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# Enslaved as Outsiders, Enslaved as Property: Understanding Slavery in a Global and Early Modern Context

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Abstract

This text seeks to de-center existing narratives regarding enslavement, which traditionally focus on how it was practiced in North America, and instead to observe it in the *longue durée* and more globally. It asks about the various roles enslaved persons played in different times and geographical locations, paying particular attention to the ways by which they contributed to the reproduction of families, kin groups and communities. It also questions the assumption that slaves were property by setting enslavement on a larger canvas and by observing early modern debates regarding both the household and labor relations.

Keywords: slavery, property, otherness, servants, chattel

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# Enslaved as Outsiders, Enslaved as Property: Understanding Slavery in a Global and Early Modern Context

In his 2014 book *Qu'est-ce que l'esclavage? Une histoire globale*, Olivier Grenouilleau set out to define what slavery was.[1] Insisting that slavery was a status that could indicate a great diversity of conditions, he nonetheless proposed three elements that, according to him, characterized slavery in most periods and locations. The first of these was otherness. Enslaved persons, Grenouilleau argued, did not necessarily begin as external to the group that enslaved them. However, once enslaved, they were deemed outsiders. What being an outsider entailed differed from place to place, from time to time, but it always implied that the enslaved would be denied access to important social, economic, political, and legal benefits. To understand enslavement, therefore, we must begin by asking what was important to society at that time, because only by proceeding in this way will we be able to discover what the enslaved were deprived of.[2]

If otherness was the first factor common to all situations of enslavement, the second element Grenouilleau identified was that, in order to classify the enslaved as outsiders, those who enslaved them had to be in a position of power because only such a position would enable them to operate this re-(or de-)classification. Enslavement, in other words, necessarily involved power inequalities.

The third element in all cases of enslavement was usefulness. The reason those in power engaged in enslaving others was because it was beneficial to them. The advantages could be economic, but they could also include other components such as reproductive, symbolic, military, or religious benefits, to mention but a few examples. Grenouilleau ended his analysis by pointing out that the existence of authorities that sanctioned the transformation of insiders into outsiders was often vital to these processes, because it converted practices into institutions, thus both enabling and legitimizing what had transpired.

Grenouilleau was not the only scholar who sought to understand what slavery was and concluded that, rather than being an institution that transcended space and time, it consisted of a huge variety of dissimilar historical strategies.[3] In his case, as in that of many others, these assertions were fueled by the acute awareness that the study of enslavement has been skewed by the fact that researchers mostly concentrated on the Atlantic Ocean. It is estimated, for example, that approximately 80 % of all studies on enslavement originated in the USA and another 10 % in Brazil.[4] This concentration on the Atlantic, historians have observed, had important consequences on how the field of slavery studies has developed. It has led to what some have identified as a North America-centric myth, which made what transpired in the Unites States the norm, while all other practices were viewed as either complying or failing to comply with this model.[5] This resulted in extreme attention being paid to the plantation economy, as well as to violence, resistance, and racialization. It produced a vision of slavery as a stable and endurable institution and supplied researchers with a fixed epistemology that they also applied to their study of other areas.[6] The

1 Grenouilleau (2014).

2 Peabody (2011b) also stresses that the characteristics that sought to justify otherness could be radically different according to place and time: They could invoke family relations, ethnicity, religion, political adhesion, and so forth. On comparative slavery also see Drescher (2009).

3 Miller (2012) ix–x and 1. On these questions also see Kopytoff / Miers (1977) 3–4 and Batselé (2020) 13–16.

4 Zeuske (2012) 87.

5 Vidal (2021) in a radio interview in Le portail des Outre-mer.

6 Miller (2012) x. Miller argues that the antebellum United States were »the single source of the politicized epistemology of studies of slavery as an institution«. Also see his pages 1–2, 19, 34 and 119–121. On p. 121 Miller calls it »the politicized caricature« of slavery and, on p. 130 he summarizes this model as »a public legal institution protecting private property in people, characterized racially and as excluded from a commercial economy taken as otherwise comprehensive«.

pre-dominance of North American scholarship also led to a-historicization and a-contextualization, homogenizing practices even in the United States, which were never as singular as the model suggested and, furthermore, were in constant evolution.[7] Indeed, even in the United States, we are now told, enslavement as stereotypically presented by many did not emerge before the late 18th and the early 19th century.

Responding to these scholarly developments, historians like Grenouilleau insisted that enslavement was a practice that was adopted by multiple societies in different periods.[8] Rather than an isolated or marginal phenomenon, an exception to the rule (the rule being liberty), enslavement was a widespread occurrence that began in prehistory and continues, according to many, even today. If we do not look at it as it really was, we will fail to understand it properly.

In response to these calls, historians of the Atlantic did acknowledge the pervasiveness of enlavement around the globe and in different periods; at the same time, however, they insisted on the importance, indeed centrality, of Atlantic slavery. Atlantic slavery was crucial, they argued, because of how massive it had been, and because it added a new dimension to enslavement: that of race. Atlantic slavery, in other words, introduced a new system of organization and created new hierarchies to explain why certain people could be enslaved. According to scholars of the Atlantic, it is precisely the centrality of racism, and its legacies at the present, which justified concentering on the Atlantic and making it the model.[9]

Despite these considerations, and following Grenouilleau, I propose to de-center existing narratives by adding new dimensions to already flourishing and fascinating debates. I offer two considerations that may help us rethink slavery both in the *longue durée* and more globally. The first of these questions the paradigm of othering, suggesting that we also consider the mechanisms that enabled ›inside‹. The second questions the assumption that enslaved persons were property, by setting enslavement on a larger canvas and by observing early modern debates regarding both the household and labor.

