1269] See, e.g., Hezekiah Hosmer, *Adela, the Octoroon* (Columbus: Follett, Foster, 1860); J. H. Ingraham, *The Quadroone, Or, St. Michael's Day* (New York: Harper, 1841).

[1270] For the best critical analyses, see Gross, "Litigating Whiteness;" Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008); James Kinney, *Amalgamation!: Race, Sex, and Rhetoric in the Nineteenth-Century American Novel* (Westport, Connecticut: Greenwood Press, 1985).

The gendered aspect of this criminal case also raises the question of whether McHenry would have decided the freedom suits differently if they had been brought by plaintiffs who were men or boys. Perhaps when David and the community of free people of color handpicked certain litigants, they were playing into Southern notions of masculinity and honor. McHenry believed it was the solemn duty of men to protect women and children. In 1864, he bemoaned the fact that women and children had been left behind on Southern plantations without protection from the crimes of war.[1271] According to his daughter who secretly attended the University of California, Hastings School of Law, from 1879-1882, McHenry

> had no sympathy whatsoever with the then revolutionary idea that a woman had a right to think of a career outside of a home and babies…. [He] believed, that no woman's brain is capable of understanding the intricacies of law.[1272]

Like other African American female litigants throughout the antebellum South, the successful female claimants in McHenry's court may have had status deserving of protection, but they did not necessarily have rights.[1273]

McHenry's Complicated Politics of Slavery

At first glance, the language in McHenry's opinions in Arsène's and Mary's cases might lead one to believe that he had Abolitionist tendencies. Indeed, McHenry does not appear as a buyer or seller of human property in New Orleans between the years 1838 and 1850.[1274] The conveyance books are meticulously archived, and this absence contrasts with other white men of McHenry's status and time period. Even the plaintiffs' attorney, David, bought and sold humans for profit.

Although New Orleans records suggest that McHenry personally abstained from buying and selling human beings, sources held in California, where McHenry died, tell a different story. In 1842, McHenry's mother wrote a letter informing him that "Weaver and Cason has [*sic*] filed a bill in the chancery court against you for the balance of the money you are behind with them for the purchase of three negroes."[1275] The balance was $700, and the sheriff had seized the two children until McHenry would paid his debt.[1276] Also in the 1840s, McHenry informed his new bride Ellen that he had instructed a certain Louis to pack up their room and pick up his mail from the post.[1277] In the 1850s, he instructed his wife to bring a "faithful servant" to aid her along the

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[1271] "John McHenry, speech, made in Sonoma," 1864, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.
[1272] "Hastings College of the Law, University of California," 1882, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Carton 4; "Widow of Artist is Suffrage Pioneer Determination Sharpened by Defeat," 16 March 1925, *San Francisco Examiner*, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Carton 14.
[1273] Laura Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth century U.S. South," *American Historical Review* 112, no. 2 (2007).
[1274] Vendor-Vendee Records, *NONA* Conveyance Books Index 38-51.
[1275] "Letter, Elizabeth McHenry to John McHenry, 12 May 1841," Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1276] "Letter, Elizabeth McHenry to John McHenry, 12 May 1841."
[1277] "Letters, John McHenry to Ellen McHenry," n.d.; 14 June 1847, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.

voyage from New Orleans to San Francisco.[1278] These letters do not show us that McHenry, like so many legal professionals of his day, lived in New Orleans while managing a plantation from afar. Nonetheless, it is clear that he participated in the trade in human property.[1279]

Still, McHenry does not seem to have conceived of himself as a slaveowner, referring not to his slaves but to "Louis" and his "servant."[1280] Likely, in Louisiana he did not have the means to purchase a great number of slaves. Only in California could McHenry aspire to a lifestyle like that of a well-to-do Southern planter. A human interest piece written more than fifty years after McHenry's death describes the "slaves" that McHenry employed on his 160-acre property, Rancho Temescal, for $90 a month.[1281] The quotation marks around the word "slaves" appears in the original, indicating that these were not truly slaves. But like many laborers in multiracial California, they were clearly not easily classified as either free or slave, and likely experienced degrees of unfreedom.[1282]

A speech that McHenry delivered in Sonoma in 1864 demonstrates that later in life, McHenry's personal and political views on slavery solidified. Whereas in the 1840s McHenry's attitudes toward slavery might be described as ambiguous, by the midst of the Civil War he had developed much sharper opinions. Speaking to members of the California Democratic Party on the eve of the 1864 election, McHenry condemned the "fanatical, fratricidal war" that had been waged "to free the Negro and subjugate the South."[1283] The war for McHenry was not about states' rights, with little to do with slavery.[1284] McHenry denounced Abraham Lincoln as a

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[1278] "Letters, John McHenry to Ellen McHenry," 1 Jan. 1851, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.

[1279] On legal professionals who owned and managed plantations, see Ariela Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton: Princeton University Press, 2000), 27-30. On the prevalence of absentee landlordism, see Ulrich Bonnell Phillips, *American Negro Slavery: A Survey of the Supply, Employment and Control of Negro Labor as Determined by the Plantation Regime* (Baton Rouge: Louisiana State University Press, 1966), 50; 62; 91; 251; 340-341.

[1280] "Letters, John McHenry to Ellen McHenry," n.d.; 14 June 1847, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15; "Letters, John McHenry to Ellen McHenry," 1 Jan. 1851, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 15.

[1281] E.G. Fitzhamon, "The Streets of San Francisco: Taylor, No. 11," 14 April 1929, *San Francisco Chronicle*, in Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14, "McHenry Miscellany" Folder.

[1282] Stacey Smith, "Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California," *Pacific Historical Review* 80, no. 1 (2011): 28–63 (discussing the landmark case *Stovall v. Archy*; Stacey Smith, *Freedom's Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction* (Chapel Hill: University of North Carolina Press, 2013) (on degrees of unfreedom in California). See also *In Re Perkins*, 2 Cal. 424 (1852).

[1283] "John McHenry, speech, made in Sonoma," 1864, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17. For the 1864 election, see David Long, *The Jewel of Liberty: Abraham Lincoln's Re-Election and the End of Slavery* (Mechanicsburg, PA: Stackpole Books, 1994); John Waugh, *Reelecting Lincoln: The Battle for the 1864 Presidency* (New York: Crown Publishers, 1997).

[1284] This explanation is put forward by William A. Dunning and his students. William Archibald Dunning, *Essays on the Civil War and Reconstruction.* (Gloucester, Mass.: P. Smith, 1898); William Archibald Dunning, *Reconstruction, Political and Economic, 1865-1877* (New York: Harper & Bros., 1907). In *The Irrepressible Conflict, 1850-1865* (New York: Macmillan Co., 1934), Arthur Cole argues that social and economic differences between the North and South inevitably led to the Civil War. In so doing, members of the Dunning School downplayed or completely evaded the political significance of slavery. In "Lincoln's Election an Immediate Menace to Slavery in the States?," *The American Historical Review* 36, no. 4 (1931): 766, Cole asserts that "slavery was scarcely the crux of the sectional issue." See also Charles Beard and Mary Ritter Beard, *The Rise of American Civilization,* (New York: The Macmillan Company, 1933). In Nathaniel Wright Stephenson, "California and the

tyrant and a despot. He predicted that "the Washington Abolition tyrant" would go down in the annals of history alongside Charles, the Duke of Burgundy, and other "wretches who have disgraced mankind."[1285]

McHenry's positions were not uncommon among Northern Democrats. In 1864, war-wary "Peace Democrats" were ready to negotiate to allow the Confederacy to be a separate American nation.[1286] *The Lincoln Catechism*, a satirical piece published in New York similarly signified a perception of Lincoln as an anti-slavery tyrant. It read, "III. By whom hath the Constitution been made obsolete? By Abraham Africanus the First," and "XVI. What is the meaning of the word 'traitor?' One who is a stickler for the Constitution and the laws."[1287]

McHenry's references to the "implacable and hellish spirit of Abolitionism," and the misguided "Abolition preachers [who] still continue to deliver political harangues" bear a striking contrast to his opinion in *Couvent v. Guesnard* (1848), where he had condemned the Louisiana legislature for taking away from Mary the right to sue for her freedom.[1288] However, McHenry's 1864 speech is not irreconcilable with his earlier judicial opinions on freedom suits. First, creating one legal exception (manumission) solidifies the rule (enslavement for those perceived to be of exclusively African descent). Furthermore, in both his 1864 speech and his judicial opinions nearly two decades prior, McHenry's stated logic depends not on his personal or political views of slavery, but upon the rule of law. In this way, he is similar to the judges at the center of Lucy Salyer's *Laws Harsh as Tigers*, whom she describes as "captives of law."[1289] Between 1891 and 1905, federal and circuit court judges in San Francisco often decided cases in favor of Chinese petitioners regardless of their personal or political views on immigration. Even Judge William Morrow, who had been a vocal proponent of the Chinese Exclusion Act (1882) during his time as a legislator, felt bound once he became a judge to honor certain sacred principles of Anglo-American law, such as habeas corpus and evidentiary standards. He thus allowed the Chinese to access courtrooms and indeed often ruling in their favor.[1290] Like

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Compromise of 1850," *Pacific Historical Review* 4, no. 2 (1935): 115, Beard is quoted as saying that slavery hardly deserves a footnote in the history of the Civil War. As Laura Edwards explains in *A Legal History of the Civil War and Reconstruction: A Nation of Rights* (New York: Cambridge University Press, 2015), 181, the Dunning School was marked by a "clear support for white supremacy." Revisionists of the 1930s-1940s instead focused on political factors, portraying Civil War era politicians as a blundering generation who had failed to compromise on compromisable issues, thereby leading to a needless, tragic loss of human life. See, e.g., Avery Craven, *The Repressible Conflict, 1830-1861* (Baton Rouge: Louisiana State University Press, 1939); James Randall, *Lincoln, the President.* (New York: Dodd, Mead, 1945); David Potter, *The Impending Crisis, 1848-1861* (New York: Harper & Row, 1976); David Potter, *The South and the Sectional Conflict* (Baton Rouge: Louisiana State University Press, 1968). Only beginning in the 1940s and picking up during the Civil Rights era of the 1960s did historians begin to focus on the moral issues of slavery and abolition as a cause of the Civil War. See, e.g., Allan Nevins, *The Emergence of Lincoln* (New York, 1950); Martin Duberman, *The Antislavery Vanguard: New Essays on the Abolitionists* (Princeton: Princeton University Press, 1965).

