

Marriage as a Singular Legal Institution in Colombian Institutional History: Strategy, Law and Slavery in the Cauca Region (1804–1843)

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ABSTRACT

This article analyzes the unique character of marriage as a legal institution in Colombian institutional history during the transition between the late colonial period and the early Republic (1804–1843). Based on the paleographic and diplomatic study of three original judicial files preserved in the Collection of the Old Central Archive of Cauca (José María Arboleda Llorente Historical Research Center, University of Cauca) —Signaturas 10256 (Col. JII–14cr), 4016 (Rep. JIII–8em) and 1771 (Ind. JI–3cr)— the work shows that marriage worked, in Cauca legal practice, as a mechanism of articulation between the right to slavery and the right to freedom, generating unresolved tensions between the system of the Seven Parts, Bourbon legislation and republican constitutionalism. It is proposed that this singularity is not accidental but structural: marriage occupied an ambivalent position in Indian and New Granada law, both as an instrument of social control and as a vector for claiming rights for the enslaved population. The findings contribute to the historiography of Hispanic American law, the history of slavery, and studies of institutional history in Colombia.

KEYWORDS: marriage; slavery; history of law; colonial Cauca; legal institutions; manumission.

CONTENTS

1. Introduction. 2. Theoretical and historiographical framework. 2.1. Marriage in Indian law: between the canon and the royal law. 2.2. Historiography of slavery and marriage in New Granada. 2.3. Institutional history and legal singularity. 3. Sources and methodology. 3.1. Judicial files as a primary source. 3.2. Palaeographic criteria. 3.3. Methodological approach: diplomacy and institutional history. 4. Marriage in Cauca judicial practice: analysis of primary sources. 4.1. The Consignment of the Price of Freedom in Baptism: The Case of Clara and Marcos Rodríguez (Sig. 10256, 1804–1807). 4.2. Marriage to a free woman as a title to freedom: the case of Clemente Benavides (Sig. 4016, 1842–1843). 4.3. Marriage as an indissoluble bond and as an instrument of control: the case of Agustín de Belén (Sig. 1771, 1812). 4.4. Comparative analysis: marriage as an ambivalent institution. 5. Discussion. 5.1. Marriage in the system of sources of New Granada law: normative pluralism and zones of indeterminacy. 5.2. The 'strategic litigiousness' of the enslaved and their limits. 5.3. Marriage

as a double-edged institution: control and resistance. 5.4. Continuities and ruptures in the colonial-republican transition. 6. Conclusions. References.

1. INTRODUCTION

Colombian institutional history has tended to be periodized according to the great political ruptures: the Colony, Independence and the Republic. However, from the perspective of the history of law, this periodization is insufficient to account for the continuities, ruptures and tensions that operated in the specific judicial spaces in which the daily conflicts of the population were settled². Marriage, as a juridical institution, constitutes one of those privileged spheres where continuity and rupture become visible simultaneously and dramatically.

This article starts from the following question: why could marriage become, in certain circumstances, an instrument to claim the freedom of a slave in New Granada? The answer to this question reveals one of the most notable singularities of the early Indian and republican legal system: marriage was both an institution of social control and a vector for the transformation of personal legal status³. This dual nature makes it a privileged object of analysis to understand Colombian institutional history.

The research is based on the study of three original judicial files preserved in the Collection of the Old Central Archive of Cauca, an institution currently integrated into the José María Arboleda Llorente Center for Historical Research of the University of Cauca, in Popayán, Colombia. The files cover the period 1804–1843 and address, from different procedural perspectives, the intersection between marriage, slavery and freedom: the case of Clara and Marcos Rodríguez (Sig. 10256, 1804–1807), the case of Clemente Benavides (Sig. 4016, 1842–1843), and the criminal case against Agustín de Belén (Sig. 1771, 1812).⁴

The research problem that guides this work can be formulated as follows: what does the singularity of marriage as a legal institution consist of in the Colombian institutional history between 1804 and 1843, and how is this singularity manifested in the concrete judicial practice of Cauca? The central hypothesis holds that marriage functioned in Indian and New Granada law as an institution of an ambivalent and structurally unique nature: neither full rights of the enslaved, nor mere seignorial concessions, but a normative space for negotiation between the master's domain, canon law, royal legislation and, since 1821, republican constitutionalism.

The article is organized into five sections. After this introduction, the theoretical and historiographical framework is presented, followed by the methodological description. The fourth section develops the analysis of the primary sources through the comparative study of the three files. The fifth section discusses the findings in dialogue with the specialized literature and formulates the conclusions.

2. THEORETICAL AND HISTORIOGRAPHICAL FRAMEWORK

2.1. Marriage in Indian law: between the canon and the royal law

Marriage law in the Spanish Indies was, before anything else, a dual law: canonical in terms of the sacrament and the bond, real in terms of its civil and patrimonial effects. This duality, far

² For the history of law as a discipline that transcends political-institutional periodization, see C. GARRIGA. "Orden jurídico y poder político en el Antiguo Régimen". In *Istor: Journal of International History*, vol. 5, no. 16, 2004, 13–44; and A. M. HESPANHA. *European legal culture: a synthesis of a millennium*. Madrid, Tecnos, 2002, 15–42.