## I. Othering and Insiding

Grenouilleau (as well as numerous other scholars) has pointed out that enslavement was usually tied to othering: Either only outsiders could be enslaved, or those who were enslaved became outsiders by virtue of their enslavement. The stereotypical example mentioned by most was ancient Rome, though multiple other examples are of course possible. In Rome, those who were enslaved lost their membership in both community and family: They became non-citizens and were no longer considered married to their spouses or related to their progeny.

Though othering was certainly central to enslavement, and it is probable that it grew even more central over time, there are nonetheless multiple examples that show how enslavement could also operate on the inverse, transforming outsiders into insiders or at least into insiders in some respects, if not all. Moving away from Atlantic slavery and observing other places and times may be helpful in this regard.

The practices of many indigenous groups in North America are particularly well studied, though the same also holds true for several areas in Africa. Before European presence substantially affected existing modalities, in many indigenous groups enslavement mainly functioned as a mechanism to add rather than deduct members and to absorb rather than reject outsiders.[10] A means to recruit labor, it also served as a system to bolster the population and ensure the survival of kinship groups. Many North American communities bought and sold, captured and freed, or sometimes even killed enslaved persons, yet they also habitually adopted these persons into families and groups. Historians have concluded that adoption to the group was frequently carried out to replace a

7 Miller (2012) 120 and 131–132.

8 This seemed to have also motivated Rossi / Vidal (eds.) (2021) and Miller (2012).

9 Blackburn (1997) highlights some of the innovations that made Atlantic slavery important. For a more recent reiteration see Vergès (2008). Miller (2012) 126–129 responds to these conclusions by stressing that racialization itself was a historical process with enormous variations, and that it became fully operative only in the 19th century.

10 Marchant (1942); Perdue (1979); Donald (1997, 2011); Brooks (2002); Whitehead (2011); Snyder (2010).

missing member, whose name, properties, position, and family relations the enslaved automatically inherited. By way of symbolical sanction, the transformation of the enslaved into members could involve a ceremony in which they were ritually (but not physically) executed and subsequently underwent a social rebirth. The old person they had been might have died, but a new person was created in its place. Historians who have studied these practices concluded that among the indigenous peoples of North America, enslavement functioned as a mechanism for social exchange that enabled groups to trade people with the aim of ensuring both ritual and material reproduction.

Though the literature on indigenous groups in North America mainly centers on the integration of captured males, often defeated warriors, the literature on slavery in Africa before the emergence of the large-scale Atlantic slave trade describes the search for both males (mainly for military and hunting purposes) and females (for workforce and reproduction).[11] It also understood enslavement as a historical strategy for building communities and managing change, and insisted that enslaved persons often became affiliated with groups, which they then helped reproduce. In Africa, historians argued, enslavement formed part of systems of kingship, which transacted in people in a variety of ways (purchase, exchange, war, and captivity). Yet while other social members could rely on what has been called idioms of descent, enslaved persons who were absorbed into the community were imagined as ancestor-less individuals. In a society in which kin was fundamental, although absorbed, the enslaved – and sometimes their offspring – remained relatively marginal and defenseless because they lacked a kin group to protect them. As a result, rather than seeking freedom, as the literature on North America had led us to believe, in Africa enslaved individuals sought bonds and connections that would reduce isolation and vulnerability. This continued to be true even as African polities expanded, as enslavement became militarized as well as commercialized, and as the targeted persons were now obtained through long-range interactions.

Research on indigenous North America and Africa thus indicates several ways by which insiding (rather than othering and outsiding) formed part of the historical experience of enslavement. This begs the question: Could this also have been the case in Europe and its overseas territories?

Historians of North America, of course, have long argued that one of the most important contributions of enslaved females to their enforced new groups or communities was reproduction.[12] They suggested that the owners' desire to increase the number of enslaved persons, as well as the rule that automatically passed status from mother to offspring, had intensified pressure, often accompanied by extreme sexual violence, on female slaves to reproduce. Yet it is possible that here too, making the late 18th and 19th century North American experience the model might have obscured important questions.

Historians of other areas and earlier times have shown that the rule according to which birth followed the womb – that is, the rule that classified children of enslaved women as slaves – was not as general, uncontestable, or absolute as it was once assumed. Rather than an automatic derivative of ancient Roman law, as it was often portrayed, the status of children born to enslaved women was fought over, questioned, and reaffirmed during the early modern period.[13] In 15th- and early-16th-century Valencia, for example, enslaved women who gave birth to a child fathered by their masters were automatically emancipated and their offspring were considered free.[14] We also know that when disagreement arose and the parties appealed to the courts, the main question they debated was how to prove the identity of the father. Formulated as paternity suits *avant-la-lettre*, discussions centered on whether the master recognized this filiation either explicitly or implicitly, for example by celebrating the birth or treating the children as if they were his own. Valencia's records also show that celibate masters, or those who had lost their other progeny, admitted their paternity when they

11 Kopytoff / Miers (1977) and Miller (2012) 90–118.

12 Chalhoub (2015) 168 mentioning the works of Gwyn Campbell, Suzanne Miers, Joseph Miller, Camilia Cowling, Joseph Dorsey, and Jessica Milward. Also see Brown (1996); Morgan (2004) 12–49; Arizia (2020); Machado et al. (2021); Vidal (2019).