[1285] "John McHenry, speech, made in Sonoma," 1864, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.

[1286] Charles Flood, *1864: Lincoln at the Gates of History* (New York: Simon & Schuster, 2009); Part III, "Slavery and the Crisis of American Democracy," in Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: Norton, 2005).

[1287] *The Lincoln Catechism Wherein the Eccentricities & Beauties of Despotism Are Fully Set Forth : A Guide to the Presidential Election of 1864.* (New York: J.F. Feeks, 1864), 3–5. *Library of Congress* CTRG237336-B.

[1288] Ibid; Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.

[1289] Salyer, *Laws Harsh as Tigers*, 69.

[1290] Salyer, 72.

McHenry, these judges' "respect for institutional obligations trumped other personal and political loyalties."[1291]

In 1848, McHenry had criticized the Louisiana legislature for deviously rejecting the laws of France, thereby reducing Mary again to slavery.[1292] In 1864, he accused Lincoln of violating the "principles and theory of the law of war, derived from Grotius, Pufendorf, Francesco Vittoria, and other Christian writers upon the subject."[1293] A catalogue of a remnant of McHenry's massive law library shows that he owned copies of Hugo Grotius's *De Jure Belli et Pacis*, as well as Emer de Vattel's *The Law of Nations*.[1294] He described the pillage, rape, and other high crimes of war that had been committed upon women and children, only to go unpunished by the federal government. He also condemned what he saw as "the Abolition program for the overthrow of the Constitution."[1295] Nevertheless, there is room in the logic of McHenry's speech for the South eventually to abolish slavery. Gradual abolition of slavery through popular referendum or through constitutional amendment would likely have been acceptable to him, but "forcible abolition" should not be contemplated for a moment.[1296]

McHenry's virulent language towards Lincoln contrasts with his fellow jurist Christian Roselius's eulogy of Lincoln (mentioned in Chapter 4). There is evidence that McHenry and Roselius shared collegial respect: McHenry owned a copy of Gustavus Schmidt's *Civil Law of Spain and Mexico* (New Orleans: 1851), dedicated to Christian Roselius.[1297] McHenry and Roselius both saw the institution of slavery as integral to Southern livelihood. Clearly, however, their political views differed drastically: McHenry was a California Democrat who condemned Lincoln as a despot, while Roselius was a Southern Republican who eulogized Lincoln as a magnanimous leader.[1298]

McHenry's legal views on slavery are not to be explained easily, by his political alignment with the Democratic party.[1299] Indeed, given the complicated sectional politics of slavery, there is no simple correlation of party affiliation with pro- or anti-slavery opinions. Although most Abolitionists voted Republican, and "anti-slavery formed no small part of Republican ideology," many Republicans were anti-slavery simply because slavery threatened the Union.[1300] As the French consul to New Orleans observed of the American political scene in 1848, the true dividing line was North-South, and there was no coherent party view on slavery. He explained to the French Minister of Foreign Affairs, "Whether among the Whigs and

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[1291] Salyer, 70.
[1292] Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), *NOCA* VSA 290.
[1293] "John McHenry, speech, made in Sonoma," 1864, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.
[1294] "John McHenry—papers re: his law library," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1295] "John McHenry, speech, made in Sonoma," 1864, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.
[1296] "John McHenry, speech, made in Sonoma."
[1297] "John McHenry—papers re: his law library," n.d., Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 14.
[1298] Christian Roselius and J.S. Whitaker, *Louisiana's Tribute to the Memory of Abraham Lincoln, President of the United States* (New Orleans: Picayune Office Job Print, 1865), 25.
[1299] "John McHenry, speech, made in Sonoma," 1864, Keith-McHenry-Pond Family Papers, BANC MSS C-B 595, Box 17.
[1300] Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (Oxford; New York: Oxford University Press, 1995), 303; 304; 309.

Democrats here, I only see partisans of slavery, and in the Northern states Abolitionism has as many apologists in one party as the other."[1301] Likewise, in Louisiana Abolitionists had reason to fear for their lives and safety.[1302]

The seeming incompatibility of McHenry's views on slavery with his judicial opinions demonstrates that successful freedom petitioners did not need the judges deciding their cases to be personally or politically opposed to slavery. After all, creating an exception to the rule merely solidifies the rule. Petitioners were certainly operating in a legal system constructed with the purpose of keeping the institution of slavery intact. Manumission laws were designed to make the power of the master even more absolute.[1303] Nevertheless, the master's law had, built into it, openings that certain individuals could exploit. As Alejandro de la Fuente and Ariela Gross argue, based on their comparative study of manumission in Louisiana, Virginia, and Cuba from the sixteenth to the nineteenth centuries, even if those openings were small in number, they gradually became a threat to the authority of the master class.[1304]

Conclusion

On 30 May 1846, the Legislature of Louisiana passed a statute constraining the ability of enslaved people from that day forward to seek liberty on the basis of having traveled to places such as France, where slavery was illegal. This legislation was clearly a reaction to cases the Supreme Court of Louisiana had decided in favor of individual liberty from the 1820s to the 1840s. Even after the passage of the Act of 1846, however, enslaved people continued to submit freedom petitions to local courts on the basis of having touched free soil. Judge John McHenry of the First District Court of New Orleans continued not only to hear these petitions but also interpret the laws so as to favor individual liberty.

In a state with a legislature dominated by slave owners, McHenry's appointment to the bench was contentious. In the first freedom suit he decided, McHenry demonstrated his commitment to the fundamental principle prohibiting retroactive application of the laws. Although the legislature had clearly sought to put an end to successful free soil cases, McHenry concluded in favor of Arsène's freedom. A flurry of freedom suits followed. Because Mary had been to France after the passage of the act, her case was an opportunity for her lawyer to test the limits of judicial interpretation in favor of liberty. With a heavy heart, McHenry declared there was nothing his court could do to help her. The legislature had stripped him of his power to pass on the merits of her claim. A comparison of his reasoning to that of the Supreme Court upon appeal demonstrates a growing division wherein a newly recomposed Supreme Court sided with a pro-slave owner legislature, while local courts sought to maintain pathways to freedom for slaves.

At a time when the issue of slavery was becoming increasingly polarized on the political scene, McHenry departed not only the bench but also Louisiana. His departure adds an explanatory layer to the case of Liza, which was decided after a new judge replaced him, and is seen as a major turning point in the history of freedom litigation in Louisiana. The case symbolizes a growing Anglicization of law in Louisiana, and with it the end of the *in favorem*

[1301] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 93.
[1302] "Correspondence politique des consuls, Etats-Unis," 6 July 1848, *MAE*-Paris 16CPC/2, fol. 97.
[1303] Patterson, *Slavery and Social Death*, 209-239.
[1304] Alejandro de la Fuente and Ariela Gross, "Manumission and freedom in the Americas: Cuba, Virginia and Louisiana, 1500s-1700s," *Quaderni storici* 50, no. 1 (2015): 15–48.

libertatis principle. McHenry's apprenticeship under the civilian jurist François-Xavier Martin, who himself trained under the anti-slavery William Gaston and wrote several opinions limiting the power of slave owners, goes a long way towards explaining why McHenry decided free soil cases in favor of individual liberty, despite clear legislative intent to shut off pathways to freedom. Additionally, McHenry shared the values of a patriarchal society where honorable men like him bore the responsibility of protecting women, children, and even slaves. A favorable ruling in his court was no doubt welcomed by the once-enslaved petitioners. But much as in the examples of the attorneys David and Roselius, it would be too simplistic to categorize him as anti-slavery. An examination of his politics around the time of the Civil War shows that his views on slavery were complicated. Furthermore, by creating exceptions for some, McHenry implicitly condoned the legal system that was slavery.

CONCLUSION

After nearly two and a half years of litigation, Mary was sold as a slave to Casimir Villeneuve of Indianola, Texas.[1305] On the Matagorda Bay along the Gulf Coast, Indianola was then the seat of Calhoun County. In 1875, its population numbered 5,000.[1306] In this small Texas town, Mary would have found herself nearly five hundred miles away from the friends and relations who had assisted her through her fight in the courts. Having seen Paris and having networked with a community of free people of color in New Orleans, she would no doubt have been devastated by her loss. It is not impossible that Mary finally won her freedom at the age of thirty-four, not through individual manumission, but with widespread Emancipation in 1865.[1307]

Like the liberty that successful claimants experienced, this freedom would have been fractional.[1308] Especially because the Thirteenth Amendment provided that involuntary servitude was abolished "except as a punishment for a crime," criminal laws throughout Southern states came to be written in such a way that targeted once-enslaved African Americans.[1309] Comparative studies on gender in postemancipation societies, furthermore, have found that emancipation tended to benefit men more than women, particularly in the political sphere.[1310] Patriarchy strengthened in African American families, and women who had once been matriarchs now found themselves restricted to the domestic sphere, under the cover of their husbands.[1311]

It is unclear whether Mary would have had the means to travel from Indianola to New Orleans to be reunited with her kin. If she did stay in Indianola, she would have been victim to a powerful hurricane in 1875. *New York Times* coverage describes the almost complete destruction of the town. Where over one hundred structures once stood, not more than twelve remained. The article lists the deceased, but neither Mary nor Casimir Villeneuve are among them.[1312]

In Louis L'Amour's novel *Matagorda*, the courthouse serves as the last refuge of the townspeople on the day the hurricane strikes.[1313] This is based at least in part on historic reality: the *New York Times* reported that the courthouse was one of the twelve buildings that withstood the natural disaster.[1314] It is not impossible that like she had many years prior, Mary approached the court as a last resort.[1315] The town was rebuilt, only to be destroyed by another hurricane in

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[1305] "Sale, Charles Lamarque Jr. to Casimir Villeneuve," 31 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act 493.
[1306] William Nienke and Sam Morrow, "Indianola, Texas: Recorded Texas Historic Landmark No. 2642 (1963)," n.d.
[1307] "Sale, Charles Lamarque Jr to Casimir Villeneuve," 31 May 1851, *NONA*, Notary Achille Chiapella, vol. 23, act 493 (which identifies Mary as being twenty years old).
[1308] McKinley, *Fractional Freedoms*; Scott, *Degrees of Freedom*.
[1309] U.S. Const. Am. XIII; Oshinsky, *Worse than Slavery*; Blackmon, *Slavery by Another Name*.
[1310] Scully and Paton, *Gender and Slave Emancipation in the Atlantic World*.
[1311] Penningroth, *The Claims of Kinfolk*, 176–85.
[1312] "The Gulf Cyclone: Additional Particulars of the Destruction of Indianola: Hardly a House Left Unharmed," *The New York Times*, September 30, 1875.
[1313] Louis L'Amour, *Matagorda* (Thorndike Press, 1999).
[1314] "The Gulf Cyclone: Additional Particulars of the Destruction of Indianola: Hardly a House Left Unharmed."
[1315] Comparative manumission studies repeatedly find that courts are a last resort, not a first resort. See Brana-Shute and Sparks, *Paths to Freedom*; Sue Peabody and Keila Grinberg, *Slavery, Freedom, and the Law in the Atlantic World: A Brief History with Documents* (Boston: Bedford/St. Martins, 2007).