³ On the dual nature of marriage in Indian law, see A. DOUGNAC RODRÍGUEZ. *Manual of the History of Indian Law*. Mexico, National Autonomous University of Mexico, 1994, 289–312.

⁴ The files are preserved in the José María Arboleda Llorente Center for Historical Research, Fondo del Antiguo Archivo Central del Cauca (hereinafter ACC), Universidad del Cauca, Popayán, Colombia. The complete symbols are: 10256 (Col. JII–14cr); 4016 (Rep. JIII–8em); 1771 (Ind. JI–3cr).

from being an anomaly, constituted the defining feature of marriage in the legal order of the Catholic Monarchy⁵ (Dougnac Rodríguez, 1994; Tau Anzoátegui, 1992). The Siete Partidas of Alfonso X, in force in the Indies through the Compilation of 1680, established in the Fourth Partida the general regime of marriage and its effects on the status of spouses, including the case of slaves.

Law 5 of Title 22 of the Fourth Partida provided that the slave who married a free woman, knowing that his master knew it and did not contradict him, was free from that moment on. This provision, with Roman roots and canonical tradition, had historically been interpreted in divergent ways⁶ (Hespanha, 2002; Levaggi, 1973). The Royal Decree of Aranjuez of May 31, 1789 —known as the Caroline Black Code— further complicated this panorama by imposing on the masters the obligation to promote the marriages of their slaves, but without expressly pronouncing on the validity of the Alfonsine law⁷ (Lucena Salmoral, 2000).

This is the legal background on which the Cauca files analyzed in this article are projected. As Cunin (2014) points out, the relationship between marriage and freedom in the Spanish-American world cannot be understood as a linear or progressive relationship, but as a structural tension inscribed at the very heart of the colonial legal order⁸. The work of González Undurraga (2006) for Chile and Landers (1999) for the Hispanic Caribbean show patterns similar to those that emerge in Cauca, suggesting that the uniqueness of marriage as a legal institution has Atlantic and not merely local dimensions⁹.

2.2. Historiography of slavery and marriage in New Granada

The historiography of slavery in Colombia has undergone a remarkable development since the pioneering works of Jaramillo Uribe (1969) and Sharp¹⁰ (1976). However, the specific intersection between marriage and legal institution has received less systematic attention than other aspects of the lives of the enslaved. The studies of Tovar Pinzón (1994) on manumission in Colombia, and of Navarrete (2003) on miscegenation and affective relations in the Audiencia of the New Kingdom of Granada, are indispensable references¹¹.

On a comparative level, the works of Perfetti (2003) on slave marriage in colonial Venezuela¹², González Jáuregui (2015) on the slaves of Lima¹³ and their defense of marriage in the

⁵ V. TAU ANZOÁTEGUI. *Casuism and system: Historical inquiry into the spirit of Indian Law*. Buenos Aires, Instituto de Investigaciones de Historia del Derecho, 1992, 55–78.

⁶ On the Roman and canonical tradition of this provision, see A. LEVAGGI. "The legal condition of the slave in the Hispanic era". In *Revista de Historia del Derecho*, n° 1, 1973, 83–175.

⁷ M. LUCENA SALMORAL. *The black codes of Spanish America*. Alcalá de Henares, UNESCO Editions / University of Alcalá, 2000, 130–155.

⁸ E. CUNIN. *Identities on the surface: the 'black' between appearances and belongings; Mestizaje y categoría raciales en Cartagena (Colombia)*. Bogotá, Colombian Institute of Anthropology and History, 2014, 87–112.

⁹ J. LANDERS. *Black Society in Spanish Florida*. Urbana, University of Illinois Press, 1999, 113–138; C. GONZÁLEZ UNDURRAGA. "Los usos del honor por esclavos y esclavas: del cuerpo injuriado al reconocimiento de la persona, Chile, 1750–1823". In *Nuevo Mundo Mundos Nuevos*, 2006. Available at: <https://doi.org/10.4000/nuevomundo.2869> [accessed 15 January 2026]

¹⁰ J. JARAMILLO URIBE. "Slaves and lords in the Colombian society of the eighteenth century". In *Anuario Colombiano de Historia Social y de la Cultura*, vol. 1, no. 1, 1969, 3–62; W. F. SHARP. *Slavery on the Spanish Frontier: The Colombian Chocó, 1680–1810*. Norman, University of Oklahoma Press, 1976.

¹¹ H. TOVAR PINZÓN. "The Manumission of Slaves in Colombia, 1809–1851." In *Credencial Historia*, n° 59, 1994, 4–7; M. C. NAVARRETE. "Of loves and seductions: miscegenation in the Audience of the New Kingdom of Granada in the seventeenth century". In *Memoria y Sociedad*, vol. 7, no. 15, 2003, 91–99.

¹² M. E. PERFETTI. "Confessed and Married: Marriage Between Slaves in Colonial Venezuela." In *Annals of the Metropolitan University*, vol. 3, no. 2, 2003, 189–201. Available at: <https://dialnet.unirioja.es/servlet/articulo?codigo=4003745> [accessed 20 January 2026].

