Prologue: Antislavery, Abolition, and the Judicial Forum

"It is criminal selfishness to seek liberty and independence from Spain for ourselves, if we wish not to grant it to our slaves." With these stern words, the lawyer Félix José de Restrepo addressed his colleagues, the delegates to the first General Congress of the Republic of Colombia, in 1821. As the delegates worked out the new republic's constitution and foundational laws, Restrepo invited them to consider the problem of slavery: were slaves, like other humans, "children of Adam" and thus eligible for equal rights? Were "whites" entitled to dominate "blacks"? Was any government that upheld slavery a "criminal" government by definition? Should independence from Spain automatically lead to liberty for slaves? As the South American independence movement reached its climax, Restrepo forcefully developed clear-cut questions.[1] But would they find the clear and forceful answers hoped for by many slaves and some free people?

In 1821 Restrepo defended freedom over slavery on behalf of humanity, religion, and the decorum of the nascent country. He introduced a manumission bill, ostensibly aimed at ending coerced labor. It is indispensable to "annihilate slavery," he insisted. In Restrepo's view, the General Congress represented the ideal opportunity to restore enslaved individuals to their human "dignity" while giving neighboring countries an example of "justice." Ending slavery, moreover, would dignify the revolution against Spain, guaranteeing future economic and political stability for this new republic. Restrepo asserted that it remained a contradiction to pray to God for deliverance from foreign

tyrants while keeping thousands of people in captivity. Providence, he predicted, would throw Colombia back into the hands of Spain "if we refuse to exercise mercy with our brothers."[2]

Yet in the end the interests and prejudices of the masters prevailed over such grave considerations. Restrepo posed clear questions but, along with most other delegates to the 1821 Congress, the answers he offered were ambiguous. Restrepo's proposed legislation called for a protracted end to slavery, rather than an immediate release of all those held as slaves. Approved on July 19, Restrepo's bill became Colombia's law "On the manumission of slaves." It declared international slave trading illegal, stipulated that slavery would no longer be transmitted from mother to child, and called for the gradual emancipation of deserving individual slaves, compensating their masters with public funds.[3] Some change now seemed possible, but the right to own others remained intact. People continued to be bought and sold like property.

Although bondage remained legal, Restrepo asserted that "the freedom of the womb" constituted the "radical remedy for slavery." By declaring all new-born children of enslaved women free, Restrepo told delegates, the "political cancer" of slavery would be terminated.[4] As it turned out, however, this approach would prove unable to end slavery. Over the next decades, committed slaveholders systematically undermined the mechanisms for slave emancipation stipulated by law in 1821. It would take a new generation, a new legislative act, and a civil war to finally end slavery in 1852.[5] Still, in 1821 Restrepo and his colleagues celebrated their efforts as the "abolition of slavery," and presented Colombia as a country that was simultaneously committed to ending slave trading, slavery, and the tyranny of Spain. Furthermore, they described themselves as "slaves" of Spain, a mistress that had cruelly subjugated her New World vassals.[6] Although the metaphor served to support the case for immediately ending political dependence from Spain, ending actual slavery in the new country seemed less urgent.

Most of the 100,000 slaves in the Republic of Colombia (which comprised today's Ecuador, Colombia, Panama, and Venezuela) never obtained emancipation. Of the nearly 50,000 slaves who lived within the borders of current-day Colombia in the early 1820s, around 19,000 (roughly 39 percent) achieved emancipation thanks to the

law of 1821. The rest, some 29,000 slaves (roughly 60 percent), never became free. Most of them died enslaved, while others escaped or gained only informal freedom. An indeterminate number (at least several hundred, but possibly thousands) were shipped abroad, often sold alongside their ostensibly freeborn children. Even the children of slaves who stayed in Colombia struggled to effectively gain emancipation at the age of eighteen, as stipulated by the manumission law.[7] Colombia officially praised its citizens who manumitted slaves, thereby formally supporting the idea of a future world without slavery. Its efforts to speed the coming of that era, however, were lukewarm.[8]

