

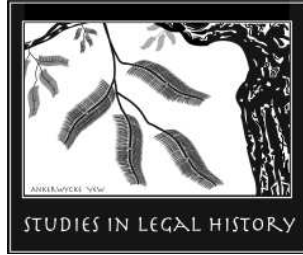
BECOMING FREE, BECOMING BLACK

How did Africans become “blacks” in the Americas? *Becoming Free, Becoming Black* tells the story of enslaved and free people of color who used the law to claim freedom and citizenship for themselves and their loved ones. Their communities challenged slaveholders’ efforts to make blackness synonymous with slavery. Looking closely at three slave societies – Cuba, Virginia, and Louisiana – Alejandro de la Fuente and Ariela J. Gross demonstrate that the law of freedom, not slavery, established the meaning of blackness in law. Contests over freedom determined whether and how it was possible to move from slave to free status, and whether claims to citizenship would be tied to racial identity. Laws regulating the lives and institutions of free people of color created the boundaries between black and white, the rights reserved to white people, and the degradations imposed only on black people. By 1860, different racial regimes had emerged. In Cuba, free people of color remained part of public life, whereas in Virginia and Louisiana, citizenship was bound to whiteness, with lasting legacies.

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ALEJANDRO DE LA FUENTE
ARIELA J. GROSS

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FREE,
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LAW IN CUBA, VIRGINIA,
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Preface

We each grew up in a society in which a person's life chances – wealth, education, and even possibility of incarceration – are ordered by “race.” Although we grew up a thousand miles apart, Alejandro in the bustling and seemingly integrated city of Havana, Cuba, and Ariela in the posh university town of Princeton, New Jersey, in the United States, we both grew up white, and this gave us opportunities people of color in the same places did not have. Both of us grew up aware of this fundamental injustice, and we came to the study of law and of history to gain some purchase on its origins. Although we do not believe there is a straight line from the past we explore in this book to the present day, we do believe that understanding the origins of race, across the New World, requires us to study slavery and the slave trade from their beginnings, as we do here. How did Africans who came to the Americas become “blacks”?

This book started serendipitously. In 2002 we participated in a panel on law and slavery at the annual conference of the American Society of Legal History. It was an improbable place to meet, as these conferences at the time were fairly Anglocentric in emphasis, with very little representation of Latin American topics. Also on the panel were the African American women's historian Martha Jones and historian of slavery Walter Johnson, both of whom had recently begun to write about law, slavery, and freedom. We did not know it at the time, but this comparative panel would lead to a process of collaboration and exchange that, along the way, became a book. And a friendship.

The panel itself was a creation of program committee member Rebecca J. Scott, who was adamant about the need to bring legal historians of race and slavery from across the Americas into a shared

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conversation. Over the years, our project has benefited enormously from Rebecca's collegiality, enthusiasm, and groundbreaking scholarship. By the mid- to late 2000s there was something of an informal group of scholars interested in comparative questions that met more or less regularly at various universities around the globe and that functioned as an incubator for projects like ours. Participating in these meetings were scholars from whom we have benefited a great deal. In addition to Rebecca and Martha, they include Manuel Barcia, Ada Ferrer, Keila Grinberg, Jean Hébrard, Silvia Hunold Lara, Richard Turits, and Michael Zeuske.

We arrived at the ASLH panel through very different personal and intellectual trajectories. Ariela had written a book about the history of the everyday law of slavery in the U.S. Deep South that emphasized local culture and law, drawing on cases from five state courts but with its deepest evidentiary base in an exhaustive study of trials in one county in Mississippi, including not only the testimony from the trials themselves but also census records, tax records, land records, newspaper articles, personal papers, and other local archival materials. This study had immersed her in the particularities of law on the ground, with little attention to comparative questions. By 2002 she was working on a second book, a far broader study of race and racism in America encompassing two centuries and the entire United States, but also using local case studies and trial records. This project, because it raised theoretical questions about the nature of racial categories and their construction in law and other discourses, brought her back to the comparative questions she had first encountered as a student of George Fredrickson, the great comparative historian of black freedom and white supremacy in the United States and South Africa. She also drew on the insights of her other mentor and teacher, Bob Gordon, whose writings on critical legal histories inspired a generation of legal historians to think about the mutual constitutiveness of law and culture, and whose comparative studies of law and efforts to repair past injustice continue to inform all of her thinking about slavery and race.

Alejandro's work, like that of any scholar of slavery and race in Latin America, was always implicitly comparative. Many of the questions, methods, and frames of reference used to study slavery and race in Latin

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America developed in dialogue with scholarship produced in the United States. It is also no coincidence that Alejandro's mentor, Manuel Moreno Fraginals, worked and coauthored papers with American scholars, such as Stanley Engerman and Herbert Klein. Alejandro then went on to work with George Reid Andrews, whose own comparative studies look to the interior of Afro-Latin America. All of these scholars have influenced our work in fundamental ways – in fact, in many more ways than we can acknowledge here.

We may have come from different intellectual traditions, but we share several things that made our collaboration possible, perhaps even plausible. First, there is our common concern about the enduring, ongoing, and devastating impact of racial constructs and ideologies in the Americas. We also share a passion for primary sources and archival research. Working through dusty, barely known, and difficult to read legal files is our definition of a good time. Finally, we share the conviction that the law cannot be reduced, as many previous comparatists have implied, to the illusory certitude of written edicts or statutes. We see the law as a set of claims, counterclaims, and conflicts that produce contentious vernacular understandings of rights and justice, with the participation of different social actors, including slaves. We find slave “agency” not only in enslaved individuals' attempts to use the law to their advantage, but also in their relentless efforts to advance their own understanding of rights and fairness.

