

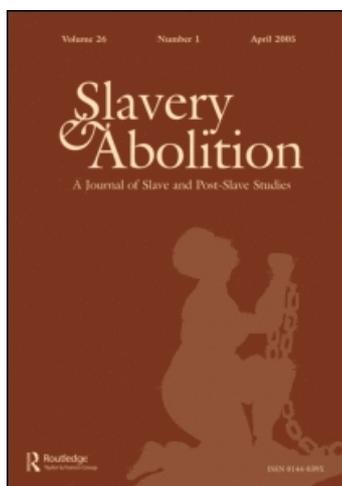
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### 'Enraged to the limit of despair': Infanticide and Slave Judicial Strategies in Barbacoas, 1788-98

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# 'Enraged to the limit of despair': Infanticide and Slave Judicial Strategies in Barbacoas, 1788–98

Marcela Echeverri

*This article analyses the use of judicial spaces by slaves organised in a mining gang located along the Telembí River in Barbacoas (Colombia). I study their alternative uses of violence and legal tactics during one decade in the late eighteenth century, a time of changing juridical opinion in the Hispanic world. From my examination of six infanticide cases (or child killings) among slaves in the mining gang of the Cortés family between 1788 and 1789, I argue that slaves strategically used both violence and judicial spaces to escape the conditions of slavery in Cortés's mine. Evidence of legal reform in the Bourbon context and a plea for collective rights in court by slaves from the same gang in 1798 speak of the profound link between Bourbon juridical reform and the slaves' choice to reject violence. A comparison between slaves' violent strategies (the infanticides) and their concerted judicial claim a decade later, proves that slaves' understanding of their rights under the new law enabled a practical defence of their communal interests. Slaves 'univocally' used legal channels and demanded their right to protection. They placed their complaints in relation to a critical contextual moment in which the opposed interests of their masters and those of colonial institutions might yield them benefits. This strategic expression of collective identity is remarkable given the adverse circumstances of slavery in Barbacoas and it illustrates how ideas of justice and rights in the context of Hispanic government had relevance for slaves.*

In the decade between 1788 and 1798 authorities in Quito grew concerned about the conflicts in the mines of Marcos Cortés, a powerful man who administered five gold mines in the Telembí River, in the district of Barbacoas. The Quito *audiencia* (High Court) was alarmed about the lack of control over the slave *cuadrillas*, or work gangs, in Cortés's mines. These were said to be in 'total libertinage', a premonition of danger that the *audiencia* said could affect not only Cortés himself but also the whole region.<sup>1</sup> These uneasy remarks by officials in the *audiencia* of Quito were

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voiced after hearing the numerous criminal cases reflecting recurrent disturbing events in the mines.

The *audiencia's* attention was initially called by infanticides committed between 1788 and 1789 by slaves in the mines of Guinulté, Boasé and Teranguará where five children were killed in the span of nineteen months.<sup>2</sup> These infanticides were expressions of the violence at the base of the slave system, reproduced by the slaves themselves. They were not, however, simple barbaric or anarchic acts. The declarations of the slaves who committed the infanticides suggest that they linked their aspiration to leave the mine with the means of having access to judicial expression. Once taken prisoner and brought to court, slaves denounced their master, the miner and the conditions inflicted on them. As I will analyse in detail below, slaves were acting to free themselves from the harsh situation in which they lived in Cortés's mine. Through actions that evinced their desperation, slaves transformed how local authorities in Barbacoas and regional powers in Quito thought of Cortés; authorities first put him under their vigilance and ultimately ordered him to follow Hispanic legislation for the treatment of slaves.

These infanticides, along with a sixth attack recorded on September 1798, were crucial precedents to the investigation of 'excessive cruelty' begun on 3 December 1798, against Casimiro Cortés, Marcos Cortés's son who administered the mines after his father's death in 1791.<sup>3</sup> The case began with the declarations of two of his slaves, Bernardo and Manuel Salvador, who fled the mine of Guinulté for the city of Barbacoas to denounce the situation of oppression their *cuadrilla* was suffering. Manuel Salvador, captain of the mine, said in his deposition to the judge that he came to

complain against his master [Casimiro Cortés], the executor (*albacea*) [of Marcos Cortés's will], representing the impiety and lack of charity with which they are treated . . . the slaves in the said mine are enraged to the limit of despair and disorder because the life they live is simply impossible to suffer [,] and together they *unanimously* collaborated in a single agreement to send him to lodge the most rightful complaint in the tribunals of the city [of Barbacoas] on behalf of the group (*cuadrilla*).<sup>4</sup>

In their declarations, both Manuel and Bernardo mentioned the high risk of outbreaks of violence in the mine at that time, because the miner, Manuel Ferrín, put slaves in living and working conditions that were not acceptable. They also stated if they did not receive proper care the killings of previous years might happen again at the mine.

This article analyses the events in these gold mines, within the context of Bourbon reform, using the documents produced in the criminal cases of the slaves who committed infanticide through the years 1788–89, in addition to the case opened against Casimiro Cortés in 1798. I also discuss the different strategies that slaves used in their search for better treatment. A first focus on the infanticides shows that there were links between violence and the desperate search for justice among the slaves. When the tension was expressed with a violent action, such as the killing of a child, slaves used the judicial space that was made available for their declarations

and appealed to authorities to intervene in their favour by denouncing the master's cruelty. The appearance of the two slaves in court a decade later conveys a different strategic intention to gain support from the courts, putting juridical action above violent action, yet keeping violence as an effective threat to pressure the authorities.

A second part of the article draws attention to the controversy around the publication of the *Instrucción sobre la educación, trato y ocupaciones de los esclavos* (*Instrucción* hereinafter), printed in Madrid as a royal decree (*cédula*) issued in Aranjuez on 31 May 1789. The edict was one of the by-products of the Bourbon attempt to heighten control over slave populations and their production.<sup>5</sup> Although the thrust to legislate was part of the project to transform the agricultural plantation economies of the Spanish Caribbean, the evidence presented here will illustrate how the mining elites of southwestern New Granada were also threatened by the changes in regulation, which they saw as an intrusion in their authority over slaves. After 1791, the outbreak of slave insurrections in Saint Domingue heightened slaveholders' fear of the consequences of the new law in Hispanic territories.

A third section treats the conflicts slaves created by their concerted actions and recourse to judicial spaces in 1798, and demonstrates that in the late 1790s slaves' strategies were in accord with the legislative context. Combined with a conscious allusion to the history of the violence in the mines, slaves pressed slave-owners in the face of the *audiencia*, in the context of Bourbon reform.

The analysis of these cases in the span of 10 years illustrates that the controversy initiated by the royal decree in 1789 is crucial for understanding Bourbon-era tensions between the government, slave-owners and slaves in their ongoing negotiation of rights and duties. It was precisely in the context of Bourbon rule that slave appeals seeking protection from colonial justice increased.<sup>6</sup> The possibility of allying with the Bourbon regime shortened the distance between the slaves and the crown as administrator of justice. As Charles Cutter has pointed out, the principal function of monarchic institutions in America was to 'administer justice', and a great part of the government of the Spanish monarchy was realised through the law as an instrument of social and political control.<sup>7</sup> This is significant for understanding the political dimension of enslaved individuals and groups, who historically had learned to exploit fundamental tensions in the Hispanic juridical system for their own benefit. Slaves' juridical strategies conjured up those rights which, although in most cases had not been codified, could be considered customary.<sup>8</sup>

Latin American historiography generally traces the emergence of notions of rights (particularly popular rights) under the influence of liberal ideas. The reproduction of such a nineteenth-century liberal assumption in historical narratives has resulted in the creation of a dichotomy between subaltern politics and legal institutions in the colonial period. Hence, greater emphasis has been given to the study of revolts or marronage as a means of accessing the political interests and goals of the enslaved. However, as has been widely documented in the last two decades, subaltern protest and politics were closely entwined with Spanish judicial concepts and institutions.<sup>9</sup> Recent work has begun to show that through engagement with colonial law and other political institutions subalterns negotiated their position in society.<sup>10</sup> For enslaved Africans

(as well as Indians), having access to legal means became a central aspect of their political life.