1886.[1316] Whatever records may have provided a clue as to Mary's destiny have no doubt also been destroyed. Today, Indianola is a ghost town. The remains of the court house are submerged in Matagorda Bay, but upon low tide the foundation can still be seen.[1317]

Moments of resistance, nevertheless, are preserved in the archives of the city of New Orleans. Studies have shown that slaves could lawfully gain free status in many ways. They could be granted liberty in exchange for good behavior or military service; they could sue for breach of contract should an executor fail to deliver on the decedent's wish of manumission; they could purchase themselves; they could claim free lineage or freedom by prescription.[1318]

This dissertation has focused on free soil suits. In the late antebellum period, connections between France and Louisiana were still robust, with at least 5,000 French citizens living in Louisiana and courts of law still requiring that court summons be delivered in both French and English.[1319] In addition to Mary, at least nineteen enslaved women and girls claimed liberty in New Orleans on the basis that they had been free for a moment in France, a country whose laws did "not tolerate slavery."[1320] Unlike Mary, most petitioners were successful in their claims.

Only a microhistorical approach can lead to a robust discussion of the questions posed at the beginning of this dissertation: How did claimants develop a legal consciousness, or awareness that their grievance could be redressed at law? How did they access justice? How did race and gender matter? These questions arise out of decades of socio-legal and critical legal inquiry. Answering them requires looking to sources outside of law in order to better understand the law. Here, these sources have included wills, testaments, and sacramental records; antislavery literature and Abolitionist periodicals; personal letters and newspapers.

My research on these cases has led me outside the United States. After all, the core legal claims were possible only because a slave left the United States. Therefore, this study is also a "microhistory set in motion."[1321] Designed as both a legal history from below and an Atlantic history, it moves through socio-legal sources to reflect the way that claimants experienced legal institutions and proceedings. It follows the historical agents across the Atlantic Ocean and back, not only to Louisiana but also to California and Texas.

Premised on the socio-legal assumption that lawsuits are only the top of a pyramid of social disputes, Chapter 1 first lays out the social circumstances leading to the core legal claims here.[1322] Desperate to escape the ravages of seasonal disease, slave-owning men and women like Jeanne Louise Emma De Larsille risked their claims in human property (and later, also their French citizenship) so they could have their slaves attend to them during the transatlantic voyage. The need for domestic service in this situation begins to explain the preponderance of

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[1316] Nienke and Morrow, "Indianola, Texas: Recorded Texas Historic Landmark No. 2642 (1963)."
[1317] John Troesser, "Indianola, Texas Gulf Coast Ghost Town (1846-1886)," accessed July 2, 2018, http://www.texasescapes.com/TexasGhostTowns/IndianolaTexas/IndianolaTx.htm.
[1318] Brana-Shute and Sparks, *Paths to Freedom*; Peabody and Grinberg, *Slavery, Freedom, and the Law in the Atlantic World*; Gross and de la Fuente, "Slaves, Free Blacks, and Race in the Legal Regimes of Cuba, Louisiana, and Virginia;" Gross, "Legal Transplants;" Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*; Spear, *Race, Sex, and Social Order in Early New Orleans*; Scott, "Social Facts, Legal Fictions, and the Attribution of Slave Status."
[1319] "Correspondence politique des consuls, Etats-Unis," 5 September 1848, *MAE*-Paris 16CPC/2, fol. 109.Greiner, *Code of Practice*.
[1320] Louise v. Marot, 8 La. at 479.
[1321] Scott and Hébrard, *Freedom Papers*, 4.
[1322] Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes."

women and girls as legal actors here. Chapter 1 then reviews codes and cases like *Marie-Louise v. Marot* (1836), which perceived France to be a country without slavery, asserted that the courts of Louisiana must respect the sovereign laws of France, and declared that upon setting foot on French soil, a slave experienced immediate, irrevocable emancipation.[1323]

Crossing international boundaries threw a once-enslaved individual's status into question. Chapter 2 follows the enslaved women and girls across the Atlantic Ocean to France. Despite the conclusion of the Supreme Court of Louisiana, the laws of slavery in France were actually contested and rapidly changing in the nineteenth century. In the 1820s, American women and girls of African descent would have encountered a legal system designed to keep black people out of France. Detention centers were created so as to preserve the medieval maxim that "there are no slaves in [metropolitan] France."[1324] With the rise of Louis-Philippe's bourgeois monarchy, however, once-enslaved people could and did experience *de facto* emancipation in a country undergoing a movement towards Abolition. In 1848, slavery was formally abolished throughout the French Empire.

The spirit of liberty American women and girls acquired in France helps explain why they felt emboldened, upon their return to New Orleans, to seek out legal help. In Chapter 3, the examination of a propertied community of free people of color in New Orleans helps explain how claimants accessed professional attorneys, whose services were not free. Most plaintiffs hid during their suits. They were presented to the court not as "negroes," but as women and girls "of color;" not as rebellious men but as "helpless females." These representations played into cultural constructions of race and femininity. Over time, the racial dividing lines of legal slavery in Louisiana hardened. Eventually, the Louisiana Supreme Court established that all humans should be presumed free—unless they were judged to be of exclusively African descent.[1325]

Chapter 4 delves into the question of legal representation. Viewed in the context of the history of legal professionalization, it can be seen that enslaved people with legal claims could access better attorneys in 1840 that at any prior point in Louisiana history. This may explain the sudden rise of manumissions, not in the form of gifts given by slave owners, but in the form of direct legal actions against owners. Both Jean-Charles David and Christian Roselius were recent newcomers to Louisiana who sought to use the practice of law as a means of upwards social mobility. Neither attorney was particularly devoted to the cause of ending slavery as a whole, but both mobilized the free soil argument where it would help their clients.

With the stroke of a pen, a judge can dramatically change an individual's life. Chapter 5 finally reaches judgement, the traditional source of legal history. Through a detailed analysis of pivotal judicial opinions, it becomes clear that the Roman law doctrine of *in favorem libertatis* was extinguished in the late antebellum years. This coincided with a growing Anglicization of the Louisiana legal system (for instance signified by the departure of John McHenry, who was a student of the famed civilian François-Xavier Martin). Liza's case was the first time the Act of 1846 (which limited a slave's ability to submit free soil claims) was applied retroactively.[1326]

[1323] Louise v. Marot, 9 La. 473; Art. 189 Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana*, 29–30.
[1324] Peabody, *There Are No Slaves in France*; Boulle and Peabody, *Le droit des noirs en France au temps de l'esclavage*.
[1325] Adelle v. Beauregard, 1 Mart. (o.s.) 183; Miller v. Belmonti, 11 Rob. 339; Gross, *What Blood Won't Tell*.
[1326] An Act to Protect the Rights of Slave Holders in the State of Louisiana, 30 May 1846, Louisiana Acts, 163; Liza v. Puissant, 7 La. Ann. 80.

Although Ann Maria Barclay was recognized as free as late as 1857, this was not because she had been to the free state of Ohio, but because nothing in the Act of 1846 was interpreted to limit the master's power to free an individual slave.[1327]

To be sure, manumission solidified the laws of slavery. I do not attempt to take issue with Patterson on this point.[1328] The freeing of just under twenty women and girls here locked many others into slavery: those deemed to be of exclusively African descent; those perceived to be violent threats to the regime; those who had not had the fortune to travel to countries, states, or territories where slavery was illegal. From a structural point of view, manumission was the power of the slave owner, not the power of the slave.

But from an individual point of view, manumission—especially in the form of a direct legal action against a putative owner—was an act of resistance. Precisely because of their exceptionality, freedom suits are worth investigating. This dissertation has examined a flurry of French free soil claims brought to local courts of New Orleans from two angles: the law in action, and the law on the books. In examining the law in action, I argue that transnational connections, a propertied free black community, and a professional ethics of dissociation explain the success of French free soil suits in the local courts of New Orleans in the 1830s to 1840s. An analysis of the law on the books, simultaneously, points to a broader trend of judicial narrowing. The civil law had certainly opened up possibilities for enslaved people, but as the state Anglicized these pathways closed.

[1327] Barclay v. Sewell, 12 La. Ann 262.
[1328] Patterson, *Slavery and Social Death*, 209–39.

APPENDIX

Chronology of Law and Slavery in the French Atlantic

1682 Cavalier de la Salle takes possession of the vast territory that would become French Louisiana.

1685 Louis XIV decrees the *Code Noir* for French islands of Martinique, Guadeloupe, and Saint Christophe.

1699 Pierre Le Moyne d'Iberville founds Louisiana.

1709 Intendant Jacques Raudot, passes an ordinance clarifying the legality of Amerindian slavery in New France.

1712 The *Custom of Paris* becomes formal law in Louisiana.

1718 Town of New Orleans founded.

1719 First slave ships arrive in Louisiana.

1724 A modified *Code Noir* is introduced in Louisiana.

1738 The Admiralty Court of France grants Jean Boucaux his freedom on the basis of the French free soil principle. A flurry of suits using a similar legal argument follows.

1740 The Superior Council of New France rejects the free status claim of Marie-Marguerite Duplessis Radisson.

1762 France cedes Louisiana to Spain. Inhabitants of Louisiana continue to practice the laws of the *Custom of Paris*.

1768-1769 Spain takes actual possession of Louisiana. Gov. Don Alexander O'Reilly formally abolishes French law and introduces Spanish slave law.

1772 In *Somerset v. Stewart*, the English Court of King's Bench holds that slavery can only be supported by positive law. Lord Mansfield rules that James Somerset may not be removed from England against his will.

1777 A royal declaration of August 9 prohibits blacks from entering France. Each master is allowed the exception of one domestic servant.

1778 Cabildo drafts a new slave code, attempting a return to France's Code Noir.

1788 *Les Amis des Noirs* founded, with the goal of abolishing French participation in the international slave trade.