13 On the persistent appeal to an ancient Roman law that allegedly was adopted wholesale and then implemented by Europeans see, for example, Machado (2010) 61–62.

14 Blumenthal (2010) and Blumenthal (2009) 174–192, 211–212, 215, 219–221.

came to realize that they would have no other descendants or on their death bed. It was as if they kept these children in ›reserve‹ to be recognized, legitimized, and freed if and when necessary.[15] It is also possible that such men choose to enslave certain females because of their reproductive capacities, separating them from their children as soon as these were born and then raising the children on their own. Apparently, as far as these masters were concerned, pregnancy was a work-related task, a labor like all others that began with conception and ended with birth. I will return to this point later.

Practices in 15th- and 16th-century Valencia also classified as free children of enslaved females who had been conceived with a free man. In these cases, however, though the offspring were born free, the mothers remained in captivity. Court records show that enslaved women were aware of these rules; some explained that they had been advised to argue that they were carrying their master's child or the child of another free man, for precisely these ends. Children of enslaved women also invoked these norms in their freedom suits, demanding recognition as free because of the identity of their fathers. In Valencia, one could argue, rather than the womb, status followed the penis.

In Genoa, 15th-century slaveholders also »saw the reproductive labor of enslaved women as a potential contribution to their lineage«.[16] As happened in Valencia, their preoccupation with ensuring generational transmission led to the wish to incorporate into the family and recognize the children fathered with enslaved women, if and when needed. This was particularly common with owners who were single or whose marriage produced no descendants. Recognition implied freedom as well as rights for the child, but generally not the mother – the laws declared her to remain enslaved, though lawsuits often demonstrated that locals might have considered her free too. As a result, one could argue that in Genoa »slavery passed through the maternal line unless the father decided otherwise«.[17] Genovese fathers of children conceived with an enslaved woman who was owned by another could be forced to pay damages to the master and take care of the child.[18] Meanwhile, Genovese potential owners selected to purchase enslaved women who were more likely to be impregnated and they purchased insurance against the risk of childbirth in case the mother died giving birth. There are multiple indications that the situation in many other northern Italian cities might have been similar.

Though we have only partial information regarding what transpired in Barcelona, there too, the attitude taken by slave masters regarding offspring borne by enslaved women was fundamental to determining their status.[19] Rather than automatically considering these offspring slaves, children who were recognized and / or legitimized by their fathers could be socially integrated. In Majorca, enslaved women who gave birth to a child recognized and supported by the master, and who had been freed, could demand to be paid a pension from his estate in reward for the sexual services they had performed.[20]

Similar practices also existed in the Islamic world and the Ottoman empire, whose authorities and residents participated in the same slave markets as the Europeans did.[21] There, an 11th-century text regarding the purchase of enslaved women took it for granted that they could have been purchased so as to procreate children for the master. What the author was concerned about, as masters in Valencia did, was paternity.[22] At stake for him was how to guarantee that the enslaved women would not be already pregnant when purchased, thus introducing as the master's child a child which had been conceived with another man. This concern expressed preoccupation not so much with ensuring the purity of the master's bloodline, but with status: Enslaved women who conceived children with their masters (identified by the designation »the mother of the child« – *umm walad*) were automatically freed upon the death of their master, and their children were born free and legitimate.[23]

Across the Mediterranean, these practices reproduced contemporary visions which generally held that filiation followed the father, not the mother. Indeed, where the status of the child followed the mother, as in the 13th-century Castilian recompi-

15 I owe this characterization to Debra Blumenthal.
16 Barker (2021) 1.
17 Barker (2021) 4.
18 Barker (2021) 13.
19 Guillén (2010) 169–176.
20 Planas (2024).
21 Barker (2019).
22 Lewis (1982) 142.
23 Schacht (1934); Ali (2010) 111, 113; White (2020) 302–304.

lation of *ius commune*, the so-called *Siete Partidas*, the authors of the collection found it necessary to specify that this was an exception to the general rule according to which children must follow the status and condition of their father.[24] Similar views also permeated Muslim society, where descent passed through the father, not the mother, as did status (and liberty).[25] Even as late as the mid-17th century, it was possible for Hugo Grotius (1583–1645) to argue that the gradually emerging rule which identified status by observing the mother rather than the father was an exception that was justified by probatory difficulties.[26] He thus concluded that, because this rule was »not in satisfactory agreement with the law of nature«, it should be ignored in cases when the identity of the father could be »recognized with sufficient certainty«. This line of reasoning also allowed Grotius to argue that where the law is silent on this question, »the children would not be less likely to follow the condition of the father than that of the mother«.

The question of how to treat children of mixed free and captive parentage, and whether they should inherit the condition of their father or mother, was also raised in Europe's overseas colonies. In 16th-century Portuguese São Tomé and Príncipe, pre-1687 French Caribbean, and 18th- and early 19th-century English Bahamas, for example, enslavers who fathered children with enslaved women often argued that these offspring were (or should be) free; and indeed, many local norms defined them as such. [27] Traces of these debates can even be found in the 1685 infamous French *Code Noir*, which on the one hand set the rule that children of an enslaved women would be considered slaves (art. 13), but which also determined that, if an unmarried slave master who had conceived children with an enslaved female married her, this act, the marriage, should be construed as a formal recognition of this filiation and would have the automatic consequence of freeing both the mother and children as well as legitimizing the offspring (art. 9).[28] In a similar manner, the same code (art. 16) determined that children who were designated by their masters as sole heirs, executors of their will, or tutors of their children, would be held and considered as free, possibly because these moves were understood to include an implied recognition of paternity.