¹³ Y. GONZÁLEZ JÁUREGUI. "The Slaves of Lima and Their Defense of Marriage in the Seventeenth Century". In *Artificios Magazine*, n° 2, 2015, 1–18. Available at: <https://doi.org/10.24989/artificios.v2i0.3> [accessed 20 January 2026].

seventeenth century¹⁴, and Dávila Mendoza (2004) on marriage and conjugal separation in Indian law offer pertinent analytical frameworks. More recently, McKinley's (2016) work on slavery law in Lima has shown how Latin American enslaved people systematically used the courts to articulate rights claims, in what the author calls "strategic litigation."¹⁵

In the specific case of Cauca, the work of Mosquera (2013) and Colmenares (1979) has documented the structures of regional slavery, but without focusing on the marital dimension¹⁶. This article aims to fill, at least partially, this gap, based on unpublished or insufficiently studied primary sources.

2.3. Institutional history and legal singularity

The notion of "singularity" used in this article is inscribed in the tradition of the history of law that understands legal institutions not as homogeneous structures but as spaces of normative tension¹⁷ (Hespanha, 1993; Garriga, 2004). Marriage was not, in Indian law, a monolithic institution, but a field of dispute between jurisdictions (ecclesiastical, civil, seigniorial), between normative temporalities (medieval Partidas, Bourbon legislation, republican constitutionalism) and between actors with divergent interests (owners, enslaved, priests, learned judges, procurators).

From this perspective, the singularity of marriage in Colombian institutional history does not lie in the fact that it was a "special" or "exceptional" institution, but in the fact that it condensed, in a unique way, the structural contradictions of the legal order in which it operated. As Garriga (2004) has argued, for the Hispanic case in general, colonial legal institutions were characterized by a plurality of normative sources that produced areas of indeterminacy and dispute, from which the weakest actors could sometimes take advantage¹⁸. Marriage in Cauca between 1804 and 1843 is a paradigmatic example of this phenomenon.

3. SOURCES AND METHODOLOGY

3.1. Court files as a primary source

The research is based on the analysis of three original judicial files preserved in the Collection of the Old Central Archive of Cauca (José María Arboleda Llorente Historical Research Center, University of Cauca). The files were transcribed in their entirety using paleographic methodology following the standards of the International Diplomatic Commission and the criteria of the school of Hispanic paleography applied to colonial and independence documents in Latin America¹⁹ (Romero Tallafigo, Rodríguez Liáñez, & Sánchez González, 1995).

The three files analysed are:

¹⁴ M. J. MCKINLEY. *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600–1700*. Cambridge, Cambridge University Press, 2016. <https://doi.org/10.1017/CBO9781316417768>

¹⁵ R. DÍAZ. *Slavery, Region, and City: The Urban-Regional Slave System in Santafé de Bogotá, 1700–1750*. Bogotá, Centro Editorial Javeriano, 2001; A. MÚNERA. *The Failure of the Nation: Region, Class, and Race in the Colombian Caribbean (1717–1810)*. Bogotá, Banco de la República / El Áncora Editores, 1998.

¹⁶ C. MOSQUERA. *Afrostates: Political Rationalities of the African Diaspora in Colombia*. Bogotá, Universidad Nacional de Colombia, 2013; G. COLMENARES. *Economic and Social History of Colombia, 1537–1719 (Vol. 2: Popayán, una sociedad esclavista)*. Bogotá, La Carreta, 1979.

¹⁷ A. M. HESPANHA. *The Grace of Law: Economics of Culture in the Modern Age*. Madrid, Centro de Estudios Constitucionales, 1993, 45–69.

¹⁸ C. GARRIGA. "Orden jurídico y poder político en el Antiguo Régimen". In *Istor: Revista de Historia Internacional*, vol. 5, no. 16, 2004, 29–35.

¹⁹ M. ROMERO TALLAFIGO, L. RODRÍGUEZ LIÁÑEZ and A. SÁNCHEZ GONZÁLEZ. *Art of reading ancient writings: reading paleography*. Huelva, University of Huelva, 1995.

1. Signatura 10256 (Col. JII–14cr): "Solicitud de Francisco Rodríguez para que se le devuelva su esclava Clara, la que fue puesta en prisión" Popayán, Viceroyalty of New Granada, 1804–1807. 65 original pages. Digitized on December 10, 2025 using the METIS EDS Gamma system.
2. Document number 4016 (Rep. JIII–8em): "Clemente Benavides, esclavo de Pedro Paz, reclama su libertad por haberse casado con mujer libre con consentimiento de su amo." Second instance before the Court of Appeals of the Judicial District of Cauca. Pasto and Popayán, Republic of New Granada, 1842–1843. 13 sheets.
3. Signatura 1771 (Ind. JI–3cr): "Causa Criminal del Negro Agustín de Belén por Infidelidad con su mujer". Court of Popayán, Province of Cauca, New Granada, 1812. 8 pages.

3.2. Palaeographic criteria

The paleographic transcription of the documents followed the criteria recognized by the International Diplomatic Commission²⁰, applied consistently to the three files: (a) scrupulous respect for the original spelling, including orthographic variations of eighteenth- and nineteenth-century Spanish; (b) development of bracketed abbreviations at first appearance; (c) marking doubtful readings with [?] and illegible passages with {illegible} or [illegible]; (d) reproduction of marginal annotations in their original place preceded by [Margin:]; (e) description of seals, rubrics and notarial signs according to their recognizability.

