Introduction

One afternoon in November 1829 James Duncan crouched in a canoe in the middle of the Mississippi River. Only a few hours before, Duncan's purported slave, Vincent, had filed suit against Duncan in the St. Louis circuit court. Vincent alleged trespass, assault and battery, and false imprisonment, technical terms that enabled him to seek something much more elementary – his freedom.[1]

This was not the first time Vincent had used the courts in an attempt to free himself. Earlier that spring, Vincent had instituted his first freedom suit – a legal action in which those held as slaves asserted that they were free people unlawfully held in bondage – against another man, a man he claimed had hired his time.[2] Because the defendant in this matter could not, in fact, legally claim ownership over him, however, it went nowhere. Vincent eventually had the case discontinued.[3]

When James Duncan learned that Vincent had filed a second freedom suit that named him as the defendant, he was no doubt desperate to frustrate the enslaved man's efforts. First, Duncan cuffed Vincent and found a man with a dirk to guard him. Apparently under the assumption that he was about to be taken into custody, Duncan then paddled out into the

[1] Vincent, a man of color v. Duncan, James, November 1829, Case No. 110, St. Louis Circuit Court Historical Records Project, Circuit Court Case Files, Office of the Circuit Clerk, City of St. Louis, Missouri, http://stlcourtrecords.wustl.edu (hereafter SLCCHRP), 63.

[2] Vincent, a free person of color v. Jerry, a free person of color, July 1829, Case No. 14, SLCCHRP. Jerry, the defendant in Vincent's first suit, was a former slave of the Duncan family. For more information on why Vincent may have filed suit against Jerry, see Chapters 2 and 5.

[3] Missouri State Archives-St. Louis, Circuit Court Record Book No. 5, November 24, 1829, 410–411.

river – convinced, it would seem, that the court's jurisdiction ended at the water's edge.

Such was the scene, in any case, when St. Louis county deputy sheriff David Cuyler arrived with an order that barred James Duncan from removing Vincent from St. Louis. Cuyler was attempting to assure Duncan that he did not intend to take him in when a fifth man, Isaac Letcher, who had once hired Vincent to labor at his brickwork, emerged from the brush to enquire whether there would be any "danger" if Duncan returned to shore.[4] With the repetition of Cuyler's assurances, Duncan finally relented. Once he reached the riverbank, some portion of this motley crew – Duncan and Vincent at the very least – proceeded to the county courthouse, where Duncan presented Vincent to the judge.

James Duncan and Vincent waged their own particular war against one another in the courts, but in many ways they were typical. In countless encounters in the American Confluence – a vast region where the Ohio, the Mississippi, and the Missouri rivers converge – ordinary individuals, those without formal legal training, repeatedly demonstrated the breadth and depth of their legal knowledge of slavery and slaveholding.[5] Duncan's efforts to avoid David Cuyler's writ may have played as broad comedy, a ham-fisted attempt to ensure he did not wind up in a jail cell. His actions, however, as well as those of all the others who had gathered

[4] Isaac Letcher, who was listed as a brickmaker in an 1836–1837 city directory, had apparently employed Vincent for a single day sometime in 1827 or 1828. Charles K. Keemle, *The St. Louis Directory for the Years 1836-7* (St. Louis: C. Keemle, 1836), 16; Vincent v. Duncan, SLCCHRP, 63. Letcher knew the legal process well, having been party to a number of cases himself. By 1829, when he intervened in Vincent's case, he had filed at least three civil suits in St. Louis and had been named as defendant in four additional civil and criminal proceedings. United States v. Letcher, Isaac A., August 1820 [case number unavailable], Circuit Court Case Files, Office of the Circuit Clerk, City of St. Louis, Missouri (hereafter SLCCCF); Miller, Daniel v. Letcher, Isaac A., July 1828, Case No. 257, SLCCCF; Letcher, Isaac A. v. O'Fallon, John, July 1827, Case No. 25, SLCCCF; Steen, Enoch, Administrator v. Letcher, Isaac A., July 1827, Case No. 30, SLCCCF; Robinson, Thomas v. Letcher, Isaac A., November 1828, Case No. 66, SLCCCF; State of Missouri v. Letcher, Isaac A.; Miller, James W.; Steward, Henry, November 1828 [case number unavailable], SLCCCF; Letcher, Isaac A. v. Dugal, Xavier, July 1829, Case No. 20, SLCCCF.