It is therefore fair to say that, leading up to the early 19th century, a great variety of practices and solutions coincided with the rule that gradually identified the children of enslaved women as slaves. Historians who have studied these processes asked why this rule was adopted, where, and through which processes. They pointed out that its consolidation was faster in the Iberian world than in the French colonies, and that some English colonies in the Caribbean might have been the last to adopt it. They also sustained that the eventual primacy of this rule in the colonies possibly had little to do with enslavement per se, and everything to do with larger processes of racialization that dramatically intensified in the 18th and 19th centuries, precisely when this rule regarding the status of children of enslaved mothers became generalized in the Americas.[29]

If we accept these premises, we could argue that, before children of enslaved women automatically became slaves, procreation could have produced additional enslavement, but could also have contributed to the survival of families and kin groups, indeed communities, even in Europe and its overseas colonies. Otherwise, it would be inexplicable why slave masters in Valencia and the Bahamas would insist that the children they fathered with their enslaved females were born free. As a result, like in indigenous North America and Africa, children of enslaved persons were marginalized in multiple ways, but even in Europe and its

24 Siete Partidas (1555 [13th c.]), Partida 4, title 21, law 1 and 2.

25 Joseph (1974) 370.

26 Grotius (1925 [1646]), Book II, chapter 5, XXIX, p. 256–257.

27 Pereira (2022).

28 Code Noir (1735 [1685]); Sarti (2022) 86–87.

29 Recent scholarship on Atlantic slavery demonstrates that the tying of enslavement to race was a gradual process that took centuries to conclude, and which could not be foreseen. While color and origins might always have mattered, comparative research has demonstrated that they came to matter more frequently and more severely *after* rather than *before* enslaved persons were emancipated. According to this vision, it was only after individuals of African descent, stereotyped as former slaves, were granted the rights of members of society that, gradually, those who wished to bar their integration invented new mechanisms to justify their discrimination. Rather than basing their otherness on slavery, they began focusing on race: Fuente / Gross (2020). On these issues also see Gross (2008, 2011) and Cottrol (2001). Also see Miller (2012) 150, who centers on commercialization rather than racialization.

colonies, they could also be admitted to families and groups in others.

Beyond the strategies adopted by communities, kin groups, families, and individuals to ensure their survival was also the question of how long enslaved origin would be remembered. While the literature on colonial and 19th-century North America describes social and legal practices that encouraged, indeed required, recollection, the bibliography on indigenous North America, Africa, and Europe suggests instead the prevalence of oblivion. This is particularly clear in the case of Europe, where historians now habitually investigate the role Europeans played as traders and enslavers but where most still adhere to a very traditional narrative according to which enslavement, which had been common in Europe in antiquity, gradually disappeared from the continent. According to this narrative, by the late Middle Ages, if not earlier, hardly any enslaved persons were present in Europe and, by the early modern period, the few who were did not have African origins. Furthermore, by the early modern period, most European countries adopted a free-soil rule that automatically liberated enslaved persons upon their arrival. According to this traditional narrative, in other words, enslavement was a colonial affair, indeed part of the horrors committed by European overseas.

Horrific it was indeed, but not merely a colonial affair. To take but a single example, historians have demonstrated the pervasiveness of enslaved persons of African origin in early modern Spain, where in some locations they accounted for as much as 10 to 15 % of the local population.[30] Spanish historians have been particularly proactive in studying these questions; however, the same conclusion could be reached regarding other European countries, where the doctrine of »free soil« – the idea that enslaved persons would be freed automatically after they arrived in Europe –, though central to legal and political debates, was never as general and as absolute as these debates pretended it was. Furthermore, even where and when it existed, as late as the 18th century it did not stop locals from continuing to hold many enslaved persons in bondage.[31]

This oblivion to the huge presence of enslaved persons of African descent on European soil, however, is not a new phenomenon. Already in 17th- and repeatedly in 18th- and 19th-century Spain – to return to my first example – many discussants assumed that Spaniards of African descent and enslaved persons only existed in the colonies.[32] How could they make these assumptions when local newspapers continued to advertise the sale of enslaved persons of African descent? While a convincing answer has yet to emerge, one could argue that oblivion was another mechanism of insiding. By relegating slavery either to the Middle Ages, or to the colonies, but never to early modern Europe, contemporaries as well as present-day Europeans went to great pains to imagine a Europe where everyone was free, and everyone belonged, even when this was clearly untrue. Why they chose to do so, and why they succeeded, is another question.

The emphasis on othering and the lack of interest in insiding among historians of enslavement could well be another result of the influence exercised by the scholarship on North America. This scholarship insisted on the convention according to which the enslaved were considered things rather than persons and, as such, could not be absorbed into society in any meaningful way. In the next section, I would like to address these conclusions by asking: If enslaved persons were

30 Stella (2000a); Orsoni-Avila (1997); Parilla Ortíz (2001).

31 On the legend of free soil in France see Peabody (1996); Peabody / Grinberg (2011); Weiss (2011). Also see Sarti (2022). On the presence of this principle in Europe at large see Batselé (2020). On free soil in a longer perspective see, for example, Alsford (2011). On what might have transpired in the Netherlands: Hondius (2011).