Studies of slavery in colonial Colombia acknowledge that slave protest took many forms. Rebellion was not always a safe path as colonial authorities and slave owners applied strong measures against insubordinate slaves, such as mutilation or death. Flight, individual or collective, was prevalent and the formation of fugitive communities surrounding dense slave populations always represented a threat for slavery.<sup>11</sup> Yet the assumption that the institution of slavery disabled enslaved individuals legally has obscured the fact that slaves' legal strategies were customary since the sixteenth century and that judicial appeals by slaves were an attempt to gain protection under Spanish law within slavery.<sup>12</sup> Recapturing the political dimension of legal strategies, this article contributes to our understanding of the dynamic relation of slaves to the law at the end of the eighteenth century and illustrates how ideas of justice and rights in the context of Hispanic government had relevance for slaves.

### **Infanticide and Slaves' Strategies of Justice**

The gold mines in the province of Barbacoas were known to be the harshest of the places to be an enslaved worker in the southwestern region of Popayán and north of Quito. Mine work was hard in the hot and humid forest regions, but in addition to the type of labour and environment, Barbacoas had a negative reputation among slaves for the lack of 'justice' that prevailed in this remote, distant area. María Mazo, an enslaved woman from Quito, had rebelled when faced with the possibility of being taken to work in Barbacoas and later testified that she feared going to those mines because there, '*negros* are tyrannized'.<sup>13</sup> In 1799, another two slaves who were pleading to leave Barbacoas spoke of their 'martyrdom' in the mines, where they were constantly punished with excessive cruelty. They further commented that it was useless to seek assistance from the authorities because, in Barbacoas, 'deaths and other crimes are constant without any justice being taken'.<sup>14</sup>

The feeling of 'incarceration', as scholars have characterised slavery in Barbacoas, led enslaved individuals to search for extreme means to denounce their conditions.<sup>15</sup> In the last years of the decade of 1780, five acts of infanticide took place in the mines of Guinulté, Boasé and Teranguará, in which adult slaves killed enslaved children.<sup>16</sup> On 9 May 1788, Mónica de la Cruz, one of Marcos Cortés's slaves who worked at the mine Teranguará, was interrogated for killing her own daughter María Merced (age 4/5), with a machete. Mónica said that when she killed her daughter she cried out loud, 'This is what the captain has looked for with all the violence he inflicted on me!' Mónica had been sick and had not received any special treatment for her illness. Instead, she had been forced to work by the mine captain (another slave) who had threatened to take her along 'even if it should be dragging [her] forcefully'. Although killing her own daughter transgressed multiple boundaries of religious, affective and criminal behaviour, in court Mónica did not express guilt or repentance in her declaration. Choosing to recall the words she cried out when attacking her child, and thus explicitly blaming the captain for her mistreatment, she stood strong in her

desire to speak of the circumstances that influenced her action. Moreover, Mónica said she knew her conduct would have consequences, perhaps even death, yet she 'decided it was better to die in the hands of justice' than to stand the violence of the captain.<sup>17</sup>

Three months later on 16 July, also in the mine Teranguará, Marcelino Pirio killed Juana, a small seven-month-old black girl. Marcelino, a black enslaved worker, had been punished with 25 lashes the day before and put in the stocks for not following the captain's order to go to the mine of Boasé to confess to a priest, along with the other slaves in the group. In the trial Marcelino said he

realized he was going to suffer [in the stocks and] *he would be better off going to suffer in jail one year [.] and only with this reflection* and the fear, seeing he had by his side a little black girl named Juana . . . with both arms he grabbed her by the waist, hit her against the stocks and threw her to one side, and with all the fuss (*bullá*) that formed around him the mother came out from the kitchen and picked her from the floor saying she was dead.<sup>18</sup>

The interrogators did not ask Marcelino whether or not the precedent of Mónica killing her daughter had influenced his 'reflection'. Nevertheless, like Mónica, in court he did not plead for forgiveness but instead justified his action, adamantly denouncing the miner and Casimiro Cortés. Punishment in the mines was clearly worse than the one Marcelino expected to get from the authorities in Barbacoas.

The following year, on 15 March 1789, Gregorio, another slave of the mine Teranguará, was brought to the city of Barbacoas along with the body of Anselmo, an 8-year-old boy he killed by giving him a 'serious and cruel wound in the stomach'.<sup>19</sup> Gregorio confessed he loathed working in the mines where he was severely punished by the miner Feliciano Riva, who sent him to labour wearing 'steel pants'.<sup>20</sup> Finding himself completely exhausted from this punishment, Gregorio wanted to free himself from slavery.

At around four in the afternoon he had the idea to kill the black child (*negrito*) Anselmo, and called him into a retired room of the house [they were in], and began hitting him in the stomach trying to kill him, and the boy's brothers who heard him shouting cried loudly to alarm the others, 'He's killing him!', calling their blind grandmother. And at this point, finding himself shocked (*consternado*) and lost, [Gregorio] put the knife through [Anselmo's] stomach and ripped it down leaving him with his guts (*tripas*) hanging out . . . He tried to run but could not because he was wearing the steel pants, so they caught him.<sup>21</sup>

During the interrogation Gregorio was asked why he decided to 'hurt a little innocent creature' in such a way. Gregorio replied he had originally hoped to kill the miner, but because this was not possible, he instead killed the little black boy to get away from the mine. This confession of his intention to kill the miner suggests that Gregorio was not pleading for forgiveness, stating that his actions had been misled or irrational, but instead he gave testimony of how killing the child was the displaced result of his enraged desperation.

From the record of the trial it is not possible to know what the final decision was regarding Gregorio's case. However, another document reveals that both Marcelino

and Gregorio escaped from jail during their imprisonment. Mariano Landázuri, mayor of Barbacoas, wrote in representation of Marcos Cortés, his father-in-law, emphasising that great care should be taken to punish the slaves for their crimes as a way to prevent the risk of a 'bad example infesting' other mines in the province.<sup>22</sup> Landázuri evoked the 'no less than three homicides committed by one black woman and two black men' owned by Marcos Cortés, and stated that 'until today those convicts remain unpunished, and worse, they escaped from prison and probably are going around infesting and seducing others to a general tragedy'. To strengthen his point, Landázuri wrote about the fear that this situation had brought among miners and slave owners like himself, who were now afraid of being around the slaves. Miners, said the mayor, had begun speaking of leaving their jobs in the mines because of their terror of the insubordinate slaves. For slave owners like Landázuri and Marcos Cortés, this was a problem that required a strong reaction from the colonial officials. Justice in the form of court-regulated punishments such as imprisonment or death would be the only means to make a statement to slaves in the mines about the single consequence such criminal behaviour would have. Landázuri wrote the petition while bringing another slave to court for committing an infanticide, this time in the mine of Boasé. The culprit was Domingo Gómez, an enslaved *sambo*,<sup>23</sup> who on 8 July 1789 had killed a little 7-year-old enslaved boy named Anastasio.

The prosecutor (*fiscal*) recounted the tragic events in his legal advice to the court, saying Domingo had confessed that, 'fed up with slavery and the rigor with which the miner mistreated him . . . he decided to act upon the idea that by killing he would be freed from being Cortés's slave, and with the desire to better die hanged' he committed the crime.<sup>24</sup> In response to the call of the anxious slave owners in Barbacoas, the court did just what the prosecutor recommended. They sentenced Domingo to be 'shot with a firearm before being hanged', and his right hand cut to be exhibited in the mine, for everyone there to see.<sup>25</sup> However, the prosecutor had also added a note that implicated the miners as well. He wrote:

Notice will be given to the *Real Audiencia* about this case and the many other homicides executed by the slaves of the mines of Cortés on their children and *compañeros*, which are attributed to the vigor with which the miner treats them and he is from now on ordered to treat them gently, as he should, giving them the necessary food and care, and in the opposite case he will be punished.<sup>26</sup>

The legal motion following this fourth infanticide case is significant because, while it was resolved with a strong verdict, the judges in Barbacoas signalled that the recurrent killings merited the attention of a higher authority, the *Real Audiencia* in Quito, to investigate the excessive cruelty of the miner and owner. They also commanded miners and slaveholders to treat their slaves well, threatening them with punishment if evidence proved that they had acted with cruelty or disregard for their slaves' well-being.