A truly radical approach to ending slavery altogether was available as a distinct possibility in 1821. According to a few delegates, immediately ending slavery was feasible and the General Congress would be remiss not to do so. One radical legislator (a printer by trade) vehemently voiced this opinion. He specifically asked for his words to be written down in the proceedings: "there can be no property on men. . .the right to liberty of any individual is absolutely inalienable."[9] Calling for actually abolishing slavery, this radical delegate opposed the gradual emancipation approach and insisted that "simultaneous and universal" freedom should be granted to slaves. He even proposed that "slaves be manumitted without the need for compensation for those self-titled lords of their freedom." The very words slave and master appeared to him detestable and fictitious.[10] Restrepo and many of his colleagues who strongly criticized the Atlantic slave system supported a politics of *antislavery*. But only a few delegates supported *abolition* as the logical consequence of this critique. This minority defended the idea that the General Congress must immediately end slavery in Colombia.[11] Many slaves agreed that slavery should end at once.

While not all slaves had the inclination or ability to seek individual emancipation or the end of slavery, *Unraveling Abolition* studies how and why some slaves – actively and at great personal risk – proposed that abolition was both politically imperative and feasible. When the Spanish viceroyalty of the New Kingdom of Granada broke up into independent provincial states (1810–1816), some slaves quickly questioned whether slavery could coexist with these burgeoning free societies. In this emerging struggle for independence, they were the first to express a radical commitment to the principle that "emancipation"

from Spain should also mean the immediate, unconditional end of domestic slavery. As early as 1811, enslaved individuals reportedly argued that if their masters were now emancipated from Spanish enslavement, entitled to the "rights of men they had been born with," then the slaves should also be set free.[12] Some slaves thus stood out as vanguard abolitionists. They appraised the possibility and significance of the final end of bondage in light of current political transformations, criticizing slaveholders who demanded freedom from Spain (their supposed mistress) but meant to keep their own slaves in bondage.

Restrepo personally knew slaves who had examined whether it was imperative to end slavery alongside cutting ties with the Spanish monarchy. In the State of Antioquia, one of the provincial states that pre-dated the founding of Colombia, the republican Constitution of 1812 denounced Spain as a mistress keeping Spanish Americans in a condition of slavery. A group of about 200 slaves petitioned the authorities to clarify whether it was "true" that the new political charter had brought an end to "slavery" and "chains." Among the petitioners were Gregorio, Antonio, and Joaquín, Restrepo's own slaves. If the language of liberty and equality in the Constitution accurately represented the intentions of the revolutionary authorities, the petitioners insinuated, then all the slaves in this new republic should be set free.[13]

Under pressure, Restrepo and the Antioquia legislature passed a free womb, gradual manumission law in 1814, later used as the model for Colombia's 1821 antislavery law.[14] But for many slaves, this gradual approach to their own emancipation seemed tepid. Through their dynamic grapevine, slaves whispered that Antioquia's manumission law had ended slavery altogether. Slave leaders gathered to discuss ways to find the law's abolitionist potential. They were even willing to pay taxes to help end slavery immediately.[15] In these discussions and plans, slaves resorted to a rich tradition of legal tinkering. They dissected republican antislavery with the same tools they used in discerning the Spanish laws and local practices of slavery and freedom. Under the Spanish king, slaves had sometimes sought legal redress from the masters, struggled to make claims before magistrates, and offered their own opinions as witnesses or accused parties during trials and litigation. Both the slaves' as well as Restrepo's antislavery politics had evolved in these legal instances.[16]

Unraveling Abolition considers the politics of antislavery and the politics of revolution together, identifying and explaining their overlapping legal origins, leitmotivs, ambivalences, and tensions. The following chapters probe slaves' legal undertakings, seeking to understand how the enslaved themselves envisioned slave emancipation during the transition from the late New Kingdom of Granada to early Colombia. Enslaved people interested in obtaining freedom only rarely turned to violence against the masters.[17] Some imagined a peaceful, complete end of slavery, aspiring to become law-abiding, God-fearing free parishioners, first as vassals of the king and, later, as citizens of the early republics. Authorities only rarely took these aspirations seriously, however. But by carefully looking into the slaves' legal encounters with masters and magistrates, it becomes possible to analyze litigation and the law as crucibles of antislavery. This is the messy story of a vanguard politics playing out over fraught legal exchanges that often took place in jail and under torture.