[5] The term "American Confluence" was pioneered by Stephen Aron to reference the Missouri and Mississippi River Valleys, a region elsewhere referred to as the American Bottoms. I have applied the term more broadly in this work. Stephen Aron, *American Confluence: The Missouri Frontier, from Borderland to Border State* (Bloomington, Ind.: Indiana University Press, 2006).

on the shores of the Mississippi River that day, were based on a sophisticated understanding of the law.

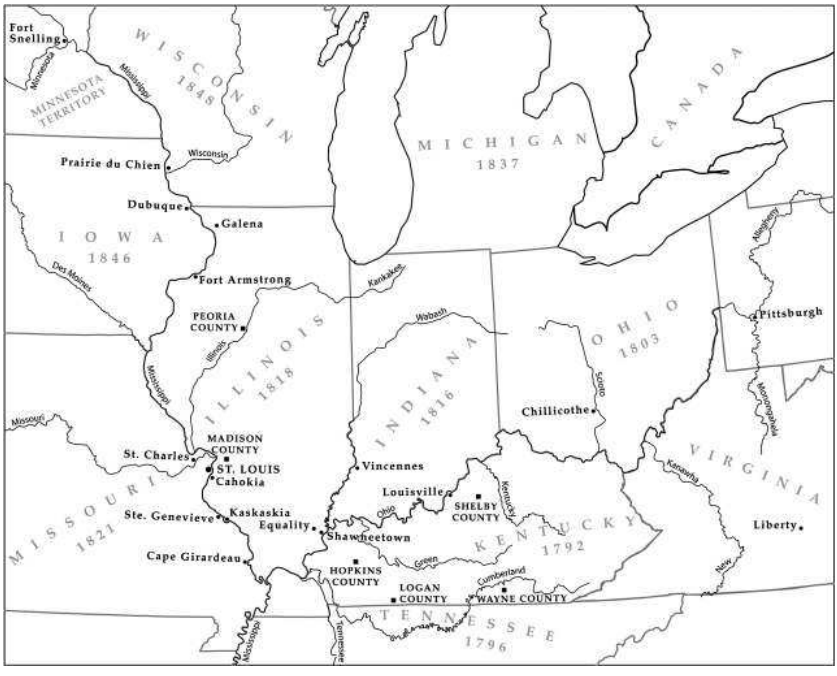
Drawing on a collection of 282 freedom suits filed in the St. Louis circuit court between 1814 and 1860, this book explores how ordinary people absorbed the law, and how the law, in turn, shaped the social and cultural histories of slavery and slaveholding in the American Confluence.[6] To understand the legal culture constructed by the region's residents is to understand how the law was used, to imagine not only the purposes to which men like James Duncan, Vincent, or any of the other three men who gathered on the banks of the Mississippi that day thought it could be put, but also the way it constrained and made possible a range of actions, how it might be employed or skirted. Despite distinctions of status and race, those who lived in the American Confluence – masters, slaves, and indentured servants, as well as free black people and their white neighbors – shared a common legal culture, one rooted in knowledge of territorial and state statutes as well as the legal mechanisms that defined the institutions of slavery and slaveholding in the region.

Encompassing portions of present-day Ohio, Indiana, Illinois, Kentucky, and Missouri, the American Confluence was part free and part slave. The Northwest Ordinance, adopted in 1787, ensured that the states carved out of the Northwest Territory – the first three of which, Ohio, Indiana, and Illinois, were admitted in 1803, 1816, and 1818 – prohibited slavery. Kentucky and Missouri, meanwhile, entered the Union as slave states in 1792 and 1821.

While these two competing normative orders met in the American Confluence, the region was nevertheless defined by its fluidity. Although the rivers that traversed it, especially the Ohio River, have often been imagined as borders, the waterways that defined the American Confluence functioned more like corridors. The region may have been carved into slave territories and states and free territories and states, but the border between slavery and freedom was regularly traversed by masters, slaves, and indentured servants, as well as all those they came into contact with.

