

Undocumented People between Slavery and Freedom¹

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In the slave societies of the eighteenth- and nineteenth-century Caribbean, people understood the transition from slavery to freedom by manumission as the crossing of a boundary.

Manumission was the act by which an enslaver renounced claims to property in a person and thus released him or her from slavery. Often, but not always, manumission also initiated the process by which a person, thus freed, sought official recognition of his or her new status.

Prior to the nineteenth-century “age of emancipation,” manumission was the primary route by which enslaved people could obtain legal freedom. Yet, opportunities for manumission remained highly restricted, since colonial laws imposed few obligations on masters to free those whom they claimed as slaves and sometimes even restricted masters’ right to do so. Despite such restrictions, many enslaved people gained freedom by this path and joined growing communities of “free people of color” whose release from slavery (or free birth) entitled them to rights denied to enslaved people, such as the right to marry, hold or transmit property, or obtain legal representation. In this sense, the boundary between slavery and freedom mattered a great deal for the allocation of rights and privileges within society, as well as for maintaining the institution of slavery upon which colonial plantation production and capital formation depended.

In the French colonies of the Antilles and Guiana from the late eighteenth century onwards, growing anxieties on the part of elite slaveholders that enslaved people might

¹ The following thought piece is a working paper. It draws on my current book project, “Enslaving Citizens: The Overthrow of Emancipation in the Revolutionary Caribbean.” **Please do not cite or circulate this document without the author’s express permission.**

“usurp” free status by transgressing the boundary of slavery and freedom pushed officials to police that boundary and make it even more of a barrier. Colonial governments set about constructing an administrative infrastructure through which to monitor the legal status of people of African descent “claiming to be free and living as such.”² A key component of this new infrastructure were documents of manumission and certificates of enfranchisement that freed people were expected to show to confirm their status as free, when called upon to do so by civil officers, magistrates or notaries. The outward purpose of these so-called freedom papers (*titres de liberté*) was to shield freed people from being enslaved unlawfully. But the bureaucratic procedures associated with their inspection reinforced the principle that black people should be deemed slaves by default and would need documents issued by planters and the government to confirm whenever this was not the case.³ In turn, this presumption made it possible for planters to legally claim undocumented people of color as slaves—a practice that my book project shows to have been widespread in Guadeloupe, Martinique and French Guiana between 1802 and 1845.

On the pretext of preventing enslaved people from passing illicitly as free, French colonial governments from the Revolution through the Napoleonic era established new powers to question, challenge and revoke the liberty of a growing number of people of color living “as free” who lacked documentation that attested to their free status. The context for

² For an example of this phrasing, see Arrêté de Villaret-Joyeuse et Bertin qui ordonne la vérification des titres dont se trouvent porteurs les gens de couleur se disant libres. Imprimé par J.-B. Thounens. 24 Ventôse, An XI (March 15, 1803): Archives Nationales d’Outre-Mer (ANOM), Aix-en-Provence, C8A/107, fol. 167v: “se disant libres, et vivant comme tels.”

³ The scholarship on freedom papers within the broader literature on the age of emancipation is substantial and growing. See especially Rebecca J. Scott, “Paper Thin: Freedom and Re-Enslavement in the Diaspora of the Haitian Revolution,” *Law and History Review* 29, no. 4 (November 2011): 1061–87; Rebecca J. Scott and Jean M. Hébrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA: Harvard University Press, 2012); Graham T. Nessler, “‘They Always Knew Her to Be Free’: Emancipation and Re-Enslavement in French Santo Domingo, 1804–1809,” *Slavery & Abolition* 33, no. 1 (March 2012): 87–103; Sue Peabody, “Freedom Papers Hidden in His Shoe: Navigating Emancipation across Imperial Boundaries,” *French Politics, Culture & Society* 33, no. 1 (Spring 2015): 11–32; Sarah L. H. Gronningsater, “‘Expressly Recognized by Our Election Laws’: Certificates of Freedom and the Multiple Fates of Black Citizenship in the Early Republic,” *The William and Mary Quarterly* 75, no. 3 (2018): 465–506; Jennifer L. Palmer, “‘She Persisted in Her Revolt’: Between Slavery and Freedom in Saint-Domingue,” *Histoire Sociale/Social History* 53, no. 107 (2020): 17–41.

the expansion of these powers was the imperial project to re-establish slavery in the French empire following nearly a decade of general emancipation in the 1790s. During the period of abolition, decreed locally by commissioners in Saint-Domingue (Haiti) in 1793 and nationally by the French National Convention in 1794, freedom papers ceased to be documents of public record, since the liberty of former slaves—now citizens of France—derived not from the will of individual enslavers but from the state. In practice, however, general emancipation (and the consequent falling away of the documentary regime of freedom papers) was a highly contested process that planter elites sought to thwart wherever possible, which they succeeded in doing in the island of Martinique and in parts of Saint-Domingue invaded by the British. Seeing planters' efforts to overturn the 1794 emancipation decree, formerly enslaved people feared a return to slavery and made arrangements, as best they could, to reinforce their claims to legal freedom in anticipation of this possibility.