32 Debating whether Spaniards of African descent should be citizens, delegates to the first Spanish constituent assembly meeting in Cádiz in 1810 assumed that such individuals only existed in the New World. See for example Argüelles on 9 January 1811, in: Diario de las discusiones y Actas de las Cortes de Cádiz (1811) vol. 2, 323. Such convictions were present as early as the 17th century, when authorities and individuals in both Spain and the Americas explained that, while in Spain purity of blood excluded individuals of Jewish or Muslim descent, in Spanish America (and only there) African blood must also be considered. Indeed, as late as 1720, a litigant in Seville (but not in Spanish America) could argue that despite his African origin his blood was pure because he did not descend from moors, Jews, or heretics: Stella (2000b) 175. On these issues and others also see Herzog (2012).

indeed property, what type of property were they? How can we situate their status in larger and longer conversations regarding both social structures and labor formation?[33] And how would this help us rethink slavery?

## II. Social Structures and Enslaved Persons as Property

During the Ancien Régime, wives, children, servants, and enslaved persons were all placed under the jurisdiction *(patria potestas)* of heads of households *(pater familias)*. Though this arrangement had originated in ancient Roman law, its meaning had undergone dramatic transformations in the late Middle Ages and the early modern period.[34] Medieval and early modern scholars believed that the household was the basic social unit in a society with a nested hierarchy, from households to local communities to the state. Households, communities, and states each had their own authorities, which were endowed with the capacity to announce and apply the law, that is, with jurisdiction *(iuris-dictio)*, literally: the ability to tell the law.

The government of the household was delegated to a *pater familias*, usually an adult male. The head of the household had jurisdiction over all members, including the right to dictate and impose norms that encompassed decisions regarding the life, activities, fortune, and properties of all those subjected to him. The *pater familias* could give orders indicating where to live, what to do for a living, and how to behave, and he had a huge discretion in choosing the sanctions and penalties, including physical punishments, in cases of infraction.[35] The authority of heads of households over other members was substantiated through their capacity to hold or release the members, by way of granting or refusing to grant them manumission or emancipation.[36] Those who were released by the *pater familias* were no longer under the duty to obey them and were considered emancipated social members who could enjoy rights and obey duties by virtue of their own decisions. Rather than ›free‹ as we would imagine it today, those emancipated became autonomous.[37]

Though these structures were often stereotyped in the literature as typical of »Roman law countries«, the relegation of family members and servants, as well as enslaved persons, to the domestic sphere and to the jurisdiction of heads of households, who had enormous discretion as to how to manage their affairs, was also obvious in the English colonies, where it had consequences similar to the ones described earlier.[38] There, as in other places, those who left the household entered society, having obtained the power to act on their own volition.

At stake in leaving the household was not freedom but autonomy.[39] Either individuals were free (that is, autonomous or emancipated) or they were under the jurisdiction of someone else who was. This is clearly expressed, for example, in the Castilian 13th-century compilation of *ius commune*,

33 On slavery and its placement in labor history see, for example, Zeuske (2012) 100–101. On the relationship between contract and coerced labor also see Chalhoub (2015) 162, 165, 169–174. Rockman (2008), for example, studies free and enslaved workers of both European and African descent in his quest to reconstruct a labor history where multiple simultaneous and overlapping forms of inequality operated side by side.

34 On slavery in ancient Rome see, for example, Buckland (1908); Dumont (1987); Watson (1987); Gardner (2011). Also see Helmholz (2012).

35 Herzog (2003).

36 Historians of Atlantic slavery mostly distinguished manumission from emancipation. For some, manumission was the granting of liberty while enslavement was legal and emancipation was the act that, following abolition, released all those formerly enslaved. For others, the former was an act that expressed the will of the owner, and the latter depended on declarations by the authorities: Peraza (2016) and Finkelman (2006). For yet another group, the difference was between liberty granted while the owner was alive, and that which was executed after his death, see: Deeds of Emancipation and Manumission.

37 Both terms referenced the submission to the hands of the householder: Manumission literally refers to releasing individuals from the hand that controls them (*manu* being the hand and *mittere* a verb that means to let go, release, terminate). Emancipation also carries the same idea of ending the capture, grasp or the taking by the hand (*ex-manu-capere, ex* being the way out, the undoing and *capere* meaning the capture / grasp / taking by the *manu*, the hand). See, for example, https://www.etymonline.com/word/manumission, and https://www.vocabulary.com/dictionary/emancipate, both accessed 10 July 2023.

38 Bush (1993); Morris (1996); Herndon / Murray (eds.) (2009); Walsh (2011); Finkelman (2012). Also see Finkelman (ed.) (1997).

39 Grotius (1925 [1646]), Book II, Chapter 22, XI, p. 551: Liberty is the same as »autonomy«.

the *Siete Partidas*: Liberty was the power that all persons naturally had »to do as they wished«.[40] The 1732 dictionary of the Spanish Royal Academy followed the same rationale when it defined »emancipation« as the act of a father (literally) removing his hand from his son, »allowing him liberty so that he can direct and govern his own affairs«.[41] That freedom meant autonomy was also clear to office holders in some Italian city-states, where the struggle of Lucca against occupation by Pisa, for example, could be formulated as a defense of liberty, liberty being understood as the right to self-government.[42] Similarly, Emer de Vattel, author of a very popular and influential book on the *Law of Nations*, argued in 1758 that according to Natural Law both individuals and nations were born free and independent.[43] For him, this meant that they had the »right to be governed as they think proper« and »according to their own pleasure«. If freedom was autonomy, slavery was defined as the lack of ability to rule oneself. For precisely this reason, »natural slavery«, a condition of permanent enslavement that had already been debated by the ancient Greeks and that was also continuously invoked in medieval and early modern Europe, was understood as applying to persons who were considered unable to govern themselves.[44]