After evaluating the case, on 27 February 1790, the *audiencia* responded, calling attention back to the depositions of slaves in previous crimes, who all 'equally express that they killed the little creatures to rid themselves of servitude'. The *audiencia*

asserted that the harsh circumstances influencing the slaves' desperate actions must be real, because in the *cuadrillas* of other miners infanticides were not common. Additionally, the *asesor* (adviser) from the *audiencia* asked the justices of the district of Barbacoas to investigate and take measures regarding the treatment of the slaves in the mines of Cortés. For the *audiencia* the solution was not simply to punish the slaves, as mine owners had recommended. The lawyers in Quito added, 'The laws and royal ordinances should be observed, taking into account the last royal decree published on the issue', referring for the first time to the *Instrucción* that had been published the previous year in late May (to be discussed in detail in the following section). The remark on the relevance of the new legislation to the infanticide cases reveals first that the new legislation had already been received in Quito. It also suggests that the new regulation was incorporated into a framework on the treatment and control of slaves and was applied as an essential element of policies coming from the peninsula in the context of Bourbon reform.<sup>27</sup>

The last of the five initial infanticides in the mines of Cortés was recorded two months later in the mine of Guinulté, on 10 November 1789. Francisco, who killed a little boy called Adriano, said he

killed him when he found himself tired of slavery and the torments of hunger and whippings that he continuously suffered, and he realized that by these means he would free himself from slavery, preferring to die [by being] hanged.<sup>28</sup>

Francisco confessed that he had plans to kill the miner José Guzmán, but after thinking it over that night he realised it was impossible and instead executed the black boy. Francisco's case was complicated because of his age. In the first interrogatory he said he was younger than 25 but older than 14, which led the lawyers to argue in his favour saying he was still too young to be sentenced to death. The punishment then would have only been imprisonment for 10 years in Cartagena, a victory for Francisco who would be away from Barbacoas, alive and, in his view, safer. Other documents dating from 1791 show that further inquiries into Francisco's age led to the conclusion that he was in fact 20 at the time of the crime, and thus was in the end condemned to death.<sup>29</sup> However, it seems significant that a note was added to the verdict telling the mayor in Barbacoas to be alert and prevent 'slaves [from being] punished inhumanely and cruelly in the mines'.<sup>30</sup>

Through the act of murder, these five slaves in the Telembí River proved the miner's excessive cruelty, demonstrating to royal officials that such recourse could only reflect the extremes to which they were exposed. Although the infanticides can be seen as isolated, individual cases, here they are interpreted as historical evidence of the combination of slaves' actions with judicial arguments in order to denounce abuse. Cases of infanticide have generally been characterised along two lines of interpretation. The first emphasises their economic consequences, given that the killing of enslaved children, either by the mother or by another enslaved adult, represented a direct strike on the slaveholder's property.<sup>31</sup> Another interpretation considers child killing as a pre-political act of 'resistance'. As acts of resistance, infanticides are not thought to have far-reaching consequences, because they are individual, not

concerted.<sup>32</sup> Yet both interpretations overlook the importance of the juridical context to which those acts spoke, and the political consequences that resulted from slaves' patterns of violence and recourse to legal settings.

As the cases studied here show, these infanticides were the means whereby slaves denounced mistreatment and signalled 'excessive cruelty'. On one level, the actions of the slaves pointed directly to the problem they were desperately reacting to: a violation of their rights. On another level, depositions of slaves in court addressed issues of mistreatment and injustice in the mines and hence brought the miner and owner to be held accountable for such irregular situations.<sup>33</sup> Slaves also explicitly argued that they preferred to face royal justice than have to put up with the arbitrary violence imposed on them in the mine. The appeal to justice in this context was clearly a strategy that enslaved individuals were exercising, which speaks of their conscious request for protection under the law. Slaves in Barbacoas were challenging the physical violence and imprisonment that were essential traits of slave owners' and miners' dominance over workers. Cortés's slaves sought access to the courts, which traditionally in Hispanic law represented the possibility to speak of mistreatment and abuse. That enslaved individuals such as Mónica, Gregorio and Francisco had to commit infanticide to gain access to the court – one of the basic rights of slaves according to the law – proves that they were in such extreme isolation that only a dramatic act could symbolise their desperation and catalyse the justices' attention. The city court was a place where slaves thought they could be heard and protected, even if they were responsible for a crime.<sup>34</sup>

However, there was a significant difference between the first killing by Mónica and the other four by male slaves unrelated to the murdered children. The first infanticide, which a mother committed in despair, was framed by the authorities in the legal terms that guaranteed women particular rights. Although local officials in Barbacoas initially studied the case and Mónica was sentenced to death, her defender at this point intervened in favour of Mónica, arguing that the sentence should be lessened. The appeal was to the law that stated that punishment should be 'softer for a weak woman and for those who are rustic (*rústicos*) [and not] wise'. It was added that, particularly in this case, the penalty should be reduced because it would cause Mónica sufficient pain to 'recognize her mistake and mourn bitterly the death of her little daughter'. Under these considerations the verdict was changed to sell Mónica to another owner as a way of expelling her from the province.<sup>35</sup> Although this decision was certainly beneficial to her owner who was reimbursed for his slave (instead of the economic loss that would have occurred if she had been punished with death), it was also a successful result for Mónica, who was liberated from the particular conditions of slavery in Cortés's dominion.

Mónica's case might have spurred other slaves to consider that killing would not necessarily result in severe punishment, but perhaps could instead lead to escaping from the mine. It is therefore noteworthy that, seemingly following her example, it was men who committed the rest of the killings. In court, each of them spoke of a history of conflict with the miner or captain who had recently punished them or threatened to do so. They also mentioned having considered killing the children at a

moment of desperation and vulnerability, reacting to their own incapacity to kill the miner (an adult) or to flee the mine. Although Marcelino and Gregorio ran away during imprisonment, the courts did not express similar sympathy towards Domingo and Franciso and their treatment in court was ultimately less lenient than the one Mónica received.<sup>36</sup>

In spite of those differences in motive and treatment along gender lines, the development of the cases studied here most importantly shows that both sides of the criminal proceedings – defence and prosecution – were persuaded by the slaves' arguments about cruelty. Even if in some cases a harsh punishment was executed to dissuade other slaves from committing infanticide, the documents that circulated among the authorities in the courts stated the need for control over slaveholders such as Cortés. Therefore, in this sense too, the actions of the slaves had consequences for the political relations between slave-owners and judicial authorities. Furthermore, the repeated horrendous consequences of these slaves' desperation left a clear mark in the history of slavery in Barbaças.<sup>37</sup> Between 1788 and 1789 officials became increasingly interested in the circumstances of slavery in the mines of Cortés; court records of the persistent infanticides permeated the different levels of the judicial institutions, establishing precedents for action to protect slaves.<sup>38</sup>

### The *Instrucción* and Bourbon Reform

The slaves' vision of the courts was informed by their contact with various notions of rights in Hispanic law. Since the fifteenth century, when slaves had recourse mainly to religious discourse about their rights as Christians, slaves 'transformed Christian obligations into rights', showing great 'cultural resourcefulness' while attempting to create tools for accomplishing a better status in their social milieu.<sup>39</sup> Hispanic political ideology in America had long been entangled with Christian universalistic values, and it was from within the Church that important debates about African slavery were laid out to justify the commerce in humans and the construction of economies based on forced labour. Theological and legal debates were not circumscribed only to monasteries.<sup>40</sup> Enslavement of Africans and Christians' trade in their bodies in the Atlantic brought practical dilemmas. Enslaved Africans developed not only material strategies to better their condition, but also incorporated political strategies to secure their place in the world. From the mine, hacienda or plantation to the broader context in which they mobilised, slaves learned about the main traits of justice under Hispanic rule. Furthermore, masters as well as colonial and ecclesiastical officials had difficulty separating slaves from other members of their family, polity and parish. The paternalist rhetoric of Hispanic law dictated that masters were obliged to incorporate slaves into the community through baptism. As Christians, slaves were also supposed to marry, a process that (especially in urban contexts) implied a legitimate sanction of their unions and recognised their offspring as part of the Christian community. Also, by developing 'the ability to invoke the[ir] rights and mobilise the Church, state, and specific masters in their defense', slaves ultimately positioned themselves as interlocutors of the Church, the state and their masters.<sup>41</sup>