The Napoleonic invasion of the Caribbean of 1801-2 to restore slavery and wrest command of the colonies from anti-slavery leaders, including Magloire Pélage and Toussaint Louverture, ignited an anti-colonial war that resulted in black revolutionaries' defeat of the imperial forces and the Haitian declaration of independence from France in 1804. In the colonies of Martinique and Guadeloupe in the Lesser Antilles and in French Guiana in South America, however, Napoleonic administrators set about putting down rebellions and reviving slavery through a combination of armed force, dispossession of freed people and a revived freedom-papers bureaucracy that rendered moot the principle of universal liberty until then enshrined in French law. In Martinique, Guadeloupe and Guiana alike, administrators instated requirements that all people of color who claimed to be free should present themselves immediately to designated civil officers to submit documentary evidence of their free status,

as a condition of maintaining that status. Local decrees in each colony stated that in failing to present such documentation individuals would forfeit state protection from enslavement.⁴

A fortunate minority of the African-descended population of these colonies who possessed freedom papers issued before the Revolution succeeded in registering and thereby maintaining an officially recognized free status. A smaller minority managed to persuade their former enslavers to offer them documents of manumission which they could present to the authorities to petition for liberty after slavery's return. However, most of the black citizens of Guadeloupe and Guiana who lacked freedom papers, because they owed their free status to the now-disputed emancipation decree, effectively lost legal protection against being enslaved. The result was that a large section of the freed black population—who could now be understood as undocumented or imperfectly documented—now lived under the threat of enslavement.

The administrative procedures that underpinned this threat were explicitly racialized: they required people marked as black or of color to prove their free status, and yet placed no corresponding burden on enslavers to demonstrate their legitimate ownership of those whom they claimed as slaves (for instance through the possession of a deed of purchase issued before the date of slavery's illegalization). The political-economic rationale for this asymmetrical arrangement was clear: it was a way for colonial administrators and planters to quickly harness a large supply of coerced labor to revive the struggling sugar and coffee plantations in the wake of abolition. Surprisingly, perhaps, the racially targeted nature of the administrative regime of verifications enabled colonists to enslave not only those people who had previously been enslaved on the eve of abolition in 1794 but also people of color who

⁴ For Guadeloupe, see Arrêté du préfet colonial Lescallier concernant l'état des personnes de couleur. Imprimé, Basse-Terre, imprimerie Cabre, 22 Fructidor, An X (September 9, 1802): ANOM, C7A/57, no. 11. For French Guiana, see Extrait des Registres des délibérations des Consuls de la République, St. Cloud, le 16 Frimaire, an onze (December 7, 1802): ANOM, C14/88, no. 68. For Martinique, see Arrêté de Villaret-Joyeuse et Bertin qui ordonne la vérification des titres dont se trouvent porteurs les gens de couleur se disant libres. Imprimé par J.-B. Thounens. 24 Ventôse, An XI (March 15, 1803): ANOM, C8A/107, fol. 167r–70v.

had been born free or who had been manumitted well before the Revolution but who, for various reasons, could not provide documentary evidence suitable to persuade the authorities of their long-standing status as free.

The bureaucracy of freedom papers acknowledged the legal rights of a minority of citizens of African descent to confiscate more readily the rights of the majority. Here we see the re-established barrier between slavery and freedom acting not so much as a line of separation between two distinct classes of people but as a tool for constructing those classes. Deploying the administrative fiction that the state could determine the legal status of people of color with reference to documents, colonial administrators reimagined undocumented black people as slaves. In turn, the reinstatement after 1802 of administrative practices of verifying the enfranchisement certificates of people of color enabled officials to imagine that people living “as free” without documents were transgressing the outer boundary of slavery. In this vein, the Guadeloupe justice commissioner wrote in October 1803 that the failure to properly implement the first phase of verifications, had “produced many abuses” with “slaves taking advantage of the absolute disorder that had reigned in this colony, claiming to be free by birth or manumission,” and of trying to “usurp civil rights and to destroy the colonial regime.”⁵ The notion of “usurpation” of freedom was in turn a kind of opportunistic legal fiction used to justify actions associated with the expropriation and enslavement of black citizens.