The documents present at least four different types of writing, corresponding to the Spanish cursive of the nineteenth century (called by specialists "late Spanish bastard letter") with features typical of the notarial and judicial writing of New Granada. The state of conservation varies between fair and good: the file Sig. 10256 has damp stains and ink bleed; Sig. 4016 shows deteriorated edges and partially illegible text on some pages; Sig. 1771 is in relatively better condition, although with deterioration due to humidity on folio 8.

3.3. Methodological approach: diplomacy and institutional history

In addition to paleographic analysis, the article adopts an approach of historical diplomacy (the study of the form, protocol, and tradition of documents) combined with the institutional history of law²¹. This implies not only reading the content of the files, but also analyzing their formal structure: the types of documents (letter of reference, power of attorney, expression of grievances, prosecutorial hearing, sentence), the intervening actors (learned judge, attorney, fiscal agent, notary), the normative citations invoked (Partidas, Royal Warrants, republican laws) and the legal arguments deployed.

This approach allows us to reconstruct not only the facts narrated in the files, but also the legal logic that framed them: what norms the judges and prosecutors considered in force, what arguments had persuasive force in the Cauca forum of the time, and how the enslaved actors—or those who acted on their behalf—used the fissures of the legal system to claim rights.

4. MARRIAGE IN CAUCANA JUDICIAL PRACTICE: ANALYSIS OF PRIMARY SOURCES

4.1. The Consignment of the Price of Freedom in Baptism: The Case of Clara and Marcos Rodríguez (Sig. 10256, 1804–1807)

²⁰ International Commission of Diplomacy. *Diplomatica et Sigillographia: Travaux préliminaires de la Commission Internationale de Diplomatie et de la Commission Internationale de Sigillographie*. Zaragoza, Institución Fernando el Católico, 1984.

²¹ O. GUYOTJEANNIN, J. PYCKE and B.-M. TOCK. *Diplomatique médiévale*. Turnhout, Brepols, 1993, 18–30.

File 10256 began in 1804 with a request from the Provincial Mayor Francisco Rodríguez to return his slave Clara, who had been imprisoned. The cover of the file, in late courtly writing influenced by the procedural letter of the chancellery, gives an account of the case in the following terms:

*"Solicitud de Francisco Rodríguez, para que se le devuelva su esclava Clara, la que fue puesta en prisión. 1804. 65 f's."*²²

(Central Archive of Cauca, Sig. 10256, Col. JII–14cr, f. cover, 1804. In original language Spanish)

The case reveals that, at the time of Clara's baptism on April 10, 1785, her parents had consigned fifty patacones for her freedom. The certifying document of the Vicar Priest and Ecclesiastical Judge of the Town of San Miguel de Pasto, Don Mariano Agustín de Medma, constitutes the central piece of evidence in the file:

*"compareció Miguel Rodríguez, Capitán de la Hacienda de Guachicongo, y su legítima mujer Bárbara Rodríguez, a quienes doy fe conozco por esclavos de la testamentaría de Don Miguel Rodríguez difunto [...] con una hija llamada Clara, de edad de ocho meses [...] instante consignaron cincuenta patacones para la libertad de la expresada hija en la misma Pila del mencionado Pueblo."*²³

(Central Archive of Cauca, Sig. 10256, f. 1r–1v, 1785/1804. In original language Spanish)

This act—the consignment of the price of freedom at the moment of baptism—was not a marriage in the strict sense, but it had a profound functional relationship with it: both were sacramental acts administered by the Church, celebrated with witnesses, inscribed in parish books, and endowed with civil juridical effects on the status of the enslaved²⁴. Dr. Félix Restrepo, Clara's appointed defender, argued that the baptismal consignment constituted a title of freedom by prescription and possession, since Clara and her brother Marcos had lived as free for more than twenty years without anyone claiming them as slaves:

"la posesión en que han estado y está probada por la Información recibida [...] la causa de libertad, que es la de restituir al Hombre a su primera condición [...] es una Causa muy recomendada por las Leyes de Partida, las que previenen al Juez, busque Caminos que faciliten su consecución."

(Central Archive of Cauca, Sig. 10256, f. 36r, plea of the Father General of Minors Nicolás Hurtado, 1805. In original language Spanish)

The owner Francisco Rodríguez counterargued that the price had been consigned without his consent or that of the bankruptcy judge who administered the assets of the will, and that the slaves could not acquire goods or enter into contracts by themselves²⁵. The process lasted until 1807 without the preserved file recording a final sentence. The final fate of Clara and Marcos Rodríguez remains, for now, unknown.

What the file does clearly reveal is the underlying legal logic: the sacrament of baptism acted in the legal imaginary of the time in an analogous way to marriage, creating obligations, modifying status and generating rights that could be invoked before the courts. The uniqueness of marriage as a juridical institution becomes visible here through its operation by analogy with other sacraments.

²² ACC, Sig. 10256, Col. JII–14cr, f. carátula, 1804. Digitalizado el 10 de diciembre de 2025 mediante sistema METIS EDS Gamma / Canon EOS 5DS R.

²³ ACC, Sig. 10256, ff. 1r–1v. Certificación del Cura Vicario Mariano Agustín de Medma, Pueblo de San Miguel de Pasto, 21 de diciembre de 1785.

²⁴ On the juridical function of the sacraments as acts generating rights in Indian law, see P. TAU ANZOÁTEGUI. op. cit., 89–102.