Slavery was regulated in *Las Siete Partidas* of Alfonso X dating from the thirteenth century, which were based on early Roman codes and promulgated well before the Spanish came to America.<sup>42</sup> After the sixteenth century, the Laws of the Indies (*Leyes de Indias*) sporadically treated particular issues addressing the new forms of African slavery, but it was in general Castilian law (the *Partidas*) that regulated this widespread and quotidian aspect of the Hispanic world. Although in the framework of the *Partidas* slaves were treated as chattel or property, an important provision in Law 6 of the *Partida XXI* noted that slaves could complain in front of a judge if their owners mistreated them. In 1680, a collection of laws, the *Recopilación de las leyes de Indias*, compiled decrees specifically related to the Indies. Even in this reinterpretation, the fundamental right of slaves continued to be based on the ancient legal precepts for the protection of slaves laid out in the *Partidas*, which gave them access to the courts. Such rights had important practical consequences because, as one scholar who focuses on the relation of slavery and law has recently argued,

it seems clear that numerous slaves had knowledge of some of the rights regulated in positive law and that such knowledge formed part of a cultural arsenal they used in their daily relations to their masters, with other members of society, and with the authorities.<sup>43</sup>

Notably, the flexible character of Hispanic law, and the casuistic base on which each legislative dispute was evaluated, allowed slaves to present their complaints in contextual and critical moments in which jurisdictional tensions between their masters and the institutions of the Church or the state could benefit them.<sup>44</sup>

The Bourbon administration's interest in creating more specific legislation on slavery was linked to their desire to mimic the economic success of French Caribbean plantations.<sup>45</sup> This ambition required importing greater number of African slaves to boost the capacity of production. By 1789, King Charles IV published a royal decree giving incentives to Spanish and foreign traffickers of slaves by granting them free trade rights for two years. In 1791 the policy was extended for another six years, with the main goal being to promote agricultural production in the Spanish Caribbean.<sup>46</sup> Assuming that the French had not gained their success only because of the technical and economic development of colonies such as Saint Domingue, the Spanish court put together a legislative proposal to back the economic experiment with new mechanisms of control. Indeed, plantation slavery required a wide array of provisions to carefully handle massive numbers of slaves, and guarantee positive results to promote ongoing investment. When drafting the codes they imagined necessary to accompany the Bourbon project, the Spanish monarchy drew on the French *Code Noir* of 1685, which had been enforced for over a century, as an example.<sup>47</sup> After two different sets of *Ordenanzas* were put in place in Santo Domingo, the *Instrucción sobre la educación, trato y ocupaciones de los esclavos* was printed in Madrid as a decree given in Aranjuez on 31 May 1789 and was immediately sent to all *audiencias* in America.<sup>48</sup> The *Instrucción* condensed Hispanic laws on slavery since the *Partidas*, Roman Law, as well as the elements borrowed from the *Code Noir*. For example, Chapter II of the *Instrucción* spoke of the need to give good treatment to

slaves, in particular by feeding and dressing them well, and reasserted Christian education as an essential duty of slave-owners.

Within the absolutist project, the *Instrucción* also had specific renewed goals. Along with the government's explicit objective to exercise control over slavery, the *Instrucción* dictated that agents of the crown should directly watch over the treatment slave-owners gave to their slaves. Just as in the French colonies application of the *Code Noir* heightened a conflictual relation of sovereignties between metropolitan and local governments, in the Spanish context the *Instrucción* was perceived as intrusive in several of its central elements.<sup>49</sup> Slave-owners manifested generalised discomfort about the loosening of discipline that Chapters VIII and XIX pointed to, especially the reduction on the number of lashes (25) that could be applied as punishment and the stipulation they only use 'a soft instrument'. Slave-owners also protested the idea that an external authority, 'the justices of cities and villages' (Chapter II and III), would decide upon the needs and obligations of slaves. Clearly, these new decrees took the overall management of plantations, mines or haciendas away from the hands of owners, and into a mediated governing situation that would not only slow decision-making but also take a great deal of discretion away from slaveholders.

The legislation reflected the Bourbon Crown's growing pretence to guarantee state participation in and responsibility for economic endeavors that it promoted. Even though, as in the French case a century earlier, the purpose of the law was to create conditions for the better long-term functioning of the production of an enslaved labour force, planters and miners did not seem to back the interest of the state in a shared sovereignty over these spaces.<sup>50</sup> This reaction is not surprising since the rhetoric of the *Instrucción* explicitly dictated that slaves' obligations to masters stemmed from their reciprocal response to the duties that masters fulfilled by caring for slaves properly. The code said:

Having slave owners the duty to sustain, educate, and employ in useful and proportionate tasks to their strength, age and sex . . . it follows for this same reason that slaves are constituted in the obligation to obey and respect their owners . . . fulfill their tasks . . . and venerate their owners as fathers.<sup>51</sup>

As Bianca Premo has argued, Spanish law on African slavery was characterised by such a description of the relation between slaves and their paternal masters as 'filial obligation'. The new royal edict, however, 'exacerbated the potential for conflict' by 'bringing the domestic governance of slaves more tightly under the control of the patriarchal state'.<sup>52</sup>

The mandate was complemented in the last three chapters (XI–XIV) of the law, where slave-owners were ordered to keep lists of their slaves for state control, and the *cabildo* (municipal council) was to keep track of masters' correct application of the law, and imposed penalties were to be paid for infractions. This, in the words of historian Alejandro de la Fuente, 'shifted the initiative from the slaves themselves to judges and local officials'.<sup>53</sup>

Among the many and diverse complaints the legislation aroused in America, we know that in Barbacoas, the south-western centre of gold mining in the Viceroyalty

of New Granada, the region's slave-owning elite promptly manifested their strong reactions. In February 1792 Diego Antonio Nieto, governor of Popayán, presented an appeal document (*representación*) to the Viceroy in Santa Fe in which he explored the risks of applying the decree in his jurisdiction. Nieto said that if the slaves

know that their master has a restricted authority that can only extend to moderate punishments, they will look at him with a certain disdain and will only respond with superficial obedience, taking occasion to dispute the faculties that correspond to them in every step.<sup>54</sup>

Nieto recalled the importance of the slave-owner's authority, so essential to the economic and social survival of his class. Slave-owners also found the proposals in the *Instrucción* inconvenient because, according to the governor's *representación*, they implied losing the possibility of executing justice at their discretion. They questioned chapter XVIII of the law, which decreed that slave-owners should look for the mediation of royal judges in every conflict, because

The town in which justice resides being ten, twenty, thirty leagues and more away, [the master] does not have any support . . . He does not find a way to apply the punishment demanded by the audacious challenge of a *negro*.<sup>55</sup>

In another *representación* of slave and mine-owners in Barbacoas to the members of the municipal council, they questioned the crown's intention to alter the traditional mechanisms used to guarantee slave domination: 'The only resource we have is that [slaves] are persuaded that our powers are absolute, as it is to threaten them with one hundred lashings and eight days in the stocks.'<sup>56</sup>

Governor Nieto had written to convince the crown of the contradiction that the *Instrucción* posed in the face of the 'laws of slavery', and to issue a reminder that every day slaves used ingenious means to resist slavery. He said: 'This type of people's character is, by their personal nature and servile condition, hard-headed and rough, always applying strength against slavery.'<sup>57</sup> Witnesses to the history of slave resistance in the mines, and cognisant of the strategies of freedom that slaves developed, slave-owners feared Bourbon legislation would pave the way for greater political activity among slaves, and would destabilise the system.

