

## Book Reviews

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Michelle A. McKinley, *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600–1700*, New York: Cambridge University Press, 2016. Pp. 281. \$99.99 cloth (ISBN 978-1107168985). doi:10.1017/S0738248017000438

One cannot help but be amazed and impressed by the extraordinary book that Michelle McKinley has written about slave litigation, drawn from the legal records of ecclesiastical courts in Colonial Lima in the seventeenth century. McKinley analyzes these cases, cases that did not necessarily result in immediate, or even full, manumission, but rather cases that sought from church officials some larger set of privileges than is customarily associated with enslavement. She analyzes these cases in the service of her thesis that slave litigants' more modest successes in securing certain privileges be seen as accruing fractional shares of freedom.

As a source of considerable power and authority in Colonial Lima, the church could recognize and protect privileges for slaves that related to ecclesiastical concerns. In these proceedings, Limean slaves were, in McKinley's words, more "supplicants" than "complainants" (39). The church could control these privileges through its authority to control religious rituals and sacraments, such as marriage, baptism, and communion.

This strong institutional involvement in recognizing the privileges of slaves has no counterpart in the Anglo-American tradition. Only in Louisiana, a civil law state, could slaves put down installments to full freedom by buying their way out of slavery, a process which was called *coartación*. In the other states, court petitions brought by slaves sought full and immediate freedom premised on the notion that these slaves' freedom be recognized because of some emancipatory event, such as residence on free soil. McKinley found only fifteen lawsuits brought by slaves challenging wrongful enslavement in the civil courts over an entire century. In Lima, manumission was overwhelmingly achieved through self-purchase.

However, Limean slaves had an additional method for seeking relief from their masters' domination, through achieving fractional freedoms in the ecclesiastical courts by appealing with regard to sacramental issues.

In colonial Lima, the church could police the sacrament of marriage, and slave couples had the right to marry without their masters' consent. Even

slaves of different masters could marry without the consent of either master. Even more surprisingly, once married, the slaves could not be completely separated from each other. The church could protect the marital and conjugal connection by forbidding masters from interfering with their married slaves' access to visit each other. If one master sought to send his slave out of the city, slaves could petition the church to see that the couple remained together. The church could, and sometimes did, pressure the owner of one of the enslaved spouses to purchase the other slave so that the married couple could remain close to each other.

The ecclesiastical courts entertained jurisdiction over these matters. Beyond *coartación*, appeals to ecclesiastical courts gave Limean slaves another step up in navigating greater degrees of freedom than American slaves had. Ecclesiastical courts could also enforce promises of future manumission made by owners through the ritual of baptism. By contrast, although the church could prevent slave owners from separating married persons, it had no similar authority to prohibit owners from separating children from parents. And further, ecclesiastical protection of conjugal unity laws only applied if *both* spouses were enslaved, not if one was free, and, therefore, presumably, free to follow the enslaved marital partner.

The church's enforcement mechanisms were also uniquely ecclesiastical. *Censuras*, described by McKinley as "spiritual subpoenas," threatened malfeasant parties with excommunication if they did not cooperate with the proceeding or behave according to the ecclesiastical decree (6).

McKinley's writing style is fresh, original, and delightful, livening up the scholarly analysis in some refreshing ways. She uses terms such as "baggy," not tailored to the purpose (14). She describes certain periods of time when Ibero-American governance was "less muscular" (16).

She deftly sidesteps the duality of the dichotomies of many scholarly debates (i.e., Tannebaum's signifier of agency or Genovese's materialist refutation or paternalism vs. exceptionalism) by suggesting that hers is a third way. Rather than agency, McKinley suggests that scholars focus on "protagonism," or perhaps the suggestion here is that one can do both. Can there be regimes of enslavement under which a person can experience both personhood (a protagonist's control over some matters), and property-ness (lacking control over other personal matters)?

McKinley stretches the fabric of the debates as she asks readers to expand their views of what constituted "success" or legal efficacy by considering fractional freedoms; that is, micro-gains in personal liberties. Fractional freedoms were states of quasi-emancipation or conditional liberty. In some ways, this approach is resonant with Rebecca Scott's well-regarded work on the malleability of people's status as they transited different places. (Scott, "Paper Thin: Freedom and Re-enslavement in the Diaspora of the Haitian Revolution." *Law and History Review* 29 [2011]: 1061).

McKinley encourages scholars to think through the teleological place of contingent liberty in the lives of the litigants. She is equally adept at positioning her subjects, slaves of African descent but of Catholic religion, within a society of multiple others—Muslims and Jews, who had resisted Christianity; Spaniards, presumptively Christians; and Andeans—assigned to a state of permanent tutelage.

There are some assumptions that McKinley makes that readers may question. Did the intimate physical closeness of domestic slaves and the care work they were required to perform beget affection between master and slave, as McKinley posits? Or was the effect the opposite: unbearable tension, leading to manslaughter, arson, or poisoning?

Nonetheless, the book gives readers an overview of the social world of the ecclesiastical court, and how a select number of participants navigated that social world. McKinley writes that she discovered approximately 9,000 uncatalogued *censuras* late in the writing stage and chose to focus on only two sorts, those that pertained to baptismal and to childhood manumission, leaving the rest as an untapped source. Readers will look forward to the next addition to this research.

**Lea VanderVelde**

University of Iowa College of Law

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Carolyn Strange, *Discretionary Justice: Pardon and Parole in New York from the Revolution to the Depression*, New York: New York University Press, 2016. Pp. 336. \$55.00 cloth (ISBN 978-1-4798-9992-0).  
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In 1920, a 13-year-old girl implored the governor of New York to pardon her father, who was serving time at Sing Sing for receiving stolen property. She addressed her petition to “your Majesty Governor Smith” (179). Her erroneous salutation captured a deeper truth about executive clemency: its origins in royal prerogative. Carolyn Strange’s *Discretionary Justice* is framed, in part, around this historical puzzle. Why did the pardon power, the hallmark of absolute rule, survive the transition to democracy? In New York State, critics at both the 1821 and 1846 constitutional conventions decried executive clemency as incompatible with republican government, yet through each successive controversy, the “one-man power” survived, increasingly framed as a necessary safety valve against penal overreach (and often used, in practice, to relieve prison overcrowding). The 1846 constitution left the pardon power intact, but allowed for limited legislative oversight of the process. New York’s current