What emerged in the American Confluence, as a result, was a peculiar mixture of slavery and freedom, one that rendered the region part

[6] For a complete list of all the freedom suits analyzed in this book and the methodology employed in compiling that list, see Tables A.3 and A.4.



MAP 1. The American Confluence, 1787–1857.
Source: Map prepared by Raymond Doherty.

free and part slave in an altogether different sense. Slavery and indentured servitude, after all, were salient features of not only the region's slave territories and states, but also its free territories and states. Long before the passage of the Northwest Ordinance, many French settlers held slaves in Vincennes, Kaskaskia, and Cahokia; long after the passage of the Ordinance, residents of what would become Ohio, Indiana, and Illinois, the latter especially, fought to protect the institution or settled, instead, for a form of indentured servitude that closely resembled slavery. At the same time, opposition to the institution was not only voiced in the region's free territories and states, but also its slave territories and states. Slaveholders in Kentucky and Missouri occasionally raised concerns about the morality of the institution while their nonslaveholding neighbors, who generally resented the concentration of land and wealth that slaveholding encouraged, often espoused a kind of popular antislavery.[7]

[7] On the widespread practice of slaveholding and indentured servitude in what became the Northwest Territory, see N. Dwight Harris, *The History of Negro Servitude in Illinois, and*

Both slavery and freedom in the region, moreover, were more ambiguous than elsewhere in the United States. There were fewer slaves and slaveholders in the region than there were further south and east, and the advantages slaveholders in other parts of the country enjoyed over their slaves – by virtue of law, custom, or force – frequently broke down. Some masters in the region, in fact, lost perpetual rights of ownership over their slaves when they indentured them. Even when slaveholders held fast to them, however, the American Confluence was a place where slaves might attain an ever-greater degree of autonomy. Many, especially enslaved men but occasionally enslaved women as well, were engaged in occupations that took them out of their masters' households. Indeed, many slaves in the American Confluence had relatively little contact with their masters since slaveholders commonly rented their slaves' labor for weeks, months, or even years at a time. Hired out to the region's lead mines, salines, farms, households, or steamboats, moreover, these men and women sometimes worked alongside free black and white laborers and had the opportunity to earn their own money. Other slaves, those who were not hired out, often lived on intimate terms with their masters. Bound to their slaves by dependence or lust, masters in such circumstances might come to view such slaves more like children and slaves might come to look on masters more like lovers. In such a world, where the boundary between slavery and freedom could be so ambiguous, slaves might be transformed into indentured servants or eventually claim their freedom, but they might just as easily see their privileges stripped away when the whims of a master or the exigencies of the market intervened.

It was no coincidence, in other words, that hundreds of plaintiffs – including Dred Scott, whose case would result in the nation's most infamous US Supreme Court decision – ultimately petitioned for their freedom in its unofficial capitol, St. Louis. As a bustling frontier town on the very border of a border state, and later, a commercial hub of the West,

of the Slavery Agitation in that State, 1719–1864 (Chicago: A.C. McClurg and Company, 1904); Emma Lou Thornborough, *The Negro in Indiana: The Study of a Minority* (Indianapolis: Indiana Historical Society Publications, 1957); Paul Finkelman, "Evading the Ordinance: The Persistence of Bondage in Indiana and Illinois," *Journal of the Early Republic* 9 (Spring 1989), 23–51; Matthew Salafia, *Slavery's Borderland: Freedom and Bondage Along the Ohio River* (Philadelphia: University of Pennsylvania Press, 2013). For information about the antislavery views of those who settled in Kentucky, see Stephen Aron, *How the West Was Lost: The Transformation of Kentucky from Daniel Boone to Henry Clay* (Baltimore: Johns Hopkins University Press, 1999), 89–93. On the lukewarm commitment Missourians showed toward slavery, see Diane Mutti Burke, *On Slavery's Border: Missouri's Small-Slaveholding Households, 1815–1865* (Athens, Ga.: University of Georgia Press, 2010), 28–29.