The arguments of slave-owners were based on the potential threat of an uprising, which they said would result from the legislation. In this sense Nieto wrote that:

Badly understood by those uneducated people, and applied with false care by indiscrete and passionate men under our dominion [the law], can cause agitations in the *cuadrillas* of slaves that, resulting in manifest damage for the masters, can also cause it to the public [interest].<sup>58</sup>

This allusion to an uprising inverted the final logic of the law. Rather than seeing the new regulation as a means to diminish the threat of slave insurrection, slave-owners used the idea of disorder at the centre of their intent firmly to repel the *Instrucción*. Asserting the constant need to employ punishment to intimidate slaves and guarantee absolute control, Nieto and the slave-owning elite of Barbacoas linked their authority to productivity in the mines, warning of the consequences that disrupting this authority

might have for the royal treasury: 'We are certain that the mines will be lost and with them a strong lag of commerce in the Kingdom will be felt, mainly in this one.'<sup>59</sup>

The menace inspired by Bourbon ideals and slave-owners' powerful reaction against the Spanish monarchy resulted in the demise of the *Instrucción* in all American territories. On 17 March 1794, a resolution of the Council of the Indies suspended the 'effects' of the *Instrucción*. It made reference to the complaints of the *cabildos* (municipal councils) of Caracas, Havana, Louisiana, Santo Domingo and Santa Fe, all of which were sent to the Council for a final judgement. Also, the Council received a document drafted by the opponents of the new laws discussing the origins of slavery in Greek and Roman times, as well as its history in other nations.<sup>60</sup> The central argument of this document was, interestingly, that treatment of slaves was comparatively 'softer' in Spanish domains than in those of the English and French.<sup>61</sup> The pro-slavery document reminded the Council that the key points of the *Instrucción* had in fact always been part of the Hispanic custom and law concerning the enslaved. The first cause of the 'sweet treatment that the Spanish give to their slaves' was, according to the document, the 'great attention that since the discovery of America our sovereigns have given to the good treatment of Indians, which was then transferred to *negros*'. It continued that the fourteen articles of the *Instrucción* were in substance already present in 'our laws', which were founded on natural law, the ties of Christian charity, and the 'immutable laws of Humanity'.<sup>62</sup> Looked at under such a light, the Council agreed that the *Instrucción* was neither foreign nor contradictory to slavery in the Indies; it was in fact 'ordinary' and its principles widely practised.

The problem was, however, that the alleged innovative nature of the new code might indeed create the image that the *Instrucción* was transforming the terms of slavery. Here, too, the main threat was founded, the Council suggested, on slaves' potential interpretation of the *Instrucción*. It was argued that *negros* were likely to interpret the text with 'bad intelligence'. Indeed, all this concern stood in the context of the ongoing uprisings in the French colony of Saint Domingue, a clear example of the risks that slaves represented if not controlled properly. On this ground, specific reference was made to the '*negros* [of the French colonies] who began a revolution, linked to the general disorder and the mistaken ideas of its unhappy metropolis, and [our] municipalities fear that in its imitation, their slaves could also be disturbed'.<sup>63</sup> For all these reasons, Council members determined that the *Instrucción* was not, and would not be, necessary to guarantee the good treatment of slaves.

However, as Premo says, 'a hasty royal retreat could not rein in what the king had not alone unleashed'.<sup>64</sup> We now turn to examine how events in the mine of Cortés following the publication of the *Instrucción* show that even after the law was revoked slaves appealed to its provisions and it continued to influence royal officials when dealing with slaves' complaints.

### Slaves and the Law in 'favor of servitude'

Although legal devices informed the local customary practices of slaves since Habsburg times, historians have argued that the possibility of allying with the Bourbon regime

shortened the distance between the slaves and the crown as the ultimate source of justice.<sup>65</sup> In the cases studied here, slaves in a distant and isolated place such as Barbacoas appealed to their rights to denounce their mistreatment, even if they did so through the extreme means of infanticide to gain attention of the courts. A sixth attack on an enslaved infant in 1798, and the declaration of the convict in court, yield more information about how the changing legislative context conditioned slaves' arguments and their search for a better situation. In addition to the issue of excessive violence, the sixth case included protests about the problems of lack of food and poor care to which slaves in Cortés's mines were exposed. Three months later, two slaves from Guinulté ran away to Barbacoas and lodged a complaint against Cortés, providing detailed declarations about the problems with food, clothing and spiritual care in the mines. A transformation is visible between the two 1798 cases in the particular tactics slaves used to pose their claim, suggesting the latter's strategic intention to gain support from the courts, placing juridical action above violent action. Most importantly, the collective form that this judicial action took, meaning that the two slaves arrived at Barbacoas to 'represent' their group, is evidence that even though the gold mines put slaves in harsh conditions this did not lessen their capacity to engage in communal assertion of their rights.<sup>66</sup>

On 1 September 1798, nine years after the last infanticide, a crime was denounced in the court of Barbacoas. Manuel Santa Fe, a black slave in the mine of Guinulté, had wounded a boy named Pablo, 8–10 years of age, striking him several times with an axe. Manuel declared that he wounded the boy because he was desperate after being threatened by the miner Manuel Ferrín:

Although he was sick . . . [Ferrín] sent him to work saying he was now fine, giving the order to the captain Juancho to punish him if he did not work . . . And around two in the afternoon with the same ax [he was working cutting some sticks of a guava tree], he hit the little boy because of the desperation he felt, being sent to work sick as he was.<sup>67</sup>

In this interrogation further questions were asked about the motives and circumstances of the crime. One question was whether or not Manuel Santa Fe wanted to kill the little boy when he attacked him. Santa Fe said he had wanted to 'rid him of the sorrow, [and] he considered it best that the little boy did not suffer as he did, and be free [of slavery] once and for all now when he was young'. He added that by wounding Pablo,

the little boy would leave the mine with his family, along with [Manuel Santa Fe] himself; [And] *perhaps with the novelty of the attack they might all be taken to the city and be sold* . . . tired as they were of the tyranny of the miner Manuel Ferrín and the great needs they have in the mine.<sup>68</sup>

Manuel Santa Fe spoke of those needs, about the food they were given – six plantains a day and a pound of meat a week, which was not much especially considering that they were expected to work very hard. The court asked whether or not those conditions were also suffered by other *cuadrillas* of Cortés's mines; his answer was that indeed it was widely known that conditions in Cortés's mines were especially harsh. In this

declaration Santa Fe stated two points that were central to show why he proceeded as he did. At a practical level, perhaps knowing how Mónica a decade earlier had been sold to a different owner, Manuel Santa Fe thought he could obtain a similar outcome from acting in a violent manner, and that his act might also yield benefits for the child and his mother. At a symbolic level, his remark about 'freeing' the child is very significant. In his declaration Santa Fe spoke directly to the issue of liberation. This is an aspect of infanticide among slaves that has been widely documented in the historiography and one that can be applied to the intention behind the violent actions of slaves in Barbacoas.<sup>69</sup>

The two slaves who fled the mine on 3 December to denounce Cortés's 'excessive cruelty' were clearly reacting to Santa Fe's recent crime. They made a trip to Barbacoas to accuse Cortés and prevent further damage to their *cuadrilla*. Manuel Salvador said they had come to denounce

the sad state in which they are found, lacking spiritual and temporal care, and [to say] they did not want to remedy it as they did in the past in the said mine, *killing one another under the influence of desperation* from the bad life they are given, [but] denouncing everything they go through and suffer so that *opportune remedy will be taken to prevent the decisive upheaval that the master's excessive violence can cause*.<sup>70</sup>

With this choice of action they not only rejected violence as a response to their desperation but also chose to defend their community within conditions of enslavement, and not in marronage. Due to the harshness of mining slavery, many slaves fled, mostly looking to join the important *palenque* of El Castigo near the Patía River just north of Barbacoas.<sup>71</sup> Although this would have been an option to escape slavery and the mine for good, the two slaves Manuel Salvador and Bernardo went seeking justice and developed a tactic from which they and their *cuadrilla* would all benefit.<sup>72</sup> The purpose of their accusation was precisely to represent the group to the colonial officials seeking justice. Bernardo highlighted this point in his declaration. When confronted with Manuel Salvador's testimony he said that