We can get a sense of how French colonists imagined the status of most people of African descent as open to dispute by looking at their lexicon. Administrators invoked categories that authorized policemen or planters to arrest and potentially enslave persons

⁵ A. R. C. Bertolio to the Minister of the Marine, Basse-Terre, 6 Brumaire, An XII (October 29, 1803), no. 96: ANOM, C7A/60, fol. 175r–v: “Depuis le 22 fructidor an 10 [September 9, 1802], le Préfet colonial avait prescrit aux gens de couleur libres de faire reconnaître et constater leur état, la non exécution de cet arrêté avait produit de nombreux abus ; des esclaves profitant du désordre absolu qui avait régné dans cette colonie se prétendaient libres ou de naissance ou par affranchissement, des étrangers de cette classe s’introduisaient dans l’île avec de semblables prétentions et tous ensemble s’efforçaient d’usurper les droits civils et de détruire le régime colonial.”

whom they deemed usurpers of liberty. These categories ranged from terms like *vagabonds* (vagrants) or *gens sans aveu* (individuals of undeclared household or employer) that referred to persons of an ambiguous status, to terms such as *marrons* (maroons, i.e., runaways) or *épaves* (unclaimed property) that assumed the enslaveability of the people in question. Just as colonial administrators did not require enslavers to prove prior ownership of persons whom they claimed as slaves, nor did individuals classified as “maroons” or “*épaves*” have to “really” belong to anyone in particular for the state to designate them as legal property. If they lacked suitable documents, the state now had the authority to capture and sell them at auction. In this way, colonial officers could conjure new titles to property in persons, as if from thin air.

Colonial settlers and administrators conspired in the years after 1802 to strip more than a hundred thousand people of African descent across Guadeloupe, Martinique and French Guiana of their free status. Many black people faced enslavement; those who did not lived under its threat. We can glimpse what part of this experience might have looked like through the fragmentary records of those arrested as presumptive slaves. For example, a list of “*épaves*” detained at the jail in Pointe-à-Pitre, Guadeloupe, in August 1810, due to be sold at auction within two months “if they are not reclaimed beforehand” (see Figure 1) hints at the experiences of at least two individuals whose lack of convincing documentary evidence of their free status led to their enslavement. The first was a woman in her mid-50s, Marie-Zabeth, who appears to have “had the benefit of liberty” since 1794, cemented in 1795 through marriage to her former owner, until June 1810 when the police arrested her, “not having papers.” The second was a man from Spanish South America, Joseph-Major, who upon his arrest in Guadeloupe had declared himself to belong to a curate in Tierra Firme, apparently believing that saying so would get him released from the jail, but who later seems to have changed his account to “claim himself to be free,” upon realising that this would not

happen. Spanish witnesses who visited the jail corroborated Joseph-Major's freedom claim, asserting that he "really was" free.⁶