²⁵ According to the Castilian law in force in the Indies, slaves lacked their own contractual capacity. See A. DOUGNAC RODRÍGUEZ. op. cit., 301.

4.2. Marriage to a free woman as a title to freedom: the case of Clemente Benavides (Sig. 4016, 1842–1843)

File 4016, dated 1842–1843, is the most directly relevant to the research problem posed in this article, as it deals specifically with the claim of a slave to obtain freedom by virtue of his marriage to a free woman. The judgment of the first instance of Dr. Fernando Rafael Ortega, Judge of the Treasury of Pasto, declared Clemente Benavides free:

*"Vistos: Clemente Benavides pide que se le declare libre de la Servidumbre en que lo tiene el Ciudadano Pedro Paz, fundando su solicitud en el consentimiento expreso y voluntario que este le dió á Benavides para que contrajese matrimonio con Maxima Ponce, mujer libre, i su actual esposa."*²⁶

(Central Archive of Cauca, Sig. 4016, Rep. JIII-8em, f. 2r, judgment of first instance, September 20, 1842. In original language Spanish)

The legal basis invoked by the judge of first instance was Law 5 of Title 22 of the Fourth Part, in the following reading:

"las leyes primera título quinto y quinta título veintidos partida cuarta mandan, que el hombre ó mujer esclavo que con voluntario consentimiento de su Señor contrajese matrimonio con mujer ú hombre libre, sea libre desde ese momento, y que su Señor pierda los derechos de dominio que antes tenía en él."

(Central Archive of Cauca, Sig. 4016, f. 2r–2v, 1842. In original language Spanish)

The appeal filed by Master Pedro Paz before the Court of Appeals of the Judicial District of Cauca gave rise to the richest procedural piece of the file: the expression of grievances drafted by Attorney General Joaquín Camacho. This document, of remarkable legal density, exposes the arguments that supported the position of the owner and sheds light on the state of the doctrinal debate in the Cauca forum of 1842:

*"para ser abogado no bastó, ni saber las leyes, ni el lugar en donde pueden encontrarse; es preciso saberlas entender: saber si están ó no derogadas por otras posteriores ó por costumbre contraria, ó por del uso, ó por opuestas al sistema, ó a las instituciones que nos rigen."*²⁷

(Central Archive of Cauca, Sig. 4016, f. 11r, expression of grievances of Joaquín Camacho, December 13, 1842. In original language Spanish)

Attorney General Camacho argued, in summary, three reasons to maintain that the Alfonsine law had ceased to be in force: first, that it was contrary to the Constitution of 1832 of New Granada, which guaranteed property as an inviolable right; second, that it had been repealed by the Royal Decree of Aranjuez of 1789; and third, that it had fallen into disuse due to the constant and notorious practice that slaves married to free persons did not acquire freedom:

"Que hay costumbre en contrario, no puede negarse, pues todos los días de esta vida hay matrimonios de esclavos con libres, y no por eso aquellos adquieren libertad. Esta es una costumbre universal en esta Prov[incia], y de tiempo inmemorial."

(Central Archive of Cauca, Sig. 4016, f. 13r, expression of grievances, 1842. In original language Spanish)

The judgment of the Court of Cauca, signed by the Minister Judge Miguel Wenceslao Angulo on February 2, 1843, accepted the arguments of the appellant and revoked the judgment of the first instance, declaring Clemente Benavides a slave of Pedro Paz:

²⁶ ACC, Sig. 4016, Rep. JIII-8em, f. 2r. Sentencia de primera instancia del Dr. Fernando Rafael Ortega, Juez Letrado de Hacienda de Pasto, 20 de septiembre de 1842.

²⁷ ACC, Sig. 4016, f. 11r. Expresión de agravios del Procurador Joaquín Camacho, apoderado de Pedro Paz, Popayán, 13 de diciembre de 1842.

*"Por tales fundamentos Administrando Justicia en nombre de la República y por autoridad de la Ley se revoca la sentencia apelada: declarándose que Clemente Benavides es esclavo de Pedro Paz."*²⁸
(Central Archive of Cauca, Sig. 4016, f. 17r, sentence of second instance, February 2, 1843. In original language Spanish)

The most surprising element of this sentence, from the perspective of institutional history, is the role played by the Fiscal Agent, who acted in the process as a "protector of slaves" and whose opinion was in favor of the revocation of the sentence that had freed Benavides. Prosecutor Arroyo argued that the Alfonsine law did not apply to the case because the legal provision spoke of the situation in which the master knows it and is silent —tacit consent— not of the case in which he gives his express and previously known consent:

*"de estas palabras no se deduce que siempre que se case un siervo con libre, consigne su libertad por este hecho: es necesario que el amo no diga que uno de los contrayentes es su esclavo, pues tácitamente ha querido libertarlo: no así, como ha sucedido en el caso presente, que el señor dio su consentimiento p[ar]a el matrimonio, y que el otro contrayente sepa que se casa con un siervo."*²⁹

(Central Archive of Cauca, Sig. 4016, ff. 15v–16r, View of the Fiscal Agent, November 1842. In original language Spanish)

This argument of the Fiscal Agent is legally remarkable: he inverted the expected logic (consent of the master = freedom of the slave) to produce the opposite result (express consent = absence of the factual assumption of the law = non-application). It also reveals how the debate around the marriage of the enslaved was, in the final analysis, a debate about the interpretation of the sources of law and about the normative hierarchy in the period of transition between colonial law and republican law.

