Comparative Studies in Society and History (2025), 1–28
doi:10.1017/S0010417524000331

RESEARCH ARTICLE

"A Sanctuary to Crime"? Enslaved Fugitives, Antislavery, and the Law in the Caribbean, 1819–1833

Jan C. Jansen

Department of History, University of Tübingen, Tuebingen, Germany
Email: jan.jansen@uni-tuebingen.de

Abstract

The article explores how the British Caribbean turned into an unlikely refuge for intercolonial escapees from slavery in the 1820s and 1830s. During this period, hundreds of enslaved men and women fled from French, Danish, and Dutch Caribbean colonies into British territories and entered in intense, and often contentious, encounters with low-ranking officials on the ground. The article examines how these individuals made use of legal ambiguities and loopholes in British slave trade abolition, thereby resetting, reinterpreting, and broadening the meaning and scope of freedom granted under it. The consequences of their actions were far-reaching and often uncontrollable, as they carved out a legal grey zone that created, in practice, a quasi-free-soil sanctuary in the heart of Britain's planation complex. For more than a decade, local assemblies and officials, legal experts, British and foreign planters and their lobbies, foreign diplomats and British politicians grappled to close this grey zone. As it reincorporates enslaved fugitives in the history of state-sponsored antislavery, the article also shows how the case of these fugitives triggered a fierce debate about the essential parameters of imperial governance around 1800. This debate involved the renegotiation of the boundaries of freedom and slavery, and of subjecthood and (un)belonging. It gave rise to crucial questions related to imperial governance, including the scope of executive power and the challenge of coordinating imperial and colonial law as part of one coherent legal space. Because it involved other empires, the fugitives' case also highlighted the connections between antislavery, sovereignty, and inter-state law.

Keywords: Slavery; Marronnage; Caribbean; Abolition; British Empire; Law; French Empire; Dutch Empire; Danish Empire; Mobility

In early May 1819, George, Ferdinand, Alexander, and Laurent, four Black men held in slavery in the French colony of Guadeloupe, escaped and steered a canoe to nearby Dominica, a small British island in the Lesser Antilles.[1] Having been taken up by or

[1]Brief account in Vice-Admiralty Court Proceedings, Dominica, 2 July 1821, UK National Archives, Kew (henceforth TNA), CUST 34/368; Court Proceedings, 18 Aug. 1821, National Archives of Dominica, Roseau (henceforth NAD), Court of Vice-Admiralty (CVA), Minute Book 1821.

presented themselves to government officials, Governor Charles Maxwell turned them over to Symonds Bridgwater, an officer of the customs service. The two officials wrote to the British Colonial Secretary Lord Bathurst, since they were "totally at a loss how to proceed," and considered their case of a "very novel description."[2] The flight of enslaved individuals across colonial borders—often referred to as maritime or intercolonial marronage—was anything but new. Yet, in 1819, Maxwell and Bridgwater were considering it within a relatively new legal framework. In 1807, Great Britain had banned the slave trade across the British Empire and the Royal Navy had begun to seize slave ships and pass their human cargo through court proceedings into a state of highly restricted freedom. Because they believed the four enslaved fugitives from Guadeloupe had recently been brought from Senegal, the officers reckoned they ought to fall into the category of illegally imported Africans, and so they put them, provisionally, in custody. But they wondered whether the protections provided by the Slave Trade Act really applied to flights from foreign colonies.

Maxwell and Bridgwater, as well as George, Ferdinand, Alexander, and Laurent, were among a diverse and growing set of actors on the ground who shaped the meaning of the abolition law. In August 1819, another four enslaved men and women, Hilaire, Lafleur, Larose, and Adrien, escaped to Dominica from Martinique after they had violently taken possession of a canoe.[3] In 1820, ten further individuals from neighboring colonies followed. All were placed in the customs officer's custody. Despite calls for their immediate return, Bridgewater initiated trials at the local Vice-Admiralty Court, published statements in regional newspapers, sought to enlist customs officers in other colonies for the cause, and pushed for a major trial in the British metropole.[4] Meanwhile, the flight of enslaved persons from French, Dutch, and Danish territories into the British Caribbean took on new dimensions as men and women of African origin or descent sought British "protection" and freedom under the slave-trade abolition. Disputes about how to cope with these claims divided colonial authorities, planters' assemblies, and courts in places such as Antigua, Tortola, and Saint Vincent, as local officials pleaded with metropolitan authorities for guidance in view of "the extreme novelty of the Question, [and] its vast importance to the general interests of the colonies."[5]