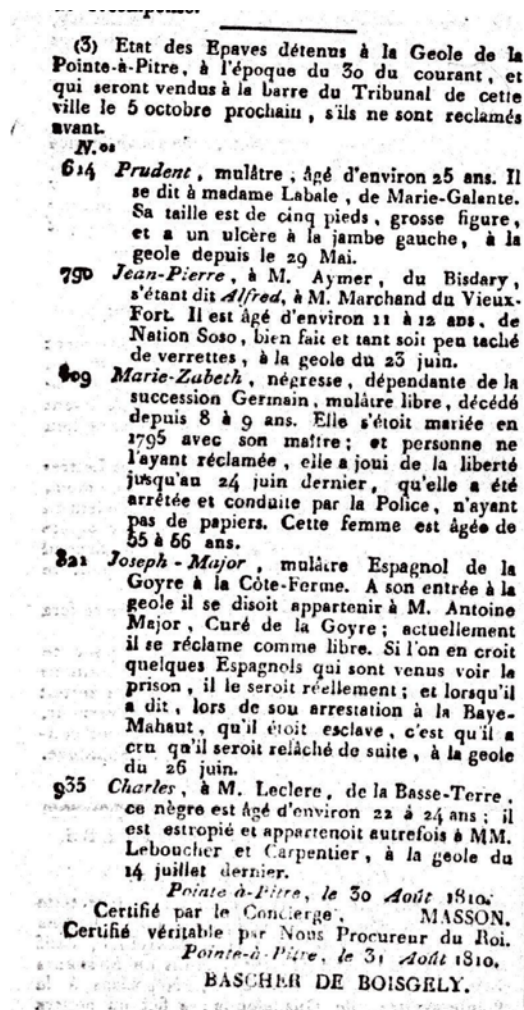


Figure 1: "Etat des Épaves détenues à la Geole de la Pointe-à-Pitre," *Gazette de la Guadeloupe*, September 30, 1810.⁷

In each case, an individual marked in the record as being of color (a "negress" and "mulatto" respectively) lacked paper evidence of the free condition in which they lived in practice. The absence of documentary proof seems to have been enough to justify their arrest. Marie-Zabeth, or someone speaking on her behalf, substantiated her claim to freedom by reference to her long-standing release from slavery. In a similar way, Joseph-Major asserted his status as a free man to all intents and purposes—a claim supported by witness

⁶ "Etat des Épaves détenues à la Geole de la Pointe-à-Pitre," *Gazette de la Guadeloupe*, September 30, 1810.

⁷ My thanks to Pascale Forestier for this reference and image.

testimony—separated from his former owner by an ocean. Yet neither detainee seems to have persuaded the authorities to release them. Regardless of whether or not officers believed the accounts that Marie-Zabeth and Joseph-Major provided of themselves, the presumption of slave status that they applied to the two prisoners, based on skin color, relieved them of responsibility to investigate further. People of color without papers thus endured a condition in which abstract forms of social classification (namely, race) could at certain moments suddenly extinguish status claims whose legitimacy derived from carefully maintained social relationships. In turn, the pervasive threat of arrest, detention and enslavement structured the day-to-day experience of people who found themselves in this precarious situation.

In response, undocumented people of African descent attempted to convert their uncertain liberty into something more durable. Many sought to enter the transitional arrangement of *patronage* in which a guardian (a patron) would exercise legal ownership of them, in place of an enslaver. Patronage normally allowed the client to work part-time for his or her own profit and thereby to make money and eventually purchase full self-ownership. The French empire had no formal system to regulate or enforce self-purchase contracts, as was the case in the Spanish Americas, but *patronage* nonetheless emerged as a legal custom there that enabled undocumented people to have their partially free status recognized in notarized documents. Patronage arrangements did not guarantee a clear path to legal freedom for clients, but they did at least oblige the patron to provide protection. In many cases, patrons were family members, who had saved money to purchase and eventually manumit their enslaved relatives.

In the decades following the re-establishment of slavery in 1802-3, as we have seen, French colonial officials in the Caribbean revived plantation labor and reasserted racial hierarchy by expanding their discretionary powers to enslave people of color who lacked freedom papers. This process did more than resurrect the old barrier between slavery and

freedom; it also opened a new zone of social dependency, maintained through the legally enforceable, racially targeted threat of enslavement and the accompanying disenfranchisement of undocumented people of color. By the late 1820s, the growing number of people living in this zone of dependency had begun to destabilize social relations and racial hierarchy. As the attorney general of Guadeloupe put it in 1828:

It is easy enough to express the view that any man of color who possesses nothing more than an illegal document of release [*désistement prohibé*] should be treated as unclaimed property [*épave*]; but how could one sell, and who would buy, some several thousand unclaimed people, who are, one might add, of all colors and among whom there are some who come close to being white?⁸

To settle the problem, legislators in 1831 and 1832 for the first time recognized a wide variety of undocumented people of ambiguous status not as slaves, as had previously been the case, but as *de facto* free people. *Liberté de fait*, as it was called, gave them the right to petition for enfranchisement and obtain freedom papers. Yet, even as they passed from undocumented dependency to documented citizenship, the emancipated did not escape the regime in which their skin color exposed them to routine suspicion of their entitlement to freedom.

⁸ Conseil général de la Guadeloupe, Session de 1828: ANOM, Généralités 160/1321: “Il est facile d’exprimer l’opinion qu’on doit considerer comme épave tout homme de couleur qui n’est porteur que d’un désistement prohibé ; mais comment vendre et qui achèterait quelque milliers d’épaves, on peut dire de toutes couleurs et parmi lesquels il y en a qui se rapprochent de celle des blancs?”