To tell this tangled tale, therefore, this book turns to the judicial forum as its privileged site of observation. It understands litigation, claims-making, and even criminal trials as instances of cultural exchange in which people – enslaved and free alike – proposed, debated, and co-constructed ideas about slavery, freedom, justice, and political belonging. In all manner of judicial encounters, people appropriated, re-shaped, and even coined legal concepts through mutual understanding, misunderstanding, and influence, neither entirely "from above" nor purely "from below."[18] Lawyers and magistrates, such as Restrepo, first considered the legal dimensions of slavery during litigation initiated by slaves, former slaves, and their allies. Those jurists would go on to write the first constitutions in the Spanish-speaking world and further develop the idea that antislavery principles were the fundamental tenets of representative, republican government.[19] Enslaved legal activists, in turn, would critically scrutinize revolutionary constitutions and antislavery laws.

Following the thread of slaves' painfully articulated preoccupations and opinions is a powerful way to chart new social and cultural geographies in the history of slave emancipation. Vibrant strands of antislavery and abolitionism intersected in the judicial forum. In Spanish-speaking, Catholic South America, debates over slavery and freedom (discussions over the privileges and obligations of masters and

slaves, the legitimacy of captivity itself, and the legal and social implications of authority and power) did not occur in the spaces more commonly associated with antislavery activism and abolitionist agitation. Before 1810, no independent newspapers existed in the New Kingdom of Granada, no abolitionist societies, and no churches that would accommodate or catalyze antislavery debate. Instead, debates over slavery and emancipation unfolded in the judicial forum – the sometimes oral, but most often handwritten transactions through which people typically sought "justice" and "mercy."

The judicial forum operated through a series of face-to-face encounters and, more often, through less direct communications via paper exchanges. It unfolded in several spaces, at different moments, rather than exclusively within the confines of a government building. We ought not to imagine litigation and other legal encounters as confrontation in a courtroom. The judicial forum came into being when individuals appealed to magistrates (knocking on their doors or approaching them in the street), when judges tried people (for criminal and civil accusations), and through the ensuing conversations and extensive document exchanges. Judges, lawyers, scribes, and witnesses exchanged memorials, depositions, petitions, opinions, decisions, and sentences. These documents captured people's thoughts on a myriad of political issues. Complaining against abusive masters, claiming the "right" to seek a more benevolent owner, suing for freedom, and speaking over unwelcome interrogations, enslaved individuals and families provided judicial agents with information on their lives, their expectations, and their ideas. Influencing one another, participants (both literate and illiterate) left handwritten records that reward careful attention.[20] Those documents are the empirical foundation for this study, alongside official and private correspondence, administrative and notarial records, periodicals, treatises, legal codes, constitutions, and laws.

Although most people never participated directly in their creation, judicial documents kept in Colombian archives and libraries hum with the voices of humble litigants, such as poor tenants, widows, Indians, and slaves. The extant sources reveal that litigants often showed tremendous insight into their own situations, even expressing radical notions that challenged the existing social and political order. Some denounced the tyranny and injustice of their social superiors. A few

slaves predicted that God, the king of Spain or an African monarch would right the wrong of slavery. Others even aired their aspirations to equality before the law and access to property as concrete ways to make their freedom meaningful.[21] Pedro Antonio Ibargüen, a former slave briefly represented by Restrepo, thus claimed in 1793 that both masters and ex-slaves, as "equal vassals of His Majesty," should be afforded equal opportunities to possess land and resources. In 1827, Ibargüen would denounce powerful slaveholders as an arrogant set of fallen "aristocrats," rejoicing that "equality is inscribed in the destiny of Colombia."[22]