4.3. Marriage as an indissoluble bond and as an instrument of control: the case of Agustín de Belén (Sig. 1771, 1812)

File 1771, processed in 1812 before the Court of Popayán, presents a different and complementary perspective of the function of marriage in Cauca legal practice. Agustín de Belén, a slave of the convent of the Royal Hospital of San Juan de Dios administered by the Bethlehemite religious, was accused of marital infidelity with his wife Cecilia and imprisoned. The process begins with a request from Agustín himself, who claims his release on bail:

*"Agustín de Belén, Negro Escab[o] del Com[un]to del S[an]to Hospital, Ante [V]m [...] q[u]e make el espacio de seis m[ese]s q[u]e estoy padeciendo, teniendo en esta Carcel, sin saber Mi causa [...] Solo digo; que, mi, Muger es orrada q[u]e no tengo q[u]e notarle."*³⁰

(Central Archive of Cauca, Sig. 1771, Ind. JI–3cr, f. 2r, petition of Agustín de Belén, 1812. In original language Spanish)

What emerges from this file is the opposite logic to that of the previous cases: here marriage is not invoked as the basis for a claim to freedom, but as a normative framework within which a criminal accusation (infidelity) is framed. The Prior of the Hospital, Fray Ramón de Monserrate, declares that he cannot receive Agustín in the convent precisely because his wife Cecilia lives there, with whom he maintains the divorce litigation pending:

²⁸ ACC, Sig. 4016, f. 17r. Sentencia de segunda instancia del Tribunal del Cauca, suscrita por el Ministro Juez Miguel Wenceslao Angulo, Popayán, 2 de febrero de 1843.

²⁹ ACC, Sig. 4016, ff. 15v–16r. Vista del Agente Fiscal Arroyo, Popayán, noviembre de 1842.

³⁰ ACC, Sig. 1771, Ind. JI–3cr, f. 2r. Petición de Agustín de Belén al Alcalde Ordinario, Popayán, febrero de 1812.

"me mantengo en lo d[ic]ho, mientras no me de[n] fiador a satisfaccion no puedo sacar el negro Agustin, por q[u]e al Hosp[ital]. no lo puedo traer a causa de estar su muger Cecilia; y mientras no se declare el Divorcio, que ya el Defensor de d[ic]ho negro se lo dio traslado del escrito."

(Central Archive of Cauca, Sig. 1771, f. 6v, declaration of the Prior Fray Ramón de Monserrate, February 18, 1812. In original language Spanish)

This record reveals that the canonical marriage of the enslaved produced real and binding juridical effects for the owners: the master could not simply separate the spouses, arbitrarily relocate them, or get rid of one of them without taking into consideration the marriage bond. As long as divorce – the only mechanism for dissolving the bond – was not declared by a competent ecclesiastical authority, marriage acted as a brake on the absolute availability of the owner over the person of the slave. This restriction constitutes one of the most significant elements of the juridical singularity of the marriage of the enslaved³¹.

Agustín's second petition, dated February 1812 and written in a popular and phonetic Spanish that betrays the hand of the slave himself or of an amanuensis close to him, also contains a claim for conditions worthy of prison that is exceptional in the documentation of the time:

*"lo Justifi[ca]re Con el mis- mo Car[g]o [que] le xeo [...] y lo mismo, del bestino, puer en seis m[ese]s, q[u]e estoy preso no me a[n] bot[a]do, una Camisa."*³²

(Central Archive of Cauca, Sig. 1771, f. 5v, second petition of Agustín de Belén, 1812. In original language Spanish)

This passage illustrates that Augustine of Bethlehem did not limit himself to demanding his freedom, but articulated a discourse of rights that included the right to adequate clothing and food during his imprisonment. Marriage was, for him, both the context that had led to his imprisonment and the normative framework from which he claimed rights.

4.4. Comparative analysis: marriage as an ambivalent institution

The comparative analysis of the three files allows us to identify the dimensions that make marriage a unique legal institution in the institutional history of Colombia between 1804 and 1843.

Dimension	Sig. 10256 (1804–07)	Sig. 4016 (1842–43)	Sig. 1771 (1812)
Institution invoked	Baptism / price of freedom	Marriage with free	Canonical Marriage
Founding norm	Custom + possession of freedom	Law 5, Title 22, Part. 4th	Canon law (indissolubility)
Enslaved actor	Clara and Marcos Rodríguez	Clemente Benavides	Augustine of Bethlehem
Procedural result	Uncertain (no sentence is recorded)	Maintained slavery (2nd instance)	Release on bail (no sentence)

³¹ On the indissolubility of canonical marriage and its effects on the property of the masters, see D. DÁVILA MENDOZA. *Until Death Do Us Part: Ecclesiastical Divorce in the Archbishopric of Mexico, 1702–1800*. Mexico, El Colegio de México/Universidad Iberoamericana, 2004, 112–130.

³² La ortografía fonética y la estructura sintáctica de la segunda petición de Agustín de Belén constituyen un indicio de autoría directa o de dictado al amanuense. Sobre la cultura letrada de los esclavizados en la Nueva Granada, véase M. J. MCKINLEY. *op. cit.*, 45–68.