St. Louis was an obvious site for these battles to take place.[8] The city's size and growing importance, after all, drew thousands of new inhabitants every year while its location ensured that a number of slaves who were drawn into its orbit had already spent time on the nominally free soil of the Northwest Territory, an experience that would enable them to prosecute a freedom suit. Its circuit court, moreover, was subject to a variety of emancipatory precedents established by the Missouri Supreme Court over the course of the early national and antebellum eras, and the city itself boasted a large population of attorneys who proved more than willing to represent those who sued for their freedom. The widespread practice of hiring out, meanwhile, common in the American Confluence as a whole but even more prevalent in a city like St. Louis, meant that slaves in the city, like urban slaves elsewhere, had greater autonomy from their masters than their counterparts in the countryside and, therefore, better access to both the judicial system and legal representation.

The proliferation of freedom suits in the St. Louis circuit court, however, was also the result of the legal literacy acquired by the region's slaves and indentured servants. To some extent, the legal knowledge displayed by such individuals was a product of their status as such. Slaves and indentured servants in the American Confluence, for instance, like others held in bondage throughout the United States, were intimately familiar with the role law played in shaping their lives because, as property, they could be sold, mortgaged, collateralized, or put in trust, any one of which might upend their lives.[9] But those in the region, far more than unfree laborers in much of the rest of the nation, enjoyed greater opportunities to manipulate the law for their own benefit. They discovered – and employed – statutes that could effect their freedom, obtained competent counsel, and tracked down sympathetic witnesses. They endeavored to keep out of the clutches of their masters' creditors and, cognizant of the emancipatory power of residence on supposedly free soil, they sought opportunities to travel to or remain in free territories or states, an action that might lay the groundwork for a freedom suit.

[8] When Missouri was recognized as a territory in 1807, it was little more than a regional backwater, home to just over a thousand people, but by 1860 the city was the eighth largest in the United States, with more than 160,000 residents.

[9] Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, Mass.: Harvard University Press, 1999), 186–187; Ariela Gross, "The Law and Culture of Slavery: Natchez, Mississippi," in *Local Matters: Race, Crime, and Justice in the Nineteenth-Century South*, ed. Christopher Waldrep and Donald G. Niemann (Athens, Ga.: University of Georgia Press, 2001), 105–106.

Like slaves and indentured servants, the region's masters as well as its free black and nonslaveholding white residents learned about the law through a combination of their own experiences with unfreedom and the distinctive characteristics of the American Confluence. Masters, after all, were fully cognizant of the economic and social value of their slaves and indentured servants and worked hard to maintain their property in a region where doing so could prove challenging. They learned to buy, sell, bequeath, mortgage, and occasionally indenture their slaves according to legal form. They discovered how long and under what circumstances they could take their slaves to free territories and states without forfeiting ownership. And they became skilled at sheltering their slaves – almost always their most valuable possessions – from seizure by creditors by executing trusts and moving from jurisdiction to jurisdiction to prevent process from being served. Others in the region who regularly interacted with slaves, indentured servants, and their masters, absorbed the laws and precedents that governed both. Such individuals learned the finer points of sojourning, the legally sanctioned practice of taking a slave to a free territory or state, and the significance the courts placed on intent when determining whether a slaveholder had illegally introduced slavery to supposedly free soil by establishing a residence with his slaves. They also dispensed legal advice about how to indenture slaves and occasionally acted as witnesses and deponants when freedom suits arose.[10]

For the last three decades, legal historians, particularly those who have studied the early national and antebellum United States, have increasingly focused their attention on "legalities" rather than "law." Instead of examining statues, precedents, and formal legal proceedings, in other words, they have concentrated, as one such scholar has noted, on "the symbols, signs, and instantiations of formal law's classificatory impulse, the outcomes of its specialized practices, the products of its institutions" as well as any "repetitive practice of wide acceptance within a specific locale."[11] In doing so, these scholars have made at least two important

[10] White residents of the American Confluence, to be sure, gave testimony in freedom suits with far more regularity than their black counterparts because people of African descent were banned from doing so when any party to a suit was white. In a handful of freedom suits in which there was a black defendant, however, black residents could and did participate as witnesses and deponants.