1789 King Louis XVI calls for a meeting of the Estates General, unleashing the chain of events now known as the French Revolution. Declaration of the Rights of Man and Citizen.

1791 Slaves and free people of color begin to revolt in Saint Domingue.

1793-1794 Most members of *Les Amis des Noirs* killed in the Terror.

1794 French National Assembly abolishes slavery.

1799 Napoleon Bonaparte overthrows the Directory in a coup d'état and establishes the Consulate.

1802 Napoleon re-establishes slavery in Guadeloupe and Martinique. Under the *Arrêté du 13 messidor an X* (2 July 1802), the motives of the Declaration of 1777 are re-affirmed: all black people are forbidding from entering the Republic of France.

1803 The Louisiana Purchase.

1804 Saint Domingue declares independence and renames itself Haiti.

1806 The first Territorial Legislature of Louisiana enacts a New Black Code.

1807 Black Code limits emancipation to those 30 years or older, along with proof of « honest conduct » during the four years prior. Masters desiring to free one or more of their slaves are required to make a declaration of this intention to a judge. The judge must then review the case, and the sheriff must post public notice so as to give those who oppose the emancipation an opportunity to come forward.

1808 The *Act Prohibiting Importation of Slaves* takes effect throughout the United States, in accordance with the Constitution.

1808 The Territorial Legislature enacts *A Digest of the Civil Laws Still in Force in the Territory of Orleans*.

1809 Influx of refugees from Haiti.

1811 Slave uprising near New Orleans brutally suppressed.

1812 Louisiana enters the Union. State Constitutions denies many civil and political rights to free people of color. Only «free white citizens of the U.S. » may be electors.

1814 Constitutional charter restores the Bourbon Monarchy under Louis XIII.

1815 Slave trade outlawed in France, although the trade continues illegally. Napoleon's rule formally ends with his defeat at the Battle of Waterloo.

1819 Moreau Lislet and Carleton translate *Las Siete Partidas* into English.

1825 Livingston, Moreau Lislet, and Derbigny draft the new *Civil Code of Louisiana* .

1827 Emancipation in Louisiana must be approved by a police jury.

1828 Spanish and Roman law formally repealed in Louisiana.

1830 The Louisiana legislature orders all persons of color, manumitted after 1825, to leave the state. The number of free people of color reaches 16,000.

1830-1848 Revolution of July 1830 ushers in King Louis-Philippe. Under his rule, the French anti-slavery movement is reborn.

1833 Great Britain abolishes slavery.

1834 *Société pour l'Abolition de l'eslavage* founded in Paris, with the goal of abolishing slavery.

1835 In *Marie-Louise v. Marot*, the Supreme Court of Louisiana holds that a slave setting foot on the soil of France gains immediate emancipation. The Royal Court of Guadeloupe holds that a single voyage to the metropole gives a slave his freedom, and that such a change in status may not be contested in a colonial court.

1836 The Ordinance of 29 April 1836 re-establishes the French free soil principle as positive law, as along as the slave came with the master's consent.

1840 The first Global Anti-Slavery Convention is held in London, with significant representation from the French anti-slavery movement.gh

1846 The Louisiana legislature passes "An Act to Protect the Rights of Slaveholders in the State of Louisiana"

1848 Slavery is abolished throughout the French Empire.

1852 The Louisiana legislature orders all manumitted people to be sent to Liberia. Owner to pay passage.

1854-56 In United States, Whig Party collapses. Republican Party forms.

1855 End of deportations to Liberia. Manumission to be decided by jury trial, and jury to determine whether free person must leave state.

1857 All emancipations prohibited in Louisiana.

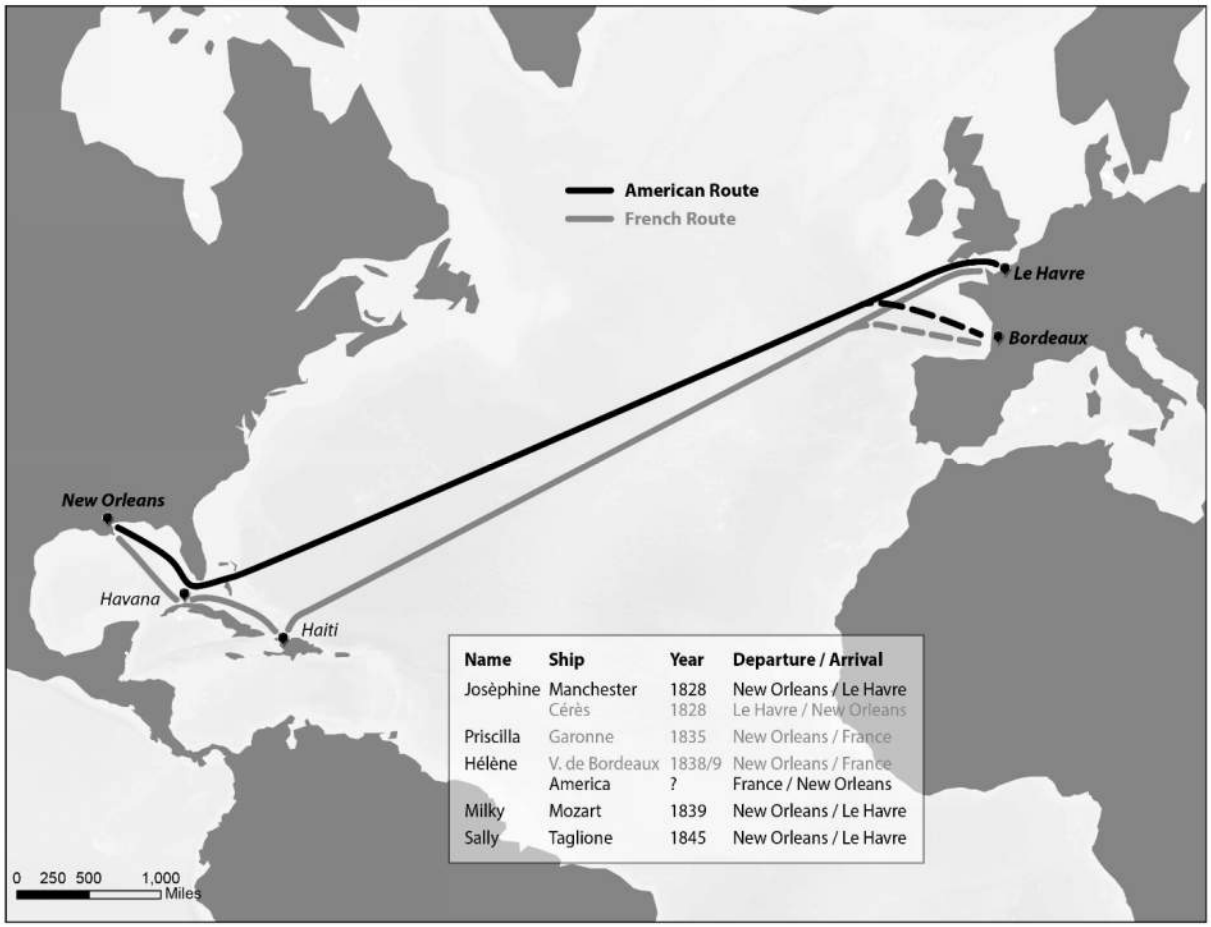
1861-1865 American Civil War. Louisiana secedes from the Union in 1861.

1870 All slavery articles deleted from *Civil Code of Louisiana*.

Source: See especially Vernon Palmer, *Through the Codes Darkly: Slave Law and Civil Law in Louisiana*. Clark, N.J.: The Lawbook Exchange, 2012.

Figures

Figure 1. Former New Orleans Slave Exchange Building.



Name	Ship	Year	Departure / Arrival
Josèphine	Manchester	1828	New Orleans / Le Havre
	Cérès	1828	Le Havre / New Orleans
Priscilla	Garonne	1835	New Orleans / France
Hélène	V. de Bordeaux	1838/9	New Orleans / France
	America	?	France / New Orleans
Milky	Mozart	1839	New Orleans / Le Havre
Sally	Taglione	1845	New Orleans / Le Havre

Figure 2. Transatlantic Voyages from New Orleans to France. Source of Base Map: Esri, USGS, NOAA.

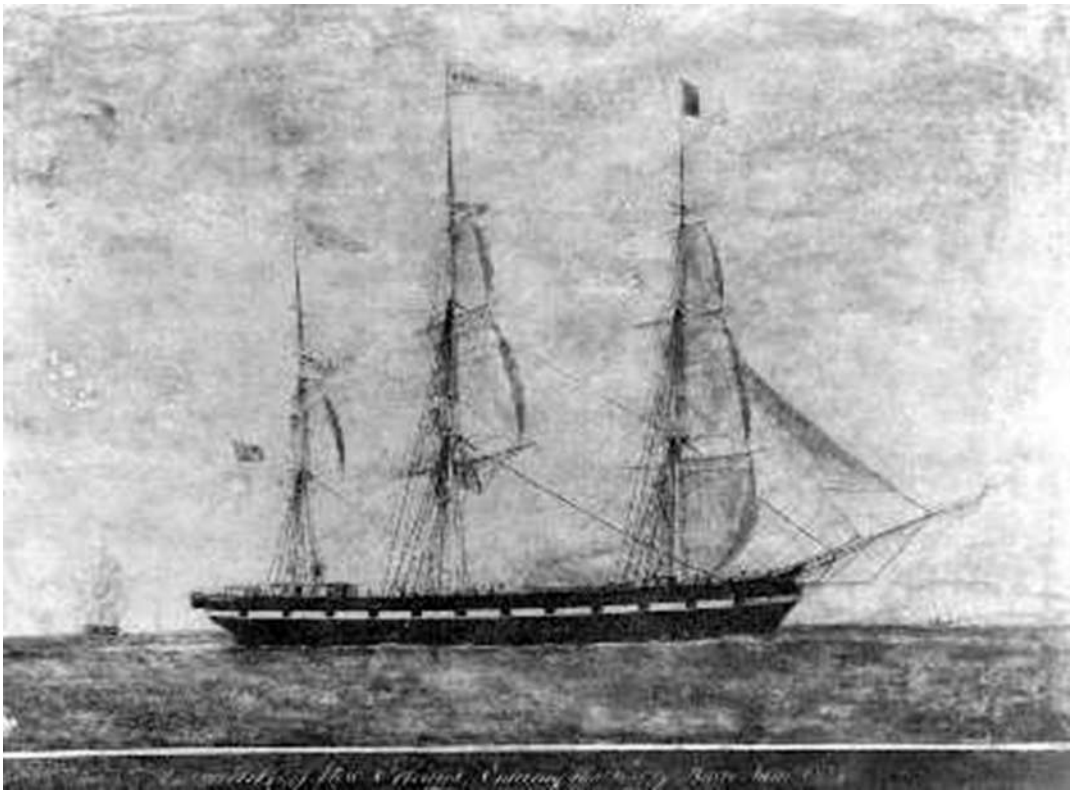


Figure 3. The Austerlitz of New Orleans, entering the Port of Havre. Watercolor, Frédéric Roux, July 1837. Peabody Essex Museum, Salem, Mass., M10568.