All that the captain Manuel Salvador has declared is true and known, and subject to desperation the rest of *the negros univocally asked him to come to lodge a complaint* and ask for justice from the *señor* lieutenant, and then he accompanied him, but not having even a canoe in which to travel they were exposed to the great risk of drowning, riding in a couple of sticks of corkwood because they had no canoe and in fact they were at great risk of losing their lives in the horrible current called '*cabezas*' in which even the most secure canoes are in danger, but God freed them equally [from this and] other river currents, until they were able to set foot in this city and *present themselves before the face of justice*.<sup>73</sup>

Both slaves went in search of the crown's protection, which was what justice meant, to be granted their rights in the context of slavery. Their aim was not necessarily to become free, which is what they would have hoped for if leaving the mine to live a life of marronage. Claims for the common protection and rights of the *cuadrilla* were at the heart of the political strategic action of these slaves, the *capitán* and his partner, representing their group. To pursue this plan they stood first and foremost

on the history of the previous violent actions of slaves in the mines and, although they now rejected such violence, they used potential violence as a threat. In this case, as another scholar has put it, 'the legal system served as a safety valve, allowing an avenue for [slaves'] redress and discouraging a resort to more violent, extra-legal measures'.<sup>74</sup>

It is significant that the captain was in charge of denouncing the injustices, which allows us to reflect on the political dynamics within the *cuadrilla*. A male slave usually headed *cuadrillas* in the Pacific mines of New Granada; that social role made him a 'leading man' within slave society in the region. This case suggests such men had a fundamentally political position because the power and authority of the captain was linked in particular to his knowledge and enforcement of the rules in the mine. While the figure of the *capitán* was crucial to exercising the oppression necessary to sustain slavery, the captain would have received different instructions according to the specific traits in the new legislation.<sup>75</sup>

Although in their recorded words the two enslaved men did not explicitly state their knowledge of the *Instrucción*, the 1798 *cuadrilla*'s 'unanimous' framing of an appeal for justice was strategic in the contents of the complaint. In this regard we may agree with de la Fuente's statement: 'Among [slaves], there circulated ideas of justice and juridical notions that were related, more or less directly, to what was regulated in positive legislation'.<sup>76</sup> It was not necessary to have direct contact with the written legal texts because oral channels were fundamental for this transfer of knowledge.<sup>77</sup> A look at the detailed declarations of the two slaves in the courts provides positive evidence of this process. Manuel Salvador opened his remarks saying that at the mine they 'lacked spiritual and temporal care'.<sup>78</sup> The emphasis on the spiritual needs of slaves resonates with laws to properly educate slaves through religious agents (Chapter I of the *Instrucción*). In his long pronouncement against Cortés, Manuel again referred to religion, saying that 25 months had passed without them confessing to a priest, nor they had been given mass or 'heard the word of God'. Furthermore, in those two years no priest had visited the mine to bring the oils for baptising the children, and for this reason, 'at least twenty [children] can be counted lacking such an essential requirement of Christians'.<sup>79</sup>

Both Manuel and Bernardo also carefully described the rations of food they were given, which they said were not enough: barely six plantains for women and eight for men, plus one pound of meat per week, and a woman's portion was not different if she had children. However, the biggest problem seemed to be in the arbitrariness of the distribution, which depended on the mood of the miner. Additionally, according to Manuel Salvador, the miner had instituted a 'law' which said that if slaves did not sweat while they worked, they would be punished. This had led to a series of constant violent punishments; an example was the *negra* Dominga who 'was left with a scar below her back for the rest of her life'.<sup>80</sup>

Another crucial element of the duties of slave-owners according to the *Instrucción* was to provide clothing (Chapter II). The slaves declared that aside from being almost naked, their master had prohibited them from making purchases in the city, forcing them to buy the goods they needed from him at the price he wanted. A final, striking point the slaves made was that women were forced to carry weights

'disproportionate' to their strength in their work, and in some cases even pregnant women had given birth to their children early, trying to comply with the rules of the miner. This violated Chapter III of the *Instrucción*, which said that the daily work of slaves should be determined '*in proportion* to their ages [and] strength'.

Aside from the above detailed claims, the slaves announced the risk of a resurgence in infanticides, speaking also of the possibility of an insurrection. In this way, they made conscious juridical and political use of the history of the infanticides, adding them to petitions for good treatment. This threat was effective at generating pressure because it drew on widespread fears of slave uprisings in the context of the massive slave rebellion in Saint Domingue ongoing since 1791. Once exposed in the tribunals, antagonism between the slave-owners and the colonial authorities grew. Dated 24 December 1798, prosecutors (*fiscales*) from Quito's *audiencia* wrote: 'Given the interest of this province for the particular calm of each part, it follows that all of it is at risk in the turbulence of each one.'<sup>81</sup> This recognition meant that the danger of crisis in Cortés's mine could have repercussions in the entire mining region, a risk that had to be properly addressed. Consequently, colonial authorities perceived the situation as described by the enslaved black men as evidence of a violation of the laws stipulated by the crown, giving way to an official request in the case against Cortés that he should follow the norms promulgated by the crown in earlier years. The lawyers wrote:

The *negros* have complained about the excesses with which they are treated, so this should be remedied opportunely following the royal *cédula* [decree] given in Aranjuez on 31 May 1789 *in favor of servitude* (*servidumbre*) [.]. Equally the Royal *Audiencia* of the district has ordered its judges to watch the good behavior and treatment of [Cortés] with the *cuadrillas* in his care given the repeated deaths executed in this mine in [past] years and the present caused with the rage and desperation in which they suffer.<sup>82</sup>

The interest of royal agents in Quito was to protect slaves mainly as a means to prevent disorders.<sup>83</sup> Yet the *audiencia* officers mentioned the *cédula* as legislation that was established in favour of servitude, and they sided with the slaves, making reference to the tension between the precepts in the legislation and Cortés's reluctance to collaborate with their procedures. Their appeal to the decree of 31 May and their use of the language in favor of slaves and against Cortés became an opportunity for the latter cunningly to reject their recommendation and disregard the validity of the legislative framework. In his reply Cortés said, 'You leave no doubt about the royal *cédula* of His Majesty related to servitude, but up to now I have not seen it publicised as it should have been for it to be observed.'<sup>84</sup> Following this dismissal of the law's application, Cortés transformed the terms of the problem, establishing that as defendant in the trial he expected to receive more information on the case, asking to have all declarations of his slaves sent to him. He also sent numerous excuses to prevent the other slaves called to declare from appearing in court in Barbacoas, complicating the development of the case. Given his reluctance, the lawyers in the *audiencia* decided to include in Cortés's file copies of all the documents pertaining to the infanticide cases, from the years 1788–89 and the more recent one in 1798. They used them as evidence to illustrate the risk of heightened violence to which the slaves Manuel and

Bernardo called attention, and as proof of the excessive cruelty of Cortés and the miners upon his *cuadrillas*. In a decree dated 11 January 1799, the local court asserted its role as magistrates who were ‘in charge by the government [in the *audiencia*] to aid and protect slaves in their quality as miserable people, to hear their pleas and resolve them, and all the more so in these conditions.’<sup>85</sup>

The recurrence of killings in the gold mines in Barbacoas had become a visible mark of the conflicts of slave lives under Cortés’s dominion, and of the potential ‘disorder’ that mistreatment of slaves could provoke. These judicial cases of infanticide reveal that with their violent actions, slaves utilised the colonial courts to denounce the injustices committed against them, complicating the master’s and miner’s reputation. A decade later, slaves’ understanding of their rights under the new law enabled a practical use of their collective identity that is remarkable given the adverse circumstances of slavery in Barbacoas. While in the years previous to the publication of the decree slaves resorted to violence – in 1788–89 when the infanticides were a radical strategy for attracting juridical attention – after 1789 their awareness of the new juridical tides was an incentive for slaves to reject self-destructive violence and address their complaints and pleas in court.