Thus, our book examines the development of the legal regimes of slavery and race in Cuba, Virginia, and Louisiana, but it does so from the bottom up, using the initiatives of slaves and free people of color as a guide. It is a synthetic book in the sense that it covers three and a half centuries in three different locations, but is a synthesis based on primary sources and our own archival research. Indeed, what made the project daunting was the need to conduct primary research on places and periods we had not studied before (like colonial Virginia) and on topics that had not been at the center of our previous work. But we knew that to move old comparative debates into new territory, it was necessary to be grounded locally, to recover slaves' lives and actions, and to be attentive to change across time. That could be achieved only through the nitty-gritty of archival research. It became evident to both of us that a project of

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this scope, based on primary research, required collaborating in ways that historians rarely do.

The local court records and other materials we consulted are mostly to be found on paper in the archives of Cuba, Louisiana, and Virginia. Alejandro collected records from archives in Havana, Seville, and Madrid over many years, sometimes on his own and at other times with the help of assistants, as having access to Cuban archives has been difficult for him since he moved to the United States. Ariela visited the Library of Virginia in Richmond many times to photograph the colonial court records of Accomack and Northampton Counties, as well as the original trial records of freedom suits and “free negro and slave records” from every Virginia county, for the late eighteenth and nineteenth centuries, which the Library of Virginia archivists have aggregated into their own collections. Moreover, all of the Virginia chancery court cases and legislative petitions have been digitized by the library, so she was able to collect hundreds of cases and petitions online. In Louisiana, colonial judicial records are held at the Louisiana Historical Center in New Orleans, where Ariela photographed original copies of freedom suits, as well as at the New Orleans Notarial Archives, where she read and copied all of the records of notary Francisco Broutin, who worked for several decades in New Orleans, as a sample of the many notarial records of manumission from the Spanish period. Orlando Rivero Valdés transcribed and translated the Spanish judicial records and notarial records that she collected. The nineteenth-century trial records of the Louisiana Supreme Court, held at the University of New Orleans, have now been digitized and are all available online, which made it possible for Alejandro to read them as well. Many other sources concerning Louisiana and Virginia are also available online, which is not the case with Cuban materials.

We presented different chapters of the manuscript at numerous conferences and events. Particularly useful were discussions in law and history workshops, where we presented our work together, at the University of Michigan, Princeton University, the University of North Carolina–Chapel Hill, Tulane University, the University of Pennsylvania, New York University, and Stanford University, as well as at our home institutions, the University of Southern California and

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Harvard University. Participants in these workshops raised poignant questions, leading us to clarify key arguments. Ariela also benefited from discussions of this work, and about race in a comparative perspective more generally, with Yasuko Takezawa and colleagues at the University of Kyoto and others who participated in the symposium titled A Japan-Based Global Study of Racial Representations, and with Jean-Fred Schaub, Silvia Sebastiani, Eric Fassin, Pap Ndiaye, Johann Michel, Paul Schor, Clément Thibeaud, Federica Morelli, and colleagues at the École des Hautes Études en Sciences Sociales in Paris, over the course of many visits there, as well as with participants in faculty workshops at Tel Aviv University, UC Berkeley, Boston University, DePaul University, the American Bar Foundation, Chicago-Kent Law School, and Vanderbilt University. We finished the manuscript with the generous support of a collaborative research grant from the American Council of Learned Societies. Ariela is also grateful for a fellowship from the Center for Advanced Study in the Behavioral Sciences at Stanford, which gave her the time to finish writing in 2017–2018. We thank the many colleagues who gave us invaluable comments on chapters along the way, including Bob Gordon, Dirk Hartog, Sam Erman, Nomi Stolzenberg, Hilary Schor, Jean Hébrard, and of course Rebecca Scott. And we are particularly indebted to those who read and gave us comments on the full manuscript: George Reid Andrews, Martha Jones, Bianca Premo, Leslie Harris, Renee Romano, Wendy Wall, Alice Yang, Karen Dunn-Haley. We also thank the students in the seminar Comparative Slavery and the Law: Africa, Latin America, and the United States, which Alejandro teaches with Emmanuel Akyeampong at Harvard, for their comments and suggestions, and James Bennett for invaluable research assistance.

Finally, a note to Sally Gordon. Her friendship, her careful, critical reading of the manuscript, and her boundless enthusiasm for this project kept us going. We gratefully acknowledge her generous and numerous suggestions, which made this book better. Debbie Gershenowitz edited with a keen eye, and shepherded the book skillfully and cheerfully through the production process. Our spouses, Jon Goldman and Patricia (Patri) Gonzalez, tolerated our absences and preoccupations with good humor, asking only occasionally whether we were done yet.

Abbreviations

| | | |
|------------|---|--|
| ACAHO | – | Actas Capitulares del Ayuntamiento de la Habana, Originales (Museo de la Ciudad de la Habana) |
| ACAHT | – | Actas Capitulares del Ayuntamiento de la Habana, Trasuntadas (Museo de la Ciudad de la Habana) |
| AGI | – | Archivo General de Indias, Seville |
| AH | – | Academia de la Historia |
| AHN | – | Archivo Histórico Nacional, Madrid |
| ANC | – | Archivo Nacional de Cuba, Havana |
| ER | – | Escribanía Regueira |
| FNSR | – | Free Negro and Slave Records |
| GSC | – | Gobierno Superior Civil |
| <i>LHQ</i> | – | <i>Louisiana Historical Quarterly</i> |
| LSCA, UNO | – | Louisiana Supreme Court Archives, University of New Orleans |
| LVA | – | Library of Virginia, Richmond |
| LVA-LPDC | – | Legislative Petitions Digital Collection, Library of Virginia |
| PNH | – | Protocolos Notariales de la Habana |
| RC | – | <i>Real cédula</i> |
| SD | – | Santo Domingo |