PASSE-PORT
À
L'ÉTRANGER.
Département de l'Oise
Registre 1816
n° 4.
SIGNALEMENT.
Agé de 20 ans
taille d'un mètre 62 c/5 pieds centimètres,
cheveux noirs
front bas
sourcils noirs
yeux noirs
nez moyen
bouche grande
barbe
menton rond
visage plein
teint basané.
SIGNES PARTICULIERS.
SIGNATURE DU PORTEUR.
a déclaré ne savoir signer

Au nom du Roi.

Nous Comte de Choiseul Préfet du Département de l'Oise

Invitons les Officiers Civils et Militaires, chargés de maintenir l'ordre public dans l'intérieur du Royaume, et prions les Officiers Civils et Militaires remplissant les mêmes fonctions dans les Pays Amis ou Alliés de la France, de laisser passer librement
La Delle Joséphine dite Zozotte, Mulâtre, au service de
native de l'Isle de Ste Lucie
demeurant à
allant en Angleterre, pour de là retourner à Ste Lucie.
et de lui donner aide et protection en cas de besoin.
Le présent Passe-port accordé pour le voyage
est valable pendant six mois pour sortir du territoire français.
Délivré sur la ~~Dépôt~~ de
Fait à Beauvais le 20 Mars 1816.
Le Préfet de l'Oise
Par le Préfet
Le Secrétaire général,
Prix du Passe-port, DIX FRANC

Figure 4. Passport of Josephine, 20 March 1816, ANOM GEN/629, no. 2735.

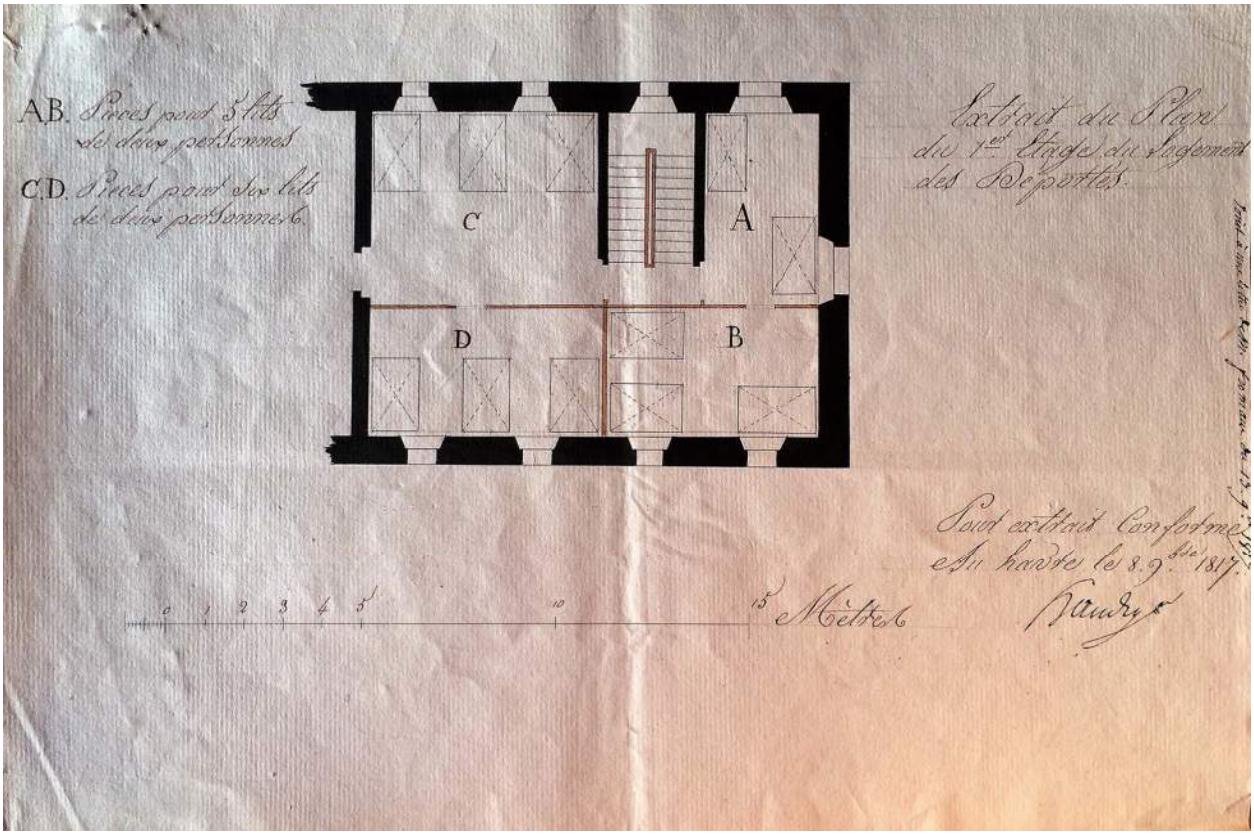
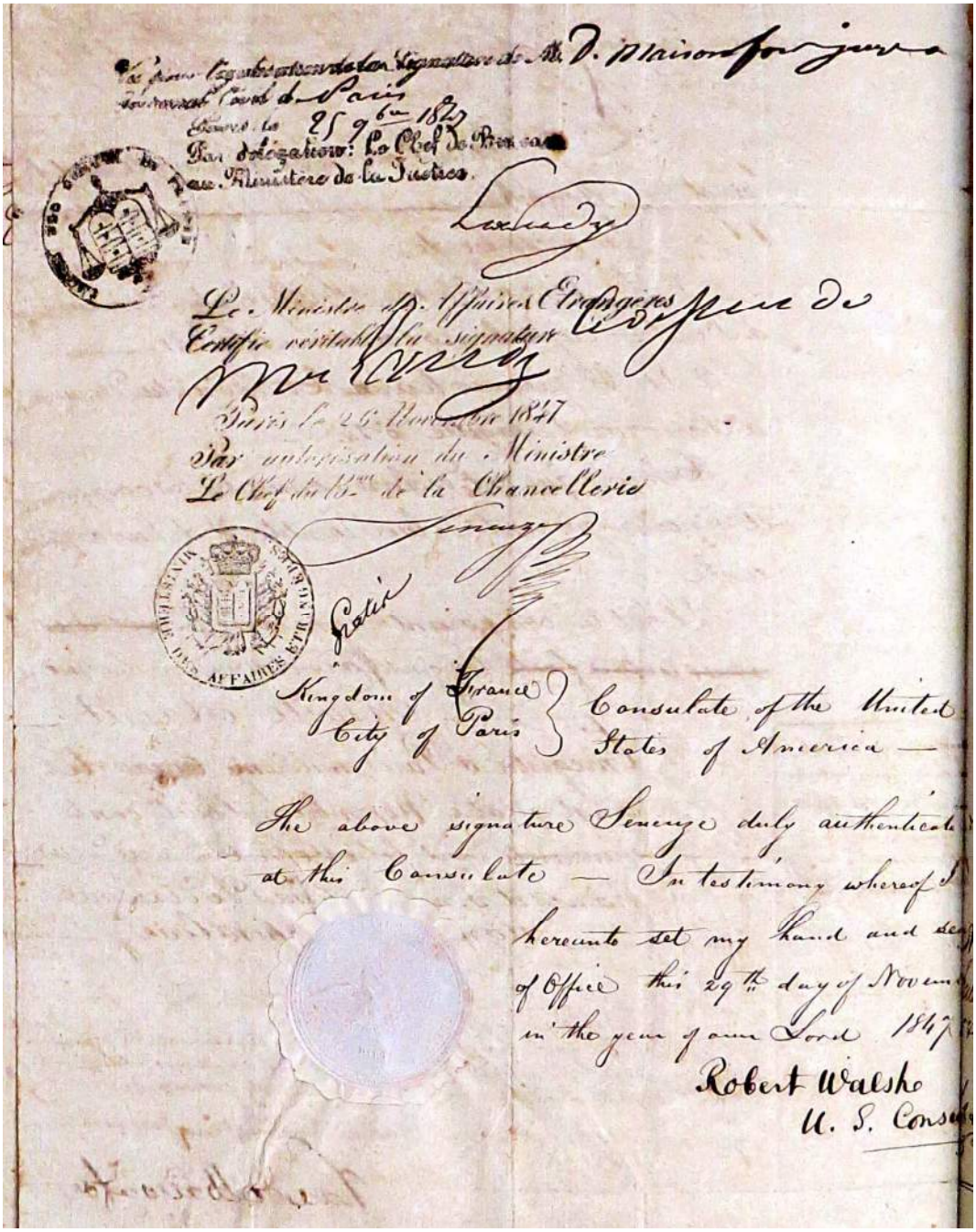


Figure 5. Floorplan, Lodging for the Deported, 8-13 Nov. 1817, ANOM GEN/629, no. 2735.



Kingdom of France
City of Paris } Consulate of the United States of America —

The above signature Senneye duly authenticated at this Consulate — In testimony whereof I hereunto set my hand and seal of Office this 29th day of November in the year of our Lord 1847

Robert Walsh
U. S. Consul

Figure 6. Power of Attorney, Mrs. Jeanne-Louise Emma Delarzille to Pierre Lemoine, 24 Nov. 1847, Notary Cyprien St-Hubert Thomassin.

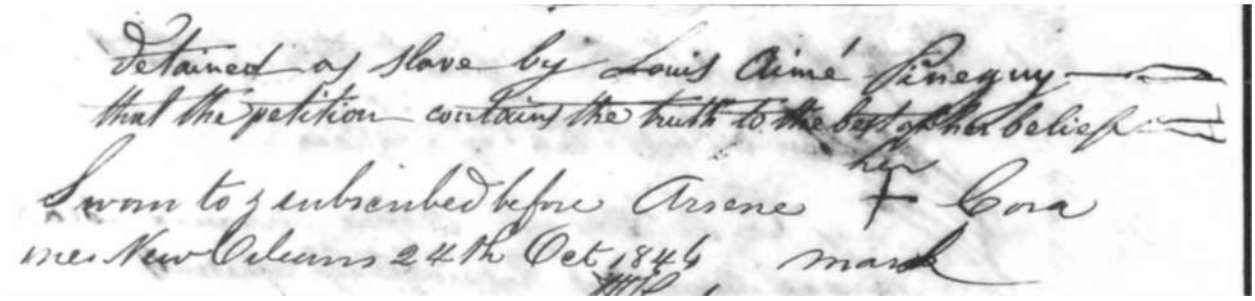
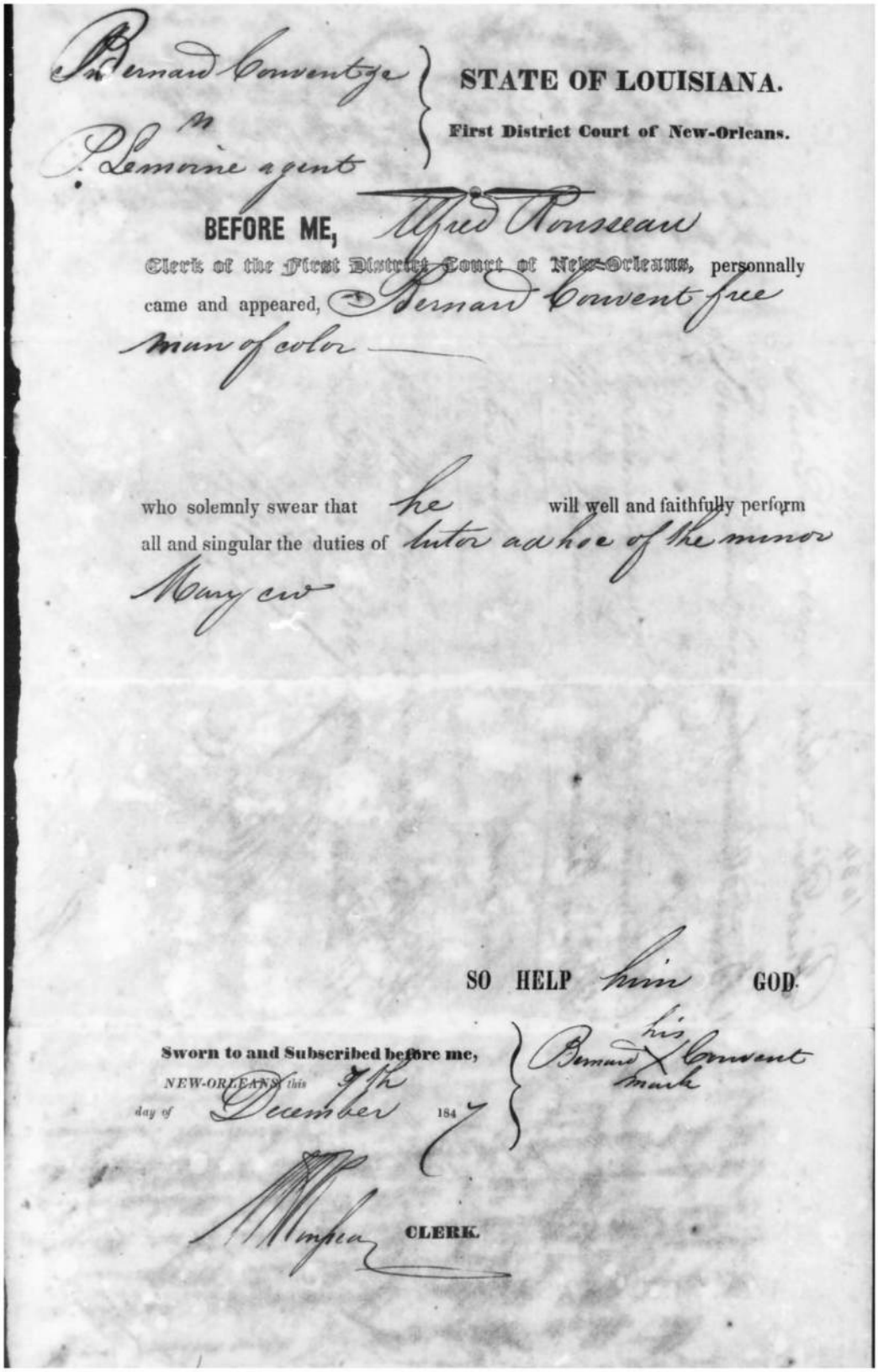

detained as slave by Louis Aimé Pineguy
that the petition contains the truth to the best of his belief
his
Sworn to & subscribed before Arsene + Cora
me New Orleans 24th Oct 1846 mark

Figure 7. Arsène's Mark. Arsène v. Pineguy, No. 395 (1st D. Ct. New Orleans 1846), NOCA VSA 290.

Figure 8. Map of Legal Networks. Source of Base Map: "Neueste Karte von Louisiana," 1845, LRC, Tulane University, C4-D3-F7.



Bernard Couvent
vs
P. Lemoine agent

STATE OF LOUISIANA.
First District Court of New-Orleans.

BEFORE ME, Alfred Rousseau
Clerk of the First District Court of New-Orleans, personnally
came and appeared, Bernard Couvent free
man of color

who solemnly swear that he will well and faithfully perform
all and singular the duties of tutor ad hoc of the minor
Mary cw

SO HELP him GOD.

Sworn to and Subscribed before me,
NEW-ORLEANS this 7th
day of December 184 7

his
Bernard X Couvent
mark

CLERK.

Figure 9. Bernard Couvent, Tutor of Mary. Couvent v. Lemoine, No. 1634 (1st D. Ct. New Orleans 1848), NOCA VSA 290.

Figure 10. Christian Roselius, Esq. Wood Engraving, authn.d., HNOC 1974.25.27.390.

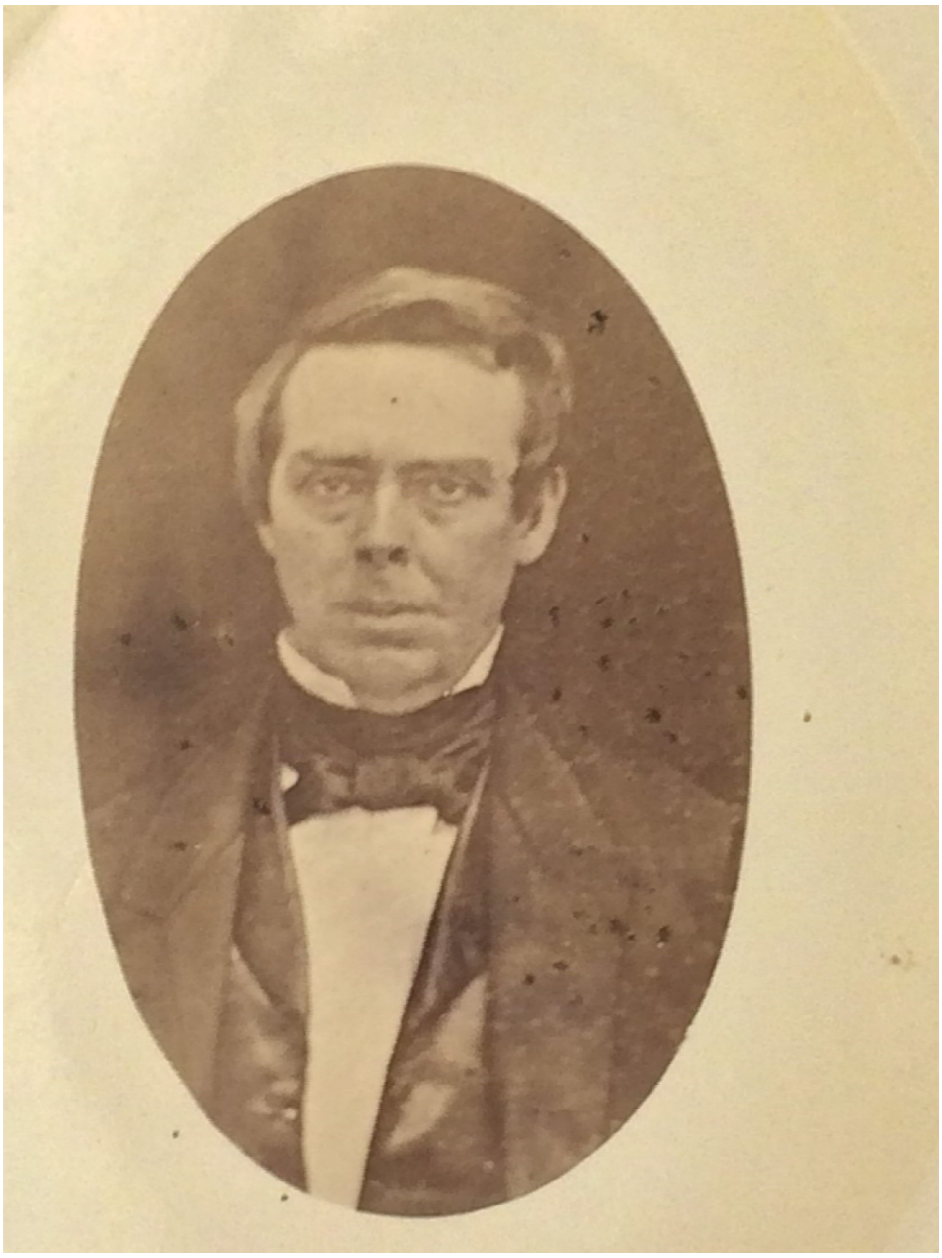


Figure 11. John McHenry, c. 1845. Courtesy of the Bancroft Library, the University of California, BANC PIC, K, Keith, M-POR Box.

Tables

Table 1. Enslaved Women and Girls Who Traveled to France and Returned to New Orleans, 1818-1847

Enslaved woman or girl	Free person(s) with whom they traveled	Departed New Orleans	Length of Stay in France	Return to New Orleans
Aimée	Pluché, Mr. and Mrs. Adolphe	c. 1833	six to eight months	Before 7 April 1846
Ajoie	Bernard de Marigny	1822	fourteen months	1823/1824
Ann (Anna)	Durel, Justin	1832	several months	Before 1834
Arsène (Cora)	Pineguy, Mr. and Mrs. Louis-Aimé	20 July 1836 (*Garonne* to New York; *François I* to Le Havre)	less than two years	1838
Aurore	Mr. and Mrs. Pierre Lausans	1818	five or six years	Before 16 June 1828
Charlotte	Cazelar, Pierre	1838/1840	a year or two	Dec. 1841
Eugénie	Gallien Preval	1830	eight years	1838
Fanny	Desdunes Poincy	1821/1822	several months or years	Before 18 Oct. 1847
Hélène	Blineau, Mrs. Oliver, and Mrs. Carrière	1838/1839 (*Ville de Bordeaux)*	less than nine years	Before June 1847 (*America)*
Josèphine, daughter of Marie-Louise, f.w.c.	Toussaint, Adele, and Marie-Emilie Marot	13 April 1828 (*Manchester*, Capt. Conpley). Arrival Le Havre, 24 June 1828.	several months	17 Sept. or Nov. 1828 (*Cérès*, Capt. Zechevallier)
Liza	Félicie Norbert Fortier, Mrs. Sauvé, and Hardy de Boisblanc	1821	two to three months	Before 1823
Louisa	Giggo, Mr. Baptiste and Mrs. Mary	1835	three to four years	1839
Lucille	Charbonnet, Aimable	1836/1837	less than eleven years	Before 20 Dec. 1847
Mary	Guesnard, William and Jeanne Louise Emma Delarsille	20 May 1847	three months	Departure from France Dec. 1847
Milky	Millaudon, Mrs. Laurent, and her children	27 May 1839 (*Mozart*)	two months, twenty days	Departure Le Havre 20 Sept. 1839 (*Mozart*). Arrival New Orleans 27 Oct. 1839.
Priscilla Smith	Mrs. Smith, Widow of Michael	Spring 1835 (*Garonne*)	several months	Nov. 1835
Sally	Varney, Mr.and Mrs. Alphonse	Nov./Dec. 1845 (*Taglione*, Capt. George Rogers)	two years	April 1847
Sarah	Guillaume (Guilhon), Mathilde, f.w.c.	1831/1832/1833	five to eight years	1838
Souri	Bordeaux, Louis	1831	Several months	June 1837
Tabé	Pierre and Blanche Vidal	1829/1830; 1832/1833	three years	Before 20 Nov. 1847

Table 2. Population Statistics, New Orleans (1721-1850)

Year	Total Population	Slave	Free People of Color	White
1721	519	192	1	326
1763	2,524	859	19	1,646
1803	8,056	2,773	1,335	3,948
1810	17,224	5,961	4,950	6,316
1830	49,826	16,639	11,906	21,281
1840	102,193	23,448	19,226	59,519
1850	119,460	18,068	9,961	91,431

Source: Richard Campanella, *Bienville's Dilemma: A Historical Geography of New Orleans* (Lafayette: Center for Louisiana Studies, University of Louisiana at Lafayette, 2008), 21-36.

Table 3. French Free Soil Suits in New Orleans (1835-1856)

Suit Initiated	**Plaintiff**	**Plaintiff's Attorney**	**First Instance Court**	**Freedom?**
1835	Marie Louise	E.A. Cannon	1st Judicial D. Ct. La.	Yes
1839	Priscilla Smith	A. Mace	Parish Ct. New Orleans	Yes
1844	Eugénie	Jean-Charles David and Buchanan	1st Judicial D. Ct. La.	Yes
1846	Arsène, alias Cora	Jean-Charles David	1st D. Ct. New Orleans	Yes
1847	Sally	Jean-Charles David	1st D. Ct. New Orleans	Yes
1847	Milky	Jean-Charles David	1st D. Ct. New Orleans	Yes
1847	Fanny	Jean-Charles David	1st D. Ct. New Orleans	Yes
1847	Tabé	Jean-Charles David	1st D. Ct. New Orleans	Yes
1847	Mary	Jean-Charles David	1st D. Ct. New Orleans	No
1847	Aimée	Jean-Charles David	1st D. Ct. New Orleans	Yes
1847	Lucille	Jean-Charles David	1st D. Ct. New Orleans	Yes
1848	Ann (Anna)	Paul E. Theard (Pheard)	2d D. Ct. New Orleans	Yes
1848	Sarah	Jean-Charles David	1st D. Ct. New Orleans	No Disposition
1848	Aurore	Jean-Charles David	1st D. Ct. New Orleans	Yes
1848	Charlotte	Jean-Charles David	3d D. Ct. New Orleans	Yes
1848	Souri	Jean-Charles David	1st D. Ct. New Orleans	Yes
1849	Hélène	Jean-Charles David	1st D. Ct. New Orleans	Yes
1850	Liza	Jean-Charles David	1st D. Ct. New Orleans	No
1851	Louisa	R.C. Me. Alpasse	1st D. Ct. New Orleans	Yes
1856	Ajoie	Lewis Duvigneaud (Durigneaud)	4th D. Ct. New Orleans	Yes

Table 4. Attorneys-in-Fact from the Race and Slavery Petitions Project, Louisiana (1813-1840)

Name	Year	Archive	Parish Court	Representing	Seeking Freedom For
AICARD, Joseph	1831	NOCA	Orleans	Jacques Christian	Sophie
ANSON, Henry Frederick	1838	NOCA	Orleans	John Thompson	Josephine
AUDIGE, Pierre (Jr.)	1819	NOCA	Orleans	Claire Daty, f.w.c.	Rosine
BELOT, Charles	1836	NOCA	Orleans	Helene Lepage, f.w.c.	Nina
BLANCHET, René	1816	NOCA	Orleans	Delbert, the testamentary executor of Victor Page	Sanite
BONAMY, Alex Cesar	1818	NOCA	Orleans	Widow Lamothe	Sannite and his two-year-old daughter
BONNE, Adelaide	1816	NOCA	Orleans	Her brothers	Felicity
BOREE, Paul, f.m.c.	1825	NOCA	Orleans	Jean Jason, called Bonnant	Jean Jason, called Bonnant
CAPELA, John	1820	NOCA	Orleans	Peter Francis Dejoie	Rose Eulalie
CHARBONNET, Aimable Barthelemy	1829	NOCA	Orleans	Heirs of the late François Balthazard Languille	Gothon
CHEW, Beverly	1814	NOCA	Orleans	Mrs. Clark, widow of Daniel Clark	Lubin
CHIAPELLA, Achille (the notary?)	1835	NOCA	Orleans	Marie Moreau	Arsene, Heloise, and two children
COUDRAIN, Anselme	1815	NOCA	Orleans	Heirs of the late Louise Laprade Duvernay	Elizabeth (Bouqil)
COUGOT, Marc Fauche	1825	NOCA	Orleans	the heirs of the late François Lagan	Apollon
CROCKER, Pierre, f.m.c.	1825	NOCA	Orleans	Isabelle Beauregard, f.w.c.	Marie Egle
DAVIS, Norman, f.m.c.	1840	Center for American History, the Univ. of Texas, Austin	West Feliciana	John Collins	Catherine and her three children
DECOSSON, Marie Claire Rigaud	1816	NOCA	Orleans	Her husband	John
DELARONDE, Denis P.	1818	NOCA	Orleans	Widow Castillon	John Baptiste
DERBIGNY, Charles	1817	NOCA	Orleans	François Bernoudy Jr., executor of	Francois

Name	Year	Archive	Parish Court	Representing	Seeking Freedom For
				François Bernoudy Sr.	
FORSTALL, Edmund	1824	NOCA	Orleans	Mrs. Lise Forstall, Widow Poiyfarre	Marianne and Caroline
GUILLOTTE, A.	1816	NOCA	Orleans	Widow Carle Navare	Francoise
HARMAN, Thomas	1816	NOCA	Orleans	Angelique Fortier, f.w.c.	Francoise
LEMONNIER, Yves (Dr.)	1818	NOCA	Orleans	Widow Lamothe	Sannite, now 28 and his daughter
LESPINASSE, Joseph	1820	NOCA	Orleans	Pierre Verain Desbordes	Elizabeth Honorine
MARCHAND, Eugène	1824	NOCA	Orleans	Jean Prevost	Marie,
MARTEL, Pierre	1821	NOCA	Orleans	Marianne Claude Planchard	Eulalie
QUESSART, Jean	1821	NOCA	Orleans	A. Sallet	Nelson
RELF, Richard	1814	NOCA	Orleans	Mrs. Clark, widow of Daniel Clark	Lubin
SAULET, Francis	1819	NOCA	Orleans	Thomas Saulet	Joseph
SAUVINET, Jean	1829	NOCA	Orleans	Elizabeth Claverie	Pablo
SAUVINET, Joseph	1829; 1831	NOCA	Orleans	Aurore Maton; Widow Dodard	Louise and Neonine (Gnognon)
SHEPERD, R.D.	1817	NOCA	Orleans	René Compagnon and his wife Marie Thérèse	Jean Pierre and Julie
SOUZA, Victor	1829	NOCA	Orleans	Antoine Bordeaux	Willis
STERRETT, James	1819	NOCA	Orleans	Gilbert Morris	Polly
TERRIEN, René	1818	NOCA	Orleans	Etienne C. Garrau et al.	Marinette

Table 5. Plaintiffs Jean-Charles David Represented in Free Soil Suits in New Orleans (1844-1850)

Suit Initiated	Plaintiff	Plaintiff Had Traveled to	First Instance Court	Freedom?
1844	Josephine	New York; Pennsylvania	1st Judicial D. Ct. La.	Yes
1844	Eugénie	France	1st Judicial D. Ct. La.	Yes
1846	Arsène, alias Cora	France	1st D. Ct. New Orleans	Yes
1847	Sally	France	1st D. Ct. New Orleans	Yes
1847	Milky	France	1st D. Ct. New Orleans	Yes
1847	Fanny	France	1st D. Ct. New Orleans	Yes
1847	Tabé	France	1st D. Ct. New Orleans	Yes
1847	Mary	France	1st D. Ct. New Orleans	No
1847	Aimée	France	1st D. Ct. New Orleans	Yes
1847	Lucille	France	1st D. Ct. New Orleans	Yes
1848	Sarah	France	1st D. Ct. New Orleans	No Disposition
1848	Aurore	France	1st D. Ct. New Orleans	Yes
1848	Charlotte	France	3d D. Ct. New Orleans	Yes
1848	Souri	France	1st D. Ct. New Orleans	Yes
1849	Hélène	France	1st D. Ct. New Orleans	Yes
1850	Eulalie	England	1st D. Ct. New Orleans	Yes
1850	Liza	France	1st D. Ct. New Orleans	No

Transcribed Legal Documents

Petition of Arsène, 5 Nov. 1846
Arsène v. Pineguy, No. 434 (1st D. Ct. New Orleans 1847), *NOCA* VSA 290.

To the Honorable the first District Court
of New Orleans, State of Louisiana

The petition of Arsène alias Cora
c w of New Orleans

Respectfully represents that your
Petitioner was the slave of Louis Aimé Pineguy of
New Orleans in 1836 or thereabouts, that in the said
year, your petitioner went with her said master to
New York & from New York to France; that the slavery [*sic*] is
not tolerated there; that she remained in france with her
said master & her mistress L.A. Pineguy about two years;
& came back to New Orleans, that your petitioner by going
to France with the consent of her master & agent also of his wife,
& with their consent, Became free ipso facto & that since
her return from France the said Louis Aimé Pineguy for
himself or as agent of his wife has received the value of
the services of your petitioner amounting to about $1200;
that the said Louis Aimé Pineguy is willing & endeavoring
to sell your petitioner for $650 as his slave & even
he has given to your petitioner an handwriting [*sic*] to look for a master,
that the aforesaid $1200 have been unduly payed &
through error; that Mrs. L.A. Pineguy residing in France
since about 1836 & has no other person to represent
her in New Orleans that her husband L.A. Pineguy
with whom she is not separated of property, that the
law of this state passed in 1846 is contrary to law of nations [*sic*] & to the
constitution of the United States

Therefore your petitioner humbly prays that
Louis Aimé Pineguy of New Orleans & as representing
his wife who resides in France be cited to appear & answer
this Petition & that after due proceedings had, your
Petitioner be decreed free & that Louis Aimée Pineguy for
himself & as representing his wife be condemned to pay to
your petitioner twelve hundred dollars unduly received by
him & that he be condemned to pay the costs of suits
& your petitioner further prays for a general relief.

for Your Petitioner J.C. David atty

Your petitioner further prays that Louis aimée Pineguy be cited to answer under oath after ten days of the service to the following Interrogatories:

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1. Did you or did you not go to France in 1836 or in another year, having with you the plaintiff?
2. is it or is it not to your knowledge that the slavery [*sic*] does not exist in France?
3. did you or did you not come from France after having resided there about two years or several months & having with you the plaintiff?

for your petitioner JC David atty

A L'Honorable Cour De District de la
Nouvelle Orléans Etat de La Louisiane

La Pétition d'Arsène alias Cora
f c de la Nouvelle Orléans

Represente respectueusement que votre Pétitionnaire était l'esclave de Louis Aimé Pinéguy de la Nouvelle Orléans, en 1836 ou environ, que dans la dite année, votre Pétitionnaire alla avec son dit maître à New York & de là en France où L'esclavage n'est pas toléré; qu'elle est restée environ deux ans en france avec son dit maître Louis Aimé Pinéguy & avec sa maîtresse madame Louis Aimé Pinéguy & qu'en suite elle est revenue à la Nouvelle Orléans; que votre pétitionnaire en allant en France avec le consentement de son maître & agent aussi de sa femme, est devenue Libre ipso facto, que depuis son retour de france ledit Louis Aimé Pineguy veut vendre & cherche à vendre votre pétitionnaire pour $650; que pour lui même ou comme agent de sa femme il a reçu toute la valeur du travail de votre pétitionnaire Se montant à la somme de $1200 qui lui eut été indûment payées & par erreur; que madame L. Aimé Pineguy

réside en france depuis 1836 & n'a personne autre pour la representer
que son mari Louis Aimé Pineguy avec lequel elle n'est pas
séparée de biens, que la Loi passée en 1846 par cet Etat
est contraire aux Lois des nations & à la constitution des Etats
Unis.

C'est pourqoui votre pétitionnaire prie humblement
que Louis Aimé Pinéguy de la Nouvelle Orléans & comme
representant aussi sa femme qui réside en france, soit cité
pour comparaître & répondre à cette petition & qu'après une
Procédure Légale, votre pétitionnaire soit décrêtée libre; que
Louis Aimé Pinéguy pour lui même & comme representant
sa femme soit condamné à payer à votre pétitionnaire
douze cents piastres qu'il a reçues indûment & qu'il soit
condamné à payer les frais du procès.

Votre pétitionnaire prie de plus pour toute espèce de secours

Pour votre pétit… JC David atty

Votre pétitionnaire prie de plus que Louis Aimé Pinéguy soit cité pour
répondre sous serment après dix jours de service aux interrogatories suivants

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1. Etes vous, ou n'êtes vous pas allé en France en 1836 ou dans
   une autre année, ayant avec vous la demanderesse?
2. est il, ou n'est il pas à votre connaissance, que l'esclavage
   n'est pas toléré en france?
3. Etes-vous ou n'êtes-vous pas venu de France ayant avec vous
   la demanderesse après y être resté environ deux ans,
   ou plusieurs mois?

Pour votre pétitionnaire J C David atty

Opinion of Judge John McHenry, 29 May 1848
Couvent v. Guesnard, No. 1786 (1st D. Ct. New Orleans 1848), NOCA VSA 290.

May 29th 1848

Bernard Couvent tutor
of the minor Mary cw,
vs 1786
Mr & Mrs Guesnard
represented by Mr Oscar
Vignand and P Lemoine

The Court delivered
this day the
following opinion
in this case, to wit

The plaintiff, mary a minor
slave, the property of Mrs. Guesnard
claims her freedom on the ground
that on the 20th day of May 1847 she was
carried by her mistress from New Orleans
to France, where she remained for almost
three months, and was sent back to
this city to be sold as a slave. This suit is
initiated against Mr. and Mrs. Guesnard,
and in addition to these facts the evidence
shows that when Mrs. Guesnard sailed
to France she was in bad health and
had long been indisposed, and that
both defendants are now in France.

By the laws of France, neither slavery
nor involuntary servitude is tolerated and
the question has many times been presented
to the Supreme Court of the state, whether
the laws of that country operated upon
the condition of a slave who was voluntarily
carried there by his or her owner, so

As to produce an immediate emancipation.
And have always been
decided in the affirmative. In the well

known case of Marie Louise vs Marot
& al, the late Judge Matthews who delivered
the opinion of the court holds this
language in speaking of plaintiff's claim to
freedom—Being free for one moment
in France, it was not in the power of
her former owner to reduce her again to slavery.
And in a recent case decided
by this Court and carried by an appeal to the
Supreme Court, the judge who delivered
the opinion of the court says, we
cannot expect that foreign nations
will consent to the suspension of the operation
Of their fundamental laws as to persons
voluntarily sojourning within their
jurisdiction for such a length of time
as to those thrown On foreign coast by
shipwrecks, taking refuge from Pirates,
driven by some overwhelming necessity
or fresh? after those passing through a foreign
country or territory on a lawful
journey, their personal condition may
remain unchanged but this is the extent
to which an immunity from the effect
of the foreign law could be maintained
under the law of nations, see case of Arsene
alias Cora vs Louis Aimee Pigneguy

We have seen that the plaintiff
was voluntarily carried by the defendant,
her mistress, from New Orleans to France
in the year 1847, where she remained

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three months and where the defendants still reside.
It is therefore certain that
according to the jurisprudence of Louisiana,
as settled by the former decisions
of her highest tribunals, the minor
Mary C. W. Is entitled to her freedom.
But the defendants in their answer
that they carried the plaintiff to
France under the authority of the laws

passed 30th of May 1846— and which is
in these words – "be it enacted &c&c
that from the passage of this act no slave
shall entitled to his or her freedom
under the pretence that he or she has
been, with or without the consent of his or her
owner, in a country where slavery does not exist,
or many of the states where slavery
is prohibited, see acts of 1846 page 163
This court feels no hesitation
in declaring if the plaintiff by the operation
of laws of France upon her personal
condition did become free for one
moment, then it was neither in the
power of her former owner or the legislature
of Louisiana to reduce her again
to slavery, and any law passed with
such a design, is against the plain and
obvious principles of common right
and common reason and is null and
void. But if the legislature intended
by the law of the 30th of May 1846 to
prohibit the courts from pronouncing
by their decrees upon the freedom of slaves
who had been emancipated by the operation
of the fundamental laws of foreign

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countries upon their personal conditions,
when voluntarily carried from Louisiana
by their owners within the jurisdiction
of such foreign countries then we are
not prepared to say that the rights to
enact such a law, is not embraced within
the scope of those powers claimed to
be exercised by sovereign and independent
States. The law of a sovereign right
fully extends over persons domiciled within
his territory and over property which
is there situated, and it is the
province of such sovereign to exercise
justice, settle differences which may
arise within the jurisdiction, and to

take cognizance of crimes and although
to establish courts, regulate judicial
proceedings and administer justice
appertaining to the duties of sovereignty,
yet it does not follow that remedial
justice may not be withheld from
those who have hold, or may hold a
servile condition in a state. The law under
consideration denies the right to a
person who has once been in a state
of slavery to stand in judgment for
his or her freedom and inhibits the courts
of this State from passing upon
the merits of such claims. Taking this
view of the law which the defendants
have invoked, the court feels itself
constrained to regard their answer,
as a peremptory exception, founded
in laws, and which compels it to dismiss
the plaintiffs Bernard? without

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rendering a judgment upon the merits
of her claim to be restored to liberty
But although the plaintiff is
without remedy by the law of the 30th
of May 1846 so far as regards her right
to have her right to freedom passed on,
upon her individual application, by
a court of this state, yet having become
free by the laws of France, she cannot
be held in slavery in the State of Louisiana,
nor be legally sold as such, for
the 12th section of the act of 1830 declares,
"That if any free person or persons,
shall hereafter knowingly bring or cause
to be brought into this state any free
negro, mulatto or person of color, and
shall hold the same as a slave, or
shall offer the same for sale to any
person or persons in this state as a slave, every
person or persons shall for every
such free Negro, mulatto or free person

of color forfeit the sum of one thousand dollars (over and above the damages which may be recovered by such free Negro, mulatto or free person of color, to any person or persons who will sue for and recover the same, which may be done either by indictment or by information filed to the Attorney General or by the District Attorney, as the case may be, or by a civil action brought by any person prosecuting for the same.

The plaintiff was brought to this state in contravention of this

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provision of our law, and cannot be legally retained in bondage _ but the court under the circumstances can do nothing more than dismiss her claim.

It is therefore ordered adjudged and decreed that the plaintiff's petition be and the same is here-by dismissed with costs.

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