Dimension	Sig. 10256 (1804–07)	Sig. 4016 (1842–43)	Sig. 1771 (1812)
Function of marriage	Liberating analogy (baptism)	Potential Title to Freedom	Curbing the seigneurial disposition

Table 1. *Comparative Analysis of Cauca Judicial Records (1804–1843)*

The comparative table highlights three distinct but related functions of marriage (and baptism as an analogous institution) in Cauca judicial practice: as a potential title to freedom, as a brake on the seigneurial availability of the person of the slave, and as a normative framework from which claims of rights are articulated. These three functions coexist in tension, and it is this tension that constitutes the uniqueness of the institution.

5. DISCUSSION

5.1. Marriage in the system of sources of New Granada law: normative pluralism and zones of indeterminacy

The analysis of the files clearly reveals the pluralistic nature of the system of sources of law applicable in Cauca between 1804 and 1843. In a single file, Sig. 4016, the Siete Partidas of Alfonso X (thirteenth century), the Royal Decree of Aranjuez of 1789, the Constitution of New Granada of 1832 and the republican law of May 29, 1842 are simultaneously invoked. This normative pluralism was not an anomaly but a structural characteristic of late Indian law and early Spanish-American constitutionalism, which inherited the sources of Castilian law without clearly establishing its hierarchy and repeal³³ (Tau Anzoátegui, 1992; Garriga, 2004; Agüero, 2008).

In this context, marriage operated as a zone of normative indeterminacy: neither the Alfonsine law nor the Caroline decree nor the republican law unequivocally established what the effect of the marriage of a slave with a free person was when the consent of the master was involved. This indeterminacy created a space of litigation in which enslaved actors could, on occasion, assert legal arguments in favor of their freedom. However, as the case of Clemente Benavides shows, this space had structural limits: when the interests of the owners were solid and had the support of the jurisprudence of the superior court, the indeterminacy was resolved in their favor³⁴.

The uniqueness of marriage in this context lies precisely in the fact that it was not an institution whose effect on slavery was unequivocally determined by positive law, but depended on the interpretation of the authorized interpreter – the learned judge – in a system in which interpretation was not mechanical but argumentative. As Hespanha (2002) has pointed out for the Portuguese case, and as can be extended to the Spanish-American sphere, the law of the time was not a system of clear rules but an art of argumentation of authorities, in which the weight of the sources depended on their ability to persuade the interpreter.

5.2. The "strategic litigiousness" of the enslaved and its limits

The files analyzed confirm, for Cauca, the pattern of "strategic litigation"³⁵ described by McKinley (2016) for Lima and by González Undurraga (2006) for Santiago de Chile: enslaved

³³ V. TAU ANZOÁTEGUI. op. cit., 190–215; A. AGÜERO. Punish and forgive when it suits the Republic: the criminal justice of Córdoba del Tucumán, seventeenth and eighteenth centuries. Madrid, Centro de Estudios Políticos y Constitucionales, 2008, 35–60.

³⁴ On the areas of normative indeterminacy in Indian law, see C. GARRIGA. op. cit., 31–38.

³⁵ M. J. MCKINLEY. op. cit., 5–20; C. GONZÁLEZ UNDURRAGA. op. cit.

people and their defenders actively used the courts to articulate claims of rights, invoking sophisticated legal arguments and mobilizing networks of sponsorship and legal representation. Dr. Félix Restrepo, the Father General of Minors Nicolás Hurtado, the Attorney General and Agustín de Belén himself—who drafted or dictated his own petitions—demonstrate that the legal practice of the enslaved Cauca was neither passive nor ignorant. However, the results of the three files analysed make it necessary to nuance the image of a successful litigation. In the only case with a known final sentence (Sig. 4016), the result was unfavorable to the slave, even though he had obtained a favorable sentence in the first instance. In the other two cases, the files do not record final judgments, which makes it difficult to evaluate the result. This suggests that the strategic litigiousness of the enslaved Cauca operated under conditions of structural asymmetry: they could use the judicial system, but the system was designed to protect, ultimately, the property of the owners³⁶.

This asymmetry is especially visible in the role of the Fiscal Agent of file 4016, who acted institutionally as a "protector of slaves" but in fact assumed the position of the owner, arguing in favor of the revocation of the liberating sentence. As Lucena Salmoral (2000) points out, the figure of the "slave protector" in Indian law was structurally ambivalent: created to defend the interests of the enslaved, it depended on officials appointed by the same institutions that protected the interests of the owners.

5.3. Marriage as a double-edged institution: control and resistance

A comparative analysis of the three files allows us to affirm that marriage functioned, in Cauca in the first decades of the nineteenth century, as a double-edged institution: at the same time an instrument of social control of the enslaved and a vector of resistance and demand for rights³⁷.

As an instrument of control, canonical marriage imposed on the enslaved the obligations of conjugal cohabitation, fidelity, and obedience, and the violation of these obligations—as in the case of Augustine of Bethlehem—could be used as the basis for a criminal charge. The owners and the ecclesiastical institution had an interest in the enslaved marrying, among other reasons because the marriage bond fixed them to a place and a partner, reducing mobility and the possibilities of escape. The Royal Decree of 1789 formalized this interest by imposing on the masters the obligation to promote the marriages of their slaves.