While contemporaries continuously argued that freedom – that is, autonomy – was a natural right, they were also aware that not all members of society were free; in particular, the lack of freedom of servants was considered puzzling. As historians have rightly observed, in the late Middle Ages and the early modern period, servants were not salaried laborers the way we might think of them today. Instead, servants were members of households and subjected to the jurisdiction of a *pater familias*. Placed under the control of masters, they could be forced to remain under their tutelage and serve them even against their will. In many places, leaving the household without permission was a punishable criminal offense.[45] According to a 1639 Maryland law, servants who did leave could be executed. In Virginia, pursuant to a law of 1642, if caught, their time of service would be doubled, and if they had run away twice, they would be branded on the shoulder or cheek.[46] In Pennsylvania, captured runaway servants sometimes were made to wear iron collars with the initials of their masters.[47] Those who wished to leave service therefore had to either secure the consent of their masters or sue for their freedom. Because such was the case, in Barbados, servants were often referred to as »white slaves« and they, too, engaged in fleeing, resisting, rebelling, and forming maroon communities, often in conjuncture with enslaved persons.[48]

How could servants be treated this way? Initially, the response was that servants – who were originally free – relinquished their freedom by agreeing to subject themselves to a master.[49] According to this interpretation, because contracts with servants did not define the specific work they were to perform, servants left this decision to the discretion of others. Contemporaries thus concluded that servants abdicated their own will for the duration of the contract and gave masters absolute control over them. From this point of view, servants and enslaved persons were similar to

40 Siete Partidas (1555 [13th c.]), Partida 4, title 22, law 1. The original version reads: »Libertad es poderío que ha todo ome naturalmente de fazer lo que quesiere solo.«

41 The original version reads: »Sacar el padre al hijo de su poder, dimitirle de su mano y ponerle en libertad, para que él por sí obre, dirija y gobierne sus cosas.«

42 The Standard Bearer of Lucca Appeals to Local Patriotism (1397), transl. by Christine Meek, in: Jansen et al. (eds.) (2011) 74–76.

43 Vattel (2008 [1758]).

44 Batselé (2020) 17–18, 23, 39–40. On its use in the early modern period, see, for example, Pagden (1990) 13–36.

45 English statutes dating from 1349 and 1562–1563 stipulated the obligation to work, as well as to complete the contractual period, defining failure to do so as a criminal offense: Pesante (2009) 294, also see 314–315. On similar limitations placed on servants in France see Sarti (2022), most particularly 68–72. On the ability to read the status of slaves from the treatment of serfs and servants see Peabody (2011a).

46 Smith (1947) 265.

47 Herrick (1926) 231.

48 Beckles (1985) 79–80. On p. 83 the author argues that it was more difficult for fleeing servants to disappear into the crowd than for enslaved persons because the scarcity of free-floating population of European descent in Barbados made them highly visible.

49 Discussions regarding the status of servants are beautifully described in Pesante (2009), whose work has inspired many of my arguments below.

a degree in that neither had a will of their own. The differences between servants and enslaved persons were nonetheless great because in the case of the latter (the enslaved) but not the former (the servant), subordination was both involuntary and permanent.

Servants therefore ceded their will – indeed their freedom to make their own decisions – to their masters. In theory, they did so voluntarily by entering into a service agreement for a limited period. Yet in practice, such was not always the case. Not only were servants not in a position to negotiate the terms of their agreements but, during the early modern period, many actors were willing to assume that servants had agreed to their submission even in the absence of proof. The operating assumption was that servants could not truly refuse the opportunity to earn a living because such refusal would result in having no means to survive and therefore in death. In the case of the destitute, therefore, jurists adopted a fiction according to which, regardless of the existence or absence of proof, since the poor wished to survive, they necessarily agreed to become servants and would continue to do so as long as they lived.[50] Furthermore, in the case of the unemployed poor, refusal to work was also considered a violation of the duty to make oneself socially useful and this, too, legitimized coercion. Here too, parallels were drawn between servants and enslaved persons. Accordingly, servants were confronted with a choice similar to the one faced by enslaved persons, who were often imagined as war captives who, if not for enslavement, would have been killed, death or enslavement being the options victors could have vis-à-vis the vanquished in a so-called ›just war‹.[51] In other words, labor in the form of either servitude or enslavement was portrayed as an alternative preferable to perishing.

Eventually, the predicament of servants led to jurists proposing a revolutionary idea: that we imagine work, that is, the time and energy employed in performing a task, as an object, a thing, that could be rented out or sold. Subsequently, jurists suggested that individuals were renting out their labor when they engaged in short-term and specific labor obligations in exchange for payment, but that they were selling their labor when they agreed to submit themselves to a general obligation to work without a specific job description, that is, when they agreed to become servants.