These cases soon became a major concern of high-ranking government officials, diplomats, politicians, and lobbies. When British metropolitan officials looked into the matter, they realized that the fugitives were operating in a legal grey zone that created, in practice, a quasi-free-soil sanctuary, in the very heart of Britain's slavery-based plantation complex. For the entire decade preceding the abolition of slavery in 1833, local assemblies and officials, legal experts, British and foreign planters and their lobbies, foreign diplomats, and British politicians all grappled with how to close this grey zone.

[2]Symonds Bridgewater to Lord Bathurst, 14 May 1819, TNA, CO 71/58; Governor Maxwell to Bathurst, 20 May 1819, TNA, CO 71/56.

[3]Testimony by Alexandre Millot DeLore, 6 Oct. 1821, TNA, CUST 34/368.

[4]Bridgwater to Bathurst, 30 Aug. 1819, 10 Dec. 1819, 5 Jan. 1820, 5 July 1821, 12 Nov. 1821, 14 Dec. 1821, TNA, CO 71/58; Bridgwater, letter to the editor of the *Dominica Chronicle*, 15 Nov. 1821; Bridgwater, circular letter, 23 Nov. 1821, TNA, CUST 34/368.

[5]Richard Musgrave, Solicitor-General, Antigua, "Further Observations on the Case of the Negroes from Guadeloupe," 12 Feb. 1825, TNA, FO 27/345.

The legal and political fallout from the influx of fugitives into British colonies in the 1820s and 1830s has largely eluded the attention of historians studying the ends and transformations of slavery. This case sits at the intersection of two separated strands of scholarship: the history of abolition and the history of marronage. Over the past two decades, historians have revisited the history of abolition, especially in the British Empire, and recovered its manifold ramifications. They have reestablished "liberated Africans" as central actors in abolitionist politics whose agency shaped notions of belonging and emancipation.[6] They have also examined the political economy of antislavery, which fostered material interests among a variety of actors—privateers, military officers, governors, bureaucrats, and colonists—and paved the way for new forms of labor exploitation and profiteering.[7] Others have insisted on the crucial role of imperial law as a regulatory mechanism during this period, exposing the intricacies of abolition at the intersection of trade and maritime war law.[8] Lastly, scholars have brought to the fore both the global interconnections and the role of specific contexts, especially borderlands and allegedly marginal places, in the history of abolition.[9]

Self-liberation by escaping within or across colonial borders appears as a distinct path to freedom from state-sanctioned abolition, and it has been the subject of a separate, no less dynamic field.[10] To be sure, the study of maroon communities has

[6]Richard Peter Anderson, *Abolition in Sierra Leone: Re-Building Lives and Identities in Nineteenth-Century West Africa* (Cambridge: Cambridge University Press, 2020); Richard Peter Anderson and Paul Lovejoy, eds., *Liberated Africans and the Abolition of the Slave Trade, 1807–1896* (Rochester: University of Rochester Press, 2020); Paul B. Lovejoy, "Conceptualizing 'Liberated Africans' and Slave Trade Abolition: Government Schemes to Indenture Enslaved People Captured from Slavery, 1800–1920," *Past & Present*, 24 July 2024, https://doi.org/10.1093/pastj/gtae019; https://liberatedafricans.org; Anita Rupprecht, "'When he gets among his Countrymen, they tell him that he is free': Slave Trade Abolition, Indentured Africans and a Royal Commission," *Slavery & Abolition* 33, 3 (2012): 435–55; Jake C. Richards, "Anti-Slave-Trade Law, 'Liberated Africans' and the State in the South Atlantic World, c. 1839–1852," *Past & Present* 241 (2018): 179–219.

[7]Padraic X. Scanlan, *Freedom's Debtors: British Antislavery in Sierra Leone in the Age of Revolution* (New Haven: Yale University Press, 2017); Kirsten McKenzie, *Imperial Underworld: An Escaped Convict and the Transformation of the British Colonial Order* (Cambridge: Cambridge University Press, 2016); Alvin O. Thompson, "African 'Recaptives' under Apprenticeship in the British West Indies, 1807–1828," *Immigrants and Minorities* 9, 2 (1990): 123–44; Anita Rupprecht, "From Slavery to Indenture: Scripts for Slavery's Endings," in Catherine Hall, Nicholas Draper, and Keith McClelland, eds., *Emancipation and the Remaking of the British Imperial World* (Manchester: Manchester University Press, 2015), 77–97.