The judicial forum was inextricably linked to people's everyday, communal life. Spanish legal culture thoroughly permeated society, with property, labor, family, jurisdictional, and even religious issues understood in light of the law and often settled through litigation. Most people would not have recognized a distinction between private and public affairs, between lay life and legal life. This was a world with no political parties and only limited elections (up to 1811 there were no provincial assemblies and only a few elected local magistrates, who were voted into office by local elites). Consequently, the judicial forum often became the political arena *par excellence*, the place where people stirred up conflict and forged amity. Unsurprisingly, what happened during litigation easily spilled outside the magistrates' bureaus. People from all walks of life eagerly learned about the developments and outcomes of civil, criminal, and ecclesiastical proceedings.[23] Shaped by Spanish legal theories and practices, finally, the judicial forum remained active long after independence.

Yet close attention to the judicial forum lays bare shifts in the understanding of the hierarchical legal order of the Spanish monarchy, revealing the place of slaves and antislavery politics in the criticism and undoing of *ancien régime* societies. In this way, the judicial forum opens up compelling avenues to unravel republican abolition, allowing us to discover its ambiguities as well as some of its pre-revolutionary roots, including shifting habits and ideas from the old regime that would have a significant bearing on the revolutionary era.[24] Colombian legislators presented their 1821 "abolition" plan as consubstantial to the new legal order, but the impetus to think about slavery as an illegitimate relationship of power, and the earliest voices to end it altogether, first emerged in the Spanish era. Across the 1700s,

elite families and corporations defended their interests and allegedly natural social positions, but critical patricians and non-elite people like slaves increasingly turned to litigation to challenge the "perks of birthright, privilege, and custom."[25] Over litigation, jurists and litigants raised and re-imagined, subtly and explicitly, fundamental legal questions: was emancipating individual slaves and favoring freedom over slavery in the best interest of the polity? Should lawgivers and magistrates aim to foster happiness on earth, including the happiness of those in bondage? Should judges presume equality before the law?

As litigants, their legal aides, and even college students and law professors sought to untangle the very logic of the inegalitarian, corporatist order of society under Spanish rule, competing and overlapping legal visions of the law and slavery emerged. Some emphasized a more traditional perception of the magistrates as agents of the king's "grace" who dispensed "justice" on a case-by-case basis. Others pushed for a more innovative understanding of "rights" and the law as independent from the person of the magistrate (or the king), emanating from "nature" and thus self-evident and universally valid. Still others took eclectic approaches, combining seemingly contradictory legal doctrines.[26] Some voiced patently unorthodox propositions. As early as 1777, two judicial forum practitioners advocated for a new understanding of the slaves' "nature" and standing, questioning whether their legal status was founded on the law of war. They implied that slaves should not be treated as domestic enemies. In 1791, the lawyer Restrepo and the former slave Ibargüen expressed the idea that lawgiving was a matter of "State" rather than a privilege of the sovereign alone. Well-crafted legislation, they claimed, should afford equal protection to all subjects, even promoting the wellbeing of ex-slaves.[27]

For many formally trained lawyers and other magistrates, confidence in legal reform was founded on confidence on what they called "modern philosophy." By modern philosophy they meant critical, practical, and experimental learning in all fields, in contrast with the scholastic following of church-approved "authorities" and the concentration on theology and canon law. Often, modern philosophy enthusiasts brought to bear on litigation conceptual tools and political positions originally developed in college classrooms, boarding houses, and in *tertulias* – salon-like meetings for socializing and learning.