Recently scholars have studied collective bargaining by slaves in situations where slave groups were owned by the Spanish King. In their historiographical accounts, solidarity is ascribed to a ‘mystique of the cult of the king as protector of the weak against powerful oppressors’.<sup>86</sup> Rather than acting on their mystical perception of a protective king – through the infanticides as much as, a decade later, by means of the concerted judicial claim posed by the *cuadrilla* in 1798 – in Barbacoas slaves strategically used legal channels and demanded their right to protection. The efficacy of slave efforts to force their masters into the legal arena speaks of the profound link between slave political action and local as well as imperial legal contexts.

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### Notes

- [1] Part of the Viceroyalty of New Granada and within the southwestern province of Popayán, Barbacoas was in the jurisdiction of the Royal *Audiencia* of Quito. See *Recopilación . . . de las Indias* 2.15.10.
- [2] According to the *Diccionario de Autoridades* (1732) *infanticidio* or infanticide is the homicide or violent death inflicted upon a child. The definition does not, however, specify a relation

between the killer and the child; nor does it imply that the term only applies to the killing of babies. Following this eighteenth-century definition, I use the term infanticide to refer to the killings of five children, between the ages of seven months and eight years, in the Barbaocoan mines.

- [3] Archivo Nacional del Ecuador (Quito, hereinafter ANE), Religiosos 46.
- [4] Archivo General de la Nación (Bogotá, hereinafter AGN), Negros y esclavos del Cauca, t. II, doc. 13, f. 770r. My emphasis. The mines in the region of Barbaocoas were characteristic for having 'absentee mine-owners' who lived mostly in the city of Santa María de las Barbaocoas and delegated the control of the mine to the hands of a miner and the slave captains. Captains were slaves chosen to help the miner with the direction of tasks for the extraction of gold. See West, *Colonial Placer Mining*, 86.
- [5] The *Instrucción* can be found in Konetzke, *Colección de documentos*, 643–652.
- [6] See Tovar, *De una Chispa*; and Premo, *Children of the Father King*, 215–218.
- [7] Cutter, 'The Legal Culture of Spanish America', 9.
- [8] de la Fuente, "Su único derecho", 17.
- [9] The use of Spanish law by subalterns started with the Indians in the sixteenth century. Since that time, Indians developed a profound relation with Spanish political culture and the conditions stipulated by the *Leyes Indianas*. As vassals of the crown, within the Spanish monarchy they defined their identity to a great extent in juridical terms, that is, in terms of their privileges, jurisdictions and restrictions. The creation of a special system of representation for Indians was a clear marker of their separate legal status within the Spanish monarchy. In the view of Steve Stern and other historians, justice was a cultural dimension of the Spanish government in the Indies and one of the main practical means of subjection of Indians. See Cutter, 'The Legal Culture of Spanish America'; Ots y Capdequí, *Manual de Historia del Derecho Español en las Indias*, 286; Stern, *Peru's Indian Peoples*.
- [10] For Indians, see Baber, 'The Construction of Empire', 68; Serulnikov, *Subverting Colonial Authority*; and Guardino, *The Time of Liberty*; for slaves, see Aguirre, *Agentes de su propia libertad*; Bennett, *Africans in Colonial Mexico*; Bryant, 'Enslaved Rebels'; Díaz, *The Virgin, the King*; de la Fuente, "Su único derecho" and 'Slaves and the Creation of Legal Rights'; Johnson, 'A Lack of Legitimate Obedience'; Lane, 'Captivity and Redemption'; Owensby, 'How Juana and Leonor'; Premo, *Children of the Father King*; Soulodre-La France, 'Socially Not So Dead'; Townsend, "Half My Body Free".
- [11] See the complete study by María Cristina Navarrete, *Cimarrones y Palenques en el siglo XVII*.
- [12] See Anthony McFarlane's 'Cimarrones and Palenques', the first to talk about slave uses of the law and Hispanic courts in New Granada.
- [13] Quoted in Lavallé, 'Aquella ignominiosa herida', 43.
- [14] *Ibid.*
- [15] An earlier reference to these cases considers that the infanticides mirror the 'prison structure' that slavery had in the faraway mines of Guinulté, San Manuel and Boasé in the Telembí River. See Romero, *Poblamiento y sociedad*, 106–107.
- [16] Other infanticides were recorded in the same period on other mines not belonging to Cortés. These will not be analysed here but it is important to bear in mind that infanticide was a recurrent strategy of slaves in different contexts. For an interpretation of infanticide among enslaved women in other regions of New Granada, see Renée Soulodre-La France, 'Por el amor!', 87–100; and Spicker, 'El cuerpo femenino en cautiverio'.
- [17] AGN, Negros y esclavos del Cauca, t. II, doc. 13, ff. 788r–789v.
- [18] *Ibid.*, f. 793v. My emphasis.
- [19] *Ibid.*, ff. 796r–799r.
- [20] *Ibid.*, f. 797r. In the original: 'le puso las carlancas o bragas de fierro y lo echó al trabajo'.
- [21] *Ibid.*, f. 797v.
- [22] *Ibid.*, f. 799r.

- [23] *Sambo* is a term that denotes racial mixture between an African descendant and an Indian.
- [24] AGN, Negros y esclavos del Cauca, t. II, doc. 13, f. 802r.
- [25] *Ibid.*, f. 802v.
- [26] *Ibid.*, f. 802r. My emphasis.
- [27] *Ibid.*, f. 802r–v.
- [28] *Ibid.*, f. 804r. In the original: ‘lo mató de verse aburrido de la esclavitud y martirios de hambre y azotes, que continuamente padece, y haciéndose cargo que por este medio se libraría de la esclavitud, apeteciéndole más el morir ahorcado’.
- [29] ANE, Popayán 227. Verifying ages of criminals was an important part of a criminal case, as the benefits of legal minority were jealously guarded by court officials. See Premo, *Children of the Father King*, 115–119.
- [30] AGN, Negros y esclavos del Cauca, t. II, doc. 13, f. 805v.
- [31] Marta Herrera explains the infanticides in economic and not political terms. By considering their consequences individually, Herrera concludes that they are part of a ‘destructive’ dynamic. However, as I will argue below, it is possible to see a ‘productive’ use that, in later years and in the context of the *Instrucción*, slaves gave to the process of violence lived in the mine in search of collective benefit for the *cuadrilla*. See Herrera, ‘En un rincón’.
- [32] Historiographical works have traditionally ascribed individual acts of violence as resistance, implying their lack of political reach in the context of slavery. This is not the interpretation proposed here, where slave violent actions are seen to be informed by a wider legal frame and to have judicial as well as political repercussions. See, for example, Genovese, *Roll, Jordan, Roll*.
- [33] The sources in question do not reveal any suspicion at the time that African religious practice was involved. I rule out such possibility considering that two of the killings were committed publicly and in all cases, according to the testimony, immediately after the attacks the killers were taken to the city to be jailed and judged. Additionally, the bodies of the dead children were taken to a forensic doctor for examination. For a contrasting case in Caribbean New Granada in which slaves confessed to ritual practices involving child killings, see Maya, *Brujería y reconstrucción de identidades*, 697–705.
- [34] Javier Villa-Flores’ work is inspiring for thinking about the controversial risks that slaves took in extreme situations of abuse and desperation. As his study on the case of colonial Mexico shows, slaves’ transgression of Christian speech regulations through blasphemy was a strategic action that aimed to create further conflict, displacing the slave from the authority of the owner into the sovereignty of the Holy Office – then turned into a ‘protective shield’ – where he or she might be treated with mercy. See Villa-Flores, *Dangerous Speech*, Chapter 5, esp., 131.
- [35] ANE, Popayán 221. In her study of infanticide and abortion in nineteenth-century Argentina, Kristin Ruggiero found how an interesting combination of arguments about lack of responsibility and straightforward sympathy for women who killed their offspring led to the pardoning both of cases of abortion and infanticide. See Ruggiero, ‘Not Guilty’, 149–166.
- [36] Another interesting example of the privileges of women in the legal developments following an infanticide case is Landers, “‘In Consideration of Her Enormous Crime’”.
- [37] As in the case of the antebellum U.S. South studied by Walter Johnson, slaves forced their ‘critique of slavery . . . into the public record’. Johnson, *Soul by Soul*, 30.
- [38] I agree with de la Fuente and Bryant who note that slaves’ appearances in court were precedents that determined local and regional slaves’ and officials’ legal practices over time. See Bryant, ‘Enslaved Rebels’, 21; de la Fuente, ‘Slaves and the Creation of Legal Rights in Cuba’, 664.
- [39] Bennett, *Africans in Colonial Mexico*, 13.
- [40] Although Capuchin friars in Santo Domingo laid out the main debates against trade of Africans in the seventeenth century, these debates cannot be seen apart from the social dynamics that developed in America. See Andrés-Gallego, *La esclavitud en la América*, 46; Blackburn, *The Making of New World Slavery*, 50.
- [41] Bennett, *Africans in Colonial Mexico*, 13; Bryant, ‘Enslaved Rebels’, 8.