Though apparently a minor juridical development, the move to conceive work as an object that could be rented out or sold was of huge significance. It enabled jurists to explain (and justify) why servants could be forced to comply with their contracts and be penalized if they did not, as was the case in most European countries and in North America. According to this rationale, if servants had sold their work, it was no longer theirs to own. As a result, they could not take it away from their masters by leaving service without their consent. The same rationale also explained why violations of the agreement by servants were criminal (they had taken away their labor, that is, property that now belonged to the master, their act therefore constituting a theft), but violations of the agreement by masters were considered a civil wrong resulting in the master's financial liability (because the master was seen as owing money in payment for a thing rented or purchased). The same argument – making work an object that had been sold – also allowed contemporaries to explain why masters could have remedies against a third party that injured or detained their servants. Such was the case not because the servants were property of the masters – they never were. What masters had was property in their labor. Yet, an injury or detention that disabled servants from performing labor harmed masters because it limited their property rights to their work. All these practices made sense, as the English jurist William Blackstone (1723–1780) argued in his *Commentaries on the Laws of England* (1765), because by the time of his writing, the common opinion was that masters had property in the service of their servants, »acquired by the contract of hiring, and purchased by giving them wages«.[52]

Not specifying the work to be accomplished was one way for jurists to rationalize their conclusion

50 Batselé (2020) 46 mentions Pufendorf using this presumption.

51 Batselé (2020) 21. See, for example, the reasoning in Grotius (1925 [1646]), Book II, chapter 14, VIII, p. 768.

52 Blackstone (1765), vol. 1, 417. Blackstone (1768) repeats this affirmation in vol. 3, 142.

that servants had sold rather than rented out their work. Another was to interpret the agreement to reside in the household as an indication of the intention to sell to the master not only the work, but also personal freedom. This was the route the English philosopher John Locke (1632–1704) took when he argued, for example, that servants not only agreed to provide certain tasks, but also consented to become servile, that is, they sold both their labor and their subjection. As a result, while they were in service, masters acquired a »general right« not only over the servants' work but also over their obedience and their bodies, since the masters' property could not be protected without safeguarding the person performing these tasks.[53] It is thus not surprising that the Dutchman Grotius concluded that, rather than property rights in persons, masters had a personal right to the slaves' perpetual (lifelong) service, which consisted of a »lasting obligation to labor«.[54] Precisely for that reason, Grotius held servants to be in a state of »imperfect« or »incomplete« servitude.[55] Their servitude was imperfect because, although masters had an absolute right to their services and subjection as they did in the case of enslaved persons, this right was temporary rather than permanent. In other words, even in the case of servants, relations with masters were property relations rather than contractual ones. What masters had were not agreements with other free individuals. Instead, by virtue of these agreements they became property owners. They owned the labor of another person.

To return to the literature on North American slavery: This excursion into early modern legal developments would explain why slaves – and, as a matter of fact, also servants – were considered chattel. Chattel was a category of property particular to the English common law, which had no real parallels elsewhere, and which included all properties that were *not* real estate (that is, chattel was defined negatively rather than positively). Among properties considered chattel during the early modern period were also rights to intangible properties, such as rights to labor, which all masters had with regard to their servants and their slaves. In other words, enslaved persons were classified as chattel not because they were things but because classifying the right to their labor in that fashion made it possible to avoid applying the complex rules regarding real estate transactions to labor, for example, the requirement that transactions had to be done in writing. It also implied that enslaved persons were not tied to the land but that, instead, their work could be sold and bought independently.

The formulation of work relations as property relations (rather than contractual ones, as we tend to think about them today) opened the door to many other important developments. Among other things, it allowed contemporaries to argue that if work was a type of property, then like all other property owners, those who owned work had a right to its fruits. Jurists and theologians who argued as much suggested that those who owned the work that transformed raw material into a final product, for example grapes into wine, should also be the rightful owner of that which had been produced, regardless of the question whether the grapes belonged to them or not.[56] To explain this conclusion, they turned to ancient Roman law but gave it a new spin. Ancient Roman law prescribed that those who had caught wild animals became their rightful owners. Traditionally, the explanation jurists gave was that wild animals belonged to their captors because no one else had a better claim to them. By the time of the Renaissance, however, jurists used the same rule to arrive at a different reasoning. They now argued that wild animals belonged to their captors because of the industry invested in their capture. Accordingly, industry, that is, labor, could serve as a basis for acquiring property, and laborers (or those who owned their labor) could become eligible to enjoy the fruits of their efforts.

By the first half of the 16th century, the notion that work was an object that could be rented out or sold, and the idea that industry, that is labor, was a means to acquire property, were matched together in new and interesting ways. The Spanish jurist Fernando Vázquez de Menchaca (1512–1569) described the appropriation of both goods and land as the consequence of having invested labor or skill.[57] Similar affirmations led Juan de Solórzano

53 Pesante (2009) 319.
54 Grotius (1925 [1646]), Book II, Chapter 5, XXVII, p. 255 and Book III, chapter 14, II.2, p. 762. Also see Olsthoorn/Apeldoorn (2022) 259, 261–262 and 264.
55 Grotius (1925 [1646]), Book II, Chapter 5, XXX, p. 258.
56 Siete Partidas (1555 [13th c.]), Partida 3, title 28, laws 33–35.
57 Brett (1997) 188 and 190.