[11] Christopher L. Tomlins, "Introduction: The Many Legalities of Colonization: A Manifesto of Destiny for Early American Legal History," in *The Many Legalities of Early America, ed*. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill: University of North Carolina Press, 2001), 2–3.

contributions. First, they have enabled us to answer questions that had previously been opaque or invisible. Without a broader understanding of what constituted law, for instance, historians would not have been able to explain how the people of nineteenth-century New York City famously established a right to keep pigs simply by doing so or how American slaves, who were defined *as* property could nevertheless *own* property.[12] Second, they have dramatically expanded the cast of characters who populate legal history. The field is no longer the sole domain of lawyers and judges. Ordinary people – those who lacked any formal education about the law – have been afforded a primary place in legal history as well.

Legal pluralism, however, has its dangers. Like the Foucauldian understanding of power or the conception of republicanism advanced by J. G. A. Pocock, Gordon Wood, and others, its ubiquity can diminish its explanatory potential: if law is everywhere it is also nowhere; by trying to explain everything it explains nothing.[13] Additionally, while legal pluralism has permitted early national and antebellum scholars to address not only new lines of inquiry but also a much larger swath of the population, it has, at the same time, generally suggested that ordinary people were locked in a largely antagonistic relationship with formal law. As a result, legal historians have seemingly faced a dilemma: either focus on formal law at the expense of ordinary people, or make ordinary people leading protagonists at the expense of formal law. And they have repeatedly chosen the latter over the former. The balance of much American legal history, in other words, has shifted so fully toward a study of alternative legal culture that, notwithstanding the real benefits of that approach, there is often little room for an examination of how ordinary people engaged, learned, and employed formal law.[14]

[12] Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* 4 (July 1985), 899–935; Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003).

[13] On the dangers of stretching these particular paradigms too far see Daniel T. Rodgers, *The Age of Fracture* (Cambridge, Mass.: Harvard University Press, 2011), chapter 3; Daniel T. Rodgers, "Republicanism: The Career of a Concept," *Journal of American History* 79 (June 1992), 11–38.

[14] Some of the work that has adopted legal pluralism as the primary framework through which to understand early national and antebellum American law has explicitly posited a hostile relationship between ordinary people and formal law, see, especially, the extremely influential Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolution South* (Chapel Hill: University of North Carolina Press, 2009). Much other scholarship in this voluminous and growing literature has been less explicit about such hostility, but in similarly asserting the prevalence

The reality, however, is that some historical problems – including an analysis of the freedom suits filed in the St. Louis circuit court before *Dred Scott* – simply cannot be understood without considering how formal law was embraced by ordinary people. To be sure, those who petitioned for their freedom clearly did so for reasons that had little to do with a deep or abiding respect for statute and precedent – they did not, in short, file suit to venerate the law. The very practice of slavery and slaveholding in much of the American Confluence, moreover, was in direct violation of formal law. But one can nonetheless only make sense of their actions and their incredible ability to manipulate the law if one reckons with their detailed knowledge of it. Although their motives sprang from many sources, the tactics and techniques they deployed to secure those ends betrayed a remarkable legal know-how.

The right to petition for one's freedom in the St. Louis circuit court was a right that was centuries in the making. The ability to do so was ostensibly rooted in a fourteenth-century English law that entitled a serf to seek redress in the king's courts if he or she alleged illegal detainment.[15] Thereafter, the right to petition for one's freedom was imported to England's North American colonies, where those who filed suit were no longer white serfs but black slaves. The first such cases were filed in the Chesapeake during the middle of the seventeenth century, but plaintiffs subsequently petitioned for their freedom in the Middle-Atlantic and New England as well.[16]

of alternative legal orders has ended up implying as much. See, for instance, Hartog, "Pigs and Positivism"; Tomlins and Mann, eds., *Many Legalities*; Penningroth, *Claims of Kinfolk*; Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge, Mass.: Harvard University Press, 2010); Aaron T. Knapp, "Law's Revolution: Benjamin Austin and the Spirit of 86," *Yale Law Review* 25 (Summer 2013), 271–358; Thomas C. Mackey, "It cant be cald stealin': Customary Law among Civil War Soldiers," in *Making Legal History: Essays in Honor of William E. Nelson* ed. Daniel J. Hulsebosch, R.B. Bernstein (New York: New York University Press, 2013), 49–74.