We must note, however, that the modern philosophical corpus went beyond the French *philosophes*, privileging instead seventeenth-century natural law theorists such as Samuel von Pufendorf and contemporary publicists such as the Neapolitan author Gaetano Filangieri.[28] Most of these sources, including some by Spanish-speaking glossators and writers, contained critical thoughts on slavery. José Marcos Gutiérrez and Antonio de Villavicencio, for example, contributed crucial antislavery turns of phrase and concepts.[29]

After 1810, modern philosophy enthusiasts with revolutionary inclinations adopted Filangieri as a most relevant source on law and antislavery.[30] In *La scienza della legislazione* (1780–1791), Filangieri studiously developed a doctrine of modern lawgiving as the means to reform the unequal, antiquated world of European monarchies and their overseas possessions. Even more forcefully than other publicists of the time, he presented the Atlantic slave system as the most egregious example of a decadent old order that had bred illegitimate institutions.[31] Some slaves, Restrepo, and many of his revolutionary colleagues, expressed similar propositions. Slavery was a tyrannical manifestation of the Spanish regime. If the old New Kingdom of Granada was to become a new, independent polity, its legislators had to end slavery as a matter of principle.[32]

And yet the Colombian framers allowed slavery to coexist with antislavery in the nascent legal order, clinging to long-held stereotypes to support their ambiguous choice. Some of his colleagues, Restrepo reported, believed that "blacks" lived "dominated by all manner of vice: they are lazy, liars, thieves." Others asserted that the slaves lacked "enlightenment" and had to be properly educated before freedom. Otherwise, they would cause "evils" to society and destroy themselves. "This is exactly the reasoning of the Spaniards in regards to Independence," answered Restrepo, meaning that Spain likewise treated overseas vassals like people unfit to govern themselves.[33] Still, he argued that suddenly granting freedom to slaves would be "precipitous." "Social liberty" came in degrees. To fully enjoy it, enslaved individuals needed to be induced to a "certain disposition" – even after ridiculing Spain for demanding a similar preparation from those who sought emancipation from the metropole, Restrepo never clarified why the slaves needed a change of disposition and how they might achieve it.[34]

For generations, most masters and magistrates had conceived of slaves as men and women who constantly conspired to turn the world upside down, allegedly seeking to become free by criminally laying waste to cities and fields with sword and fire. Slaves were allegedly sinful by nature, and even their free descendants were labeled children of sin. Even a "virtuous action" by a slave, Restrepo recognized, could pass in the master's view for a "grave crime." Still, he reiterated that people in bondage posed an existential threat to the body politic. Comparing slavery with "electric fire," Restrepo reasoned that it had to be "slowly" ended to avoid "the effects of a violent explosion."[35] Save the physics metaphor, there was nothing new to these ideas. Occupying the lowest rung of the social pyramid, enslaved people were typically described as untrustworthy.[36]

Paradoxically, by virtue of their baptism slaves and freed people belonged in the spiritual community of the Church of Rome, the single religion under both the Spanish Catholic monarchy and the early independent polities. Slaves and former slaves thus had a basic moral personhood and the potential for legal personhood and communal belonging. Some acted on this potential by engaging in litigation and joining professional guilds and spiritual brotherhoods. After all, most enslaved workers in the late New Kingdom of Granada and early Colombia were born on the land, spoke Spanish, and practiced popular Catholicism. They descended from West Africans unwillingly brought across the Atlantic generations earlier.[37]

Many slaves had long trusted that an end to their captivity was in sight, that a new species of social contract was possible. With particular energy over the period 1781–1821, some insisted that kings and queens – including "black" and "African" monarchs – had set out to free the slaves or to ameliorate the conditions of servitude. Some tried to organize collective legal challenges to their enslavement, seeking to shift their status not only to free denizens but to enfranchised members of society. They even suggested that the stigma of their enslaved past should not prevent their political incorporation. Still, most masters and magistrates continued to insist that slaves acted solely out of their wicked determination to destroy the world around them.

Even across these transformative decades, it proved impossible to dislodge entrenched prejudice and vested interests. Some people continued to believe the old order might be as immovable as clergymen