Pereira (1575–1655), a colonial judge and jurist working in Lima, to conclude in 1647 that land that had never been inhabited, or that had been abandoned by its residents, should be granted to those who occupied it not because it had no other owners, but as a reward for their »industry«, that is, their diligence or ability to perform better than others.[58]

The propositions advanced by Locke in this context are particularly well known, and often presented as a point of departure for a new age (when in fact they were more of a summing-up of previous developments). In his *Two Treatises of Government* (1689), Locke argued that it was unquestionable that laborers owned both their labor and the product that it generated.[59] He did not, however, believe that all laborers had equal rights.[60] Productivity that transformed raw material into a finished artifact gave those performing these tasks a moral as well as a natural right to that which they created.[61] To obtain property, in other words, effort alone was insufficient; it was necessary that a transformation, indeed an »improvement«, had also taken place. If none had, according to Locke, usually because the laborer lacked capacity, then no property rights would have been generated. Locke therefore distinguished between laborers who deserved property rights and those who did not. Among the latter were, according to him, individuals who were forced to work for their survival. Such individuals, he suggested, would normally be unable to achieve property rights because their activities would not lead to improvement – they would normally have neither time to reflect on what they were doing, nor to acquire knowledge that they could implement. Closing the circle, Locke then argued that this right – the right to property – was morally justified because it secured the fruits of labor. Thus, property was not only morally defensible, but also socially and economically beneficial because it motivated humans to improve things in ways that were useful.

If we return to the questions asked by Grenouilleau, who suggested that to understand what the enslaved were deprived of we must first understand what was important to society at a specific time, we could say that the answer was property. Property, Blackstone argued in the mid-18th century, was not an economic situation, but rather a status which masters had by virtue of having property rights in the work (and sometimes the subjection) of others.[62] The »very existence« of servants and enslaved persons, Blackstone explained, was »determined by that lack of property rights which legitimized [subjecting them to] public coercion to work«. Thus, while masters had property in labor, servants only had rights to their wages (rights which, as mentioned earlier, were not considered property rights, but instead a personal obligation of the master), and the enslaved had nothing. To make sure this would remain the case, across Europe, multiple norms prohibited enslaved persons from owning anything.[63] Meanwhile, enslaved persons who did accumulate property despite these rules were either able to purchase their freedom or were presumed free. Such considerations led the German jurist and philosopher Samuel von Pufendorf (1632–1694) to conclude that the differences between the free and the unfree pertained to the realm of both economic and social conditions. While those who were free were protected by the laws of the city, could choose which work to perform, and, most importantly, could have goods in excess of mere subsistence, the unfree only had the right to a basic living, could be forced to engage in any type of work regardless of their will, and (by virtue of belonging to house-

58 Solórzano Pereira (1972 [1648]), Book 1, chapter IX, point 13, vol. 1 at 91. In the 17th century, *industria* was identified as »the diligence and easiness in which one does something with less work than others«: Covarrubias (1995 [1611]) 666.

59 Locke (1980 [1690]), chapter 5, sec. 27: »Every man has a property in his own person […] [T]he labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own and thereby makes it his property. It being by him removed from the common state nature placed it in, hath by his labour something annexed to it, that excludes the common right of other men. For this labour being the unquestionable property of the laborer, no man but he can have a right to what is once joined to, at least where there is enough, and as good left in common for others.« Also see Moller (2019) 198.

60 Pesante (2009) 302–305.

61 Mossoff (2022).

62 Pesante (2009) 319.

63 Blumenthal (2009) 86 and the Siete Partidas (1555 [13th c.]), Partida 4, title 21, law 7.

holds) were subjected to the laws not of the city, but of the *pater familias*.

The question we should therefore ask is not whether enslaved persons were property and therefore could not be integrated into society, but whether they could not be integrated because they had no property; in other words, whether it was not their lack of property that marginalized them most. Indications that such might have been the case can be found in the literature on the US antebellum South as well as on colonial and 19th-century Latin America. In both these regions, according to historians, freedom meant the ability to gain independence from the control and supervision of another person (the head of the household), but no less important was »being able to keep the fruits of one's labor«.[64] To close the circle, with regard to enslaved females, this leads to the question whether the understanding of work as an object that could be rented out or sold did not affect how their reproductive capacities were considered and managed. In 15th- and 16th-century Valencia, as we have seen, masters could purchase enslaved females for the precise goal of procreation and then discard them as soon as their work – this is how they conceived of these women giving birth – had been completed. In such cases, the fruit of the labor, that is the child, was considered to belong to the master (the proprietor of the work), not the mother, and the child was indeed integrated into the masters' family as a free person, while the mother was sent away. Furthermore, in Valencia slave masters could sue other free men who impregnated their enslaved females by accusing them of theft. And if the enslaved female died in labor, the impregnator was obliged to pay the master her worth.[65]

Given all this, is it possible that the profound questioning, and eventually the abolition, of the rule that made children of enslaved women slaves during the 19th century also had something to do – even if remotely – with these developments? Could it be that the children of enslaved women came to be considered free in reward for the labor, indeed, the transformation and improvement, invested by their mothers in pregnancy? In the English language, at least, it was during this period (in the late 16th century and increasingly in the 17th century) that childbirth came to be known also as »labor«, that is, as a procedure synonymous to the effort that, according to Locke, people made when they transformed raw material into an improved final product.[66]

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64 Schafer (2003) xiv. Antillón (1820 [1811]) 11 also refers to emancipation as including individual freedom, the right to self-sufficiency, to exist politically, and to the fruits of one's labor. Also see Dantas / Saba (2024).

65 Blumenthal (2010) 182–183; Blumenthal (2009) 170–172 as well as notes 53 and 54 on p. 170.

66 On the etymology of labor see, for example, https://www.etymonline.com/word/labor, accessed 22 August, 2023. Apparently, this usage had previously been unknown: see, for example, the dictionary of Middle English, https://quod.lib.umich.edu/m/middle-english-dictionary/dictionary/MED24509, accessed 22 August, 2023.

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