[8]Lauren Benton, "Abolition and Imperial Law, 1790–1820," *Journal of Imperial and Commonwealth History* 39, 3 (2011): 179–99; Lisa Ford and Naomi Parkinson, "Legislating Freedom: Liberated Africans and the Abolition Act, 1806–1824," *Slavery & Abolition* 42, 4 (2021): 827–46.

[9]Maeve Ryan, *Humanitarian Governance and the British Antislavery World System* (New Haven: Yale University Press, 2022); Sean Kelley, "Precedents: The 'Captured Negroes' of Tortola, 1807–22," in Richard Peter Anderson and Paul Lovejoy, eds., *Liberated Africans and the Abolition of the Slave Trade, 1807–1896* (Rochester: University of Rochester Press, 2020), 25–44; Laura Rosanne Adderley, "*New Negroes from Africa*": *Slave Trade Abolition and Free African Settlement in the Nineteenth-Century Caribbean* (Bloomington: Indiana University Press, 2006); Jeppe Mulich, *In a Sea of Empires: Networks and Crossings in the Revolutionary Caribbean* (Cambridge: Cambridge University Press, 2020).

[10]Classic studies include Yvan Debbasch, "Le marronnage: Essai sur la désertion de l'esclave antillais," *L'Année sociologique* 12 (1961): 1–112, and 13 (1962): 117–95; Gabriel Debien, "Le marronage aux Antilles françaises au XVIIIe siècle," *Caribbean Studies* 6, 3 (1966): 3–43. A more recent synthesis is Alvin O. Thompson, *Flight to Freedom: African Runaways and Maroons in the Americas* (Mona: University of the West Indies Press, 2006). As part of a broader panorama of resistance, see Aline Helg, *Slave No More: Self-Liberation Before Abolitionism in the Americas*

remained at the heart of most scholarship on marronage. Yet, some historians have begun to devote more attention to the distinct characteristics of intercolonial marronage, including fugitives' agency, cosmologies, and skillsets.[11] Historians have shown how this type of marronage prompted myriad interactions between enslaved border-crossers and colonial state actors, giving rise to various notions of—temporary or permanent, gradual, or conditional—freedom.[12] They have also shown that maritime marronage had been a constant concern in intercolonial diplomacy. Exactly how to deal with fugitives was not laid out in inter-state law, and practice often followed geo-strategic and practical considerations. During peacetime, colonial authorities often subscribed to ideas of reciprocal restitution, sometimes enshrined in treaties, yet, if circumstance allowed it, they would also turn a blind eye to individuals absconding from a particular polity.[13] Until the late eighteenth century, the great outlier among colonial powers in the Americas was Spain, until then only halfway invested in the plantation complex. Spanish American colonies tended towards a policy of sanctuary and emancipation for enslaved fugitives from Protestant territories, who provided them with much-needed labor, military recruits, and borderland settlers. Taking Spanish sanctuary policies and their afterlives as the prime example, historians have emphasized the flexibility, and strategic use, of doctrines of "free soil" on the ground.[14] Once Spanish territories became more involved in slavery, the status of foreign fugitives became more uncertain, and some Spanish colonies even signed restitution treaties; in the wake of the Haitian Revolution (1791–1804) the Spanish Crown officially withdrew its sanctuary policies.

(Chapel Hill: University of North Carolina Press, 2019). For a historiographic overview, see Marcus P. Nevius, "New Histories of Marronage in the Anglo-Atlantic World and Early North America," *History Compass* 18, 5 (2020), https://doi.org/10.1111/hic3.12613.

[11]Jorge L. Chinea, "Diasporic Marronage," *Revista Braliseira do Caribe* 10, 19 (2009): 259–84; Kevin Dawson, *Undercurrents of Power: Aquatic Culture in the African Diaspora* (Philadelphia: University of Pennsylvania Press, 2018), 213–15; Elena A. Schneider, "A Narrative of Escape: Self Liberation by Sea and the Mental Worlds of the Enslaved," *Slavery