- [42] Blackburn, *Making of New World Slavery*, 51; Andrés-Gallego, *La esclavitud en la América*; Lucena Salmoral, *Sangre sobre piel negra*; Levaggi, 'La condición jurídica del esclavo', 83–175.
- [43] de la Fuente, "'Su único derecho'", 15.
- [44] Bennett, *Africans in Colonial Mexico*, 130; Tau Anzoategui, *Casuismo y Sistema*; Benton, *Law and Colonial Cultures*, 33. A similar argument about the importance of locality in the functioning of legal institutions in the post-Revolutionary US South can be found in Laura F. Edwards, 'Enslaved Women and the Law', 309.
- [45] Lucena Salmoral, *Sangre sobre piel negra*.
- [46] The *Real Cédula* dated 24 November 1791 extended for six years the concession of freedom of trade of Africans given in 1789, and it now included the viceroalties of Santa Fe and Buenos Aires, aside from the *Capitanía general de Caracas*, and the islands of Santo Domingo, Cuba, and Puerto Rico. The decree was justified saying: 'This commerce is supported to promote agriculture'. Archivo General de Indias (Seville), Santafe 549, doc. without number, f. 3.
- [47] In Louisiana the *Code Noir* was in effect between 1724 and 1800. Lucena Salmoral, *Los códigos negros*; Lucena Salmoral, *Sangre sobre piel negra*; Andrés-Gallego, *La esclavitud en la América*.
- [48] Two codes were drafted in Santo Domingo, where the transformation was being planned and directed according to local interests. One *Código de Santo Domingo* was published in 1768 and the other in 1784. Lucena Salmoral, *Los códigos negros*, 49.
- [49] An interesting discussion of the political issues at stake in French colonial contexts in relation to slave law can be found in Ghachem, 'Sovereignty and Slavery', especially part I. See Childs, *The 1812 Aponte Rebellion*, 33–38 for an account of slave-holders' responses to the *Instrucción* in Cuba.
- [50] *Ibid.*, 109.
- [51] The text corresponds to Chapter VIII of the *Instrucción*. In Konetzke, *Colección de Documentos*, 647.
- [52] Premo, *Children of the Father King*, 215.
- [53] de la Fuente, 'Slaves and the Creation of Legal Rights in Cuba', 672.
- [54] ANE, Reales Cédulas, t. 13, f. 214.
- [55] *Ibid.*, f. 215.
- [56] *Ibid.*, f. 220.
- [57] *Ibid.*, f. 213.
- [58] *Ibid.*, f. 215.
- [59] *Ibid.*, f. 222.
- [60] 'Consulta del consejo de las Indias sobre el reglamento expedido en 31 de mayo de 1789 para la mejor educación, buen trato y ocupación de los negros esclavos de América'. Published in Konetzke, *Colección de documentos*, 726–732.
- [61] This remark resonates with polemical twentieth-century comparative analyses of Atlantic slave regimes, particularly the debate opened by Frank Tannenbaum by tracing the 'historical' influences of divergent regional race relations in Latin and North America. See Tannenbaum, *Slave and Citizen*; and Díaz, 'Beyond Tannenbaum'.
- [62] 'Consulta del consejo de las Indias', in Konetzke, *Colección de documentos*, 726–732.
- [63] *Ibid.*
- [64] Premo, *Children of the Father King*, 218.
- [65] Tovar, *De una chispa*; see Chaves, *Honor y Libertad*, where a poststructuralist analysis emphasises the role of eighteenth-century legal discourse in allowing for slaves' strategies of enunciation of their rights in court in this period. As Sherwin Bryant notes in his study of black litigants who 'employed tactics that foreshadowed those used by litigants in the late colonial period', historians have interpreted the evidence of increase in the number of cases found in the archives to mean that slaves' use of the courts heightened in this period. Bryant rightly argues that this should not lead us to think that slaves did not pursue legal strategies prior to the eighteenth century. See Bryant, 'Enslaved Rebels', 7–46.

- [66] Previous interpretations of the situation in Barbacoas link isolation with a consequent incapacity of the slaves in the gold mines to build a community. See Romero, *Poblamiento y sociedad*, 107–114.
- [67] AGN, Negros y esclavos del Cauca, t. II, doc. 13, f. 808v.
- [68] *Ibid.*, f. 808v. My emphasis.
- [69] Various references can be found in Soulodre-La France, ‘Por el amor!’. Also, for North America, see Johnson, *Soul by soul*, 33; for the Caribbean, see Bush, *Slave Women in Caribbean Society*, 136–150; and Schiebinger, *Plants and Empire*, 129–149.
- [70] AGN, Negros y esclavos del Cauca, t. II, doc. 13, f. 770r. My emphasis.
- [71] The *palenque* or maroon community of El Castigo comprised two villages, each one with a church, and included runaway slaves from the haciendas near Popayán and Valle del Cauca and from the mines in Barbacoas, Panamá and Chocó. Zuluaga, *Guerrilla y sociedad en el Patía*.
- [72] As in the cases described by McFarlane, ‘rather than a flight from the justice of slaveowners or the state, this was a flight to justice’. See McFarlane, ‘*Cimarrones and Palenques*’, 148.
- [73] AGN, Negros y esclavos del Cauca, t. II, doc. 13, f. 774v.
- [74] As Bryant states, ‘At times the enslaved verbalized the threat of violence’, since slaves’ suits were ‘almost always connected to – and enhanced by – other, more radical forms of resistance employed by the enslaved’. See Bryant, ‘Enslaved Rebels’, 10–11.
- [75] Romero says ‘the captain of a *cuadrilla* was in an ambiguous position: between the defense of the master’s interests to make the work gangs function, and the representation and defense of the interest of the group’. Romero, *Poblamiento y sociedad*, 75. See also West, *Colonial Placer Mining*, 86.
- [76] de la Fuente, “‘Su único derecho’”, 15.
- [77] An interesting study of slaves’ relation to written culture can be found in Jouve Martín, *Esclavos de la ciudad letrada*, Chapter 4.
- [78] AGN, Negros y esclavos del Cauca, t. II, doc. 13, f. 771v.
- [79] *Ibid.*, ff. 772v–773r.
- [80] *Ibid.*, ff. 771v–772r.
- [81] *Ibid.*, f. 785r.
- [82] *Ibid.*, f. 785r. My emphasis.
- [83] French slave law was fundamentally oriented to reduce the risk of slave insurrection and marronage. Ghachem, ‘Sovereignty and Slavery’.
- [84] AGN, Negros y esclavos del Cauca, t. II, doc. 13, f. 786r.
- [85] *Ibid.*, ff. 786v–787v. This antagonism between masters and judges on the matter of uses of the Carolinian Instruction on Slaves proves that, in Premo’s words, ‘the edict. . .had more of an edifying effect on litigants and judges than on masters’. Premo, *Children of the Father King*, 217.
- [86] Soulodre-La France, “‘Los esclavos de su Magestad’”, 185. See also Díaz, *The Virgin, the King*.

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