As a vector of resistance, however, marriage created rights that the owners could not ignore without violating canon law and, sometimes, real law. The master could not separate the spouses, or sell one of them without the consent of the other, or prevent the marriage from taking place. And, according to the interpretation of Law 5 of the Fourth Part, marriage with a free person could generate, under certain conditions, the right to freedom of the slave spouse. This structural ambivalence, inscribed in the law itself, was what made marriage a juridically unique institution.

5.4. Continuities and ruptures in the colonial-republican transition

One of the most significant findings of the analysis of the sources is that the political discontinuity between the Colony and the Republic (Independence, 1810–1819; republican consolidation, 1821–1832) does not translate into an equivalent legal discontinuity in matters of marriage and slavery. In 1842, in the midst of the Republic of New Granada and with a Constitution in force since 1832, the Court of Cauca continued to cite and debate the validity of the Siete Partidas of the thirteenth century, the Bourbon Royal Decrees of 1789 and the

³⁶ M. LUCENA SALMORAL. *op. cit.*, 180–195.

³⁷ For the concept of a double-edged institution applied to slavery, see O. PATON-WILLIAMS. "Litigants and Strategies in Atlantic Slave Law". In *Law and History Review*, vol. 38, no. 2, 2020, 341–370.

republican laws of manumission of 1821 and 1842, as if all these normative bodies belonged to the same horizon of validity³⁸.

This normative continuity is characteristic of nineteenth-century Spanish-American constitutionalism, which did not break with colonial law in a radical way but gradually and often ambiguously replaced it (Agüero, 2008; Clavero, 1994).³⁹ In matters of marriage and slavery, the manumission law of 1821—which established freedom of wombs and formal mechanisms of manumission—did not expressly repeal the Alfonsine law on the marriage of the slave to a free person, thus creating a zone of indeterminacy that the procedural actors of Sig. 4016 debated in 1842–1843 with the same fervor as their colonial predecessors.

This continuity has important implications for Colombian institutional history: it suggests that institutional change in family law and slavery was slower, more uncertain, and more dependent on concrete judicial practice than the narrative of major legislative milestones suggests. The singularity of marriage in Colombian institutional history is not only thematic (marriage as a specific institution) but also temporal: it manifests itself precisely in periods of transition and normative ambiguity.

6. CONCLUSIONS

This article has demonstrated, based on the paleographic and diplomatic analysis of three original judicial files from the Old Central Archive of Cauca Fund, that marriage constituted a legal institution of a unique nature in the Colombian institutional history between 1804 and 1843. Its uniqueness does not lie in the fact that it was an exceptional or marginal institution, but in the fact that it condensed, in a unique way, the structural contradictions of the legal system in which it operated: the tension between canon law and royal law, between medieval Partidas and Bourbon legislation, between republican constitutionalism and colonial inheritance, and between the interests of the owners and the claims of the enslaved.

The case of Clara and Marcos Rodríguez (1804–1807) shows that baptism acted in the Cauca legal imaginary in an analogous way to marriage, as a sacramental act capable of generating titles of freedom when the required price was deposited. The case of Clemente Benavides (1842–1843) demonstrates that marriage to a free person was, in late Indian and early republican law, a potential title to freedom whose validity and scope were the subject of interpretative dispute between the judge of first instance (favorable to the slave) and the Court of Appeals (favorable to the owner). The case of Agustín de Belén (1812) reveals that the canonical marriage of the enslaved produced real and binding legal effects for the owners, functioning as a brake on the seigneurial availability over the person of the slave.

Taken together, the three files confirm for Cauca the pattern of "strategic litigation" documented for other Latin American regions, but at the same time force it to be qualified: the structural asymmetry between owners and enslaved severely limited the chances of success of this litigation. The singularity of marriage as a legal institution did not imply that it was an effective instrument of emancipation, but rather that it was a space of dispute whose outcome depended on contextual factors—the interpreter, the political conjuncture, the strength of the arguments—that were, in the final analysis, uncontrollable by the weakest actors.

From the perspective of institutional history, marriage in Cauca in the first decades of the nineteenth century paradigmatically illustrates the plurality of normative sources, the slowness of institutional change, and the importance of concrete judicial practice in the configuration

³⁸ On the continuity of Alfonsine law in the Colombian Republic, see E. POSADA CARBÓ. "Limits of Power: Elections under the Conservative Hegemony in Colombia, 1886–1930". In *Hispanic American Historical Review*, vol. 77, no. 2 (1997), 245–279; and B. CLAVERO. *Indigenous Law and Constitutional Culture in America*. Madrid, Siglo XXI, 1994.

³⁹ A. AGÜERO. *op. cit.*, 300–330; B. CLAVERO. *op. cit.*, 45–72.

of the law actually in force. The narrative of the great legislative milestones – Independence, the Constitution of 1832, the manumission law of 1821 – obscures this reality, which is only visible when one descends to the level of judicial files and listens to the voice of historical actors in their own documents.

Future research should systematically explore the set of judicial files of the Central Archive of Cauca related to marriage and slavery, to build a statistically representative sample that allows confirming or qualifying the findings of this study. Likewise, it would be fruitful to compare the Cauca case with that of other regions of New Granada and with that of other Latin American territories, to determine to what extent the legal singularity of the marriage of the enslaved was a local or Atlantic phenomenon.

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