[15] Jonathan L. Alpert, "The Origin of Slavery in the United States – The Maryland Precedent," *The American Journal of Legal History* 14 (July 1970), 189.

[16] On freedom suits in the mid-Atlantic and Chesapeake, see Tommy L. Bogger, *Free Blacks in Norfolk, Virginia: The Darker Side of Freedom* (Charlottesville, Va.: University of Virginia Press, 1997), 94–96; T. Stephen Whitman, *The Price of Freedom: Slavery and Manumission in Baltimore and Early National Maryland* (Lexington, Ky.: University of Kentucky Press, 1997), 63–67; Michael L. Nicholls, "'The Squint of Freedom': African-American Freedom Suits in Post-Revolutionary Virginia," *Slavery and Abolition* 20 (August 1999), 47–62; Thomas F. Brown and Leah C. Simms, "'To Swear Him Free': Ethnic Memory as Social Capital in Eighteenth-Century Freedom Petitions,"

In 1807, shortly after the Louisiana Purchase, enslaved people who resided in the territory west of the Mississippi River were explicitly authorized to initiate freedom suits by territorial statute. "An Act to Enable Persons Held in Slavery to Sue for their Freedom," like similar laws elsewhere, enabled any slave within the Missouri Territory to petition the general court or any court of common pleas as a pauper. This law suggested that freedom suits might take the form of an action for assault and battery as well as false imprisonment, that is, that the plaintiff in such cases would assert that he or she had been injured by the defendant. It required, moreover, that the matter would be tried like other civil proceedings in which there were two white parties. If a judge found a petition to sue sufficient, the law held that he was responsible for assigning counsel and ensuring that the plaintiff could meet with this court-appointed attorney as needed. This statute also made it illegal for the plaintiff to be either removed from the court's jurisdiction while the case was pending or "subjected to any severity because of his or her application for freedom," and permitted judges to require defendants to enter into recognizance if they feared that their orders might be violated. In the event that the defendant refused to do so, the judge was authorized to have the plaintiff taken into custody and hired out until the case could be decided. Finally, according to the statute, if the plaintiff was able to demonstrate – to a judge or a jury – that he or she had been wrongfully enslaved, the court had the power to free not only the plaintiff, but, if the plaintiff was female, any of her children as well.[17] Revisions to this law shortly after Missouri attained statehood were limited, but, on the whole, rendered freedom suits even more attractive. If the 1824 statute authorizing freedom suits required rather than merely suggested that a would-be plaintiff's suit would allege trespass in addition to assault and battery and false imprisonment, it also permitted those whose suits were successful

in *Colonial Chesapeake: New Perspectives*, ed. Debra Meyers and Mélanie Perreault (Lanham, Md.: Rowman and Littlefield Publishers, 2006), 81–112; Honor Sachs, "'Freedom by a Judgment': The Legal History of an Afro-Indian Family," *Law and History Review* 30 (February 2012), 173–203; Loren Schweninger, "Freedom Suits, African American Women, and the Genealogy of Slavery," *The William and Mary Quarterly* 71 (January 2014), 35–62. On freedom suits in New England, see George Henry Moore, *Notes on the History of Slavery in Massachusetts* (New York: D. Appleton and Company, 1866), 111–147; Arthur Zilversmit, "Quok Walker, Mumbet, and the Abolition of Slavery in Massachusetts," *The William and Mary Quarterly* 25 (October 1968), 614–624; Emily Blanck, "Seventeen Eighty-Three: The Turning Point in the Law of Slavery and Freedom in Massachusetts," *The New England Quarterly* 75 (March 2002), 24–51.

[17] "An Act to Enable Persons Held in Slavery to Sue for Their Freedom," Laws of the Territory of Louisiana, chapter 35 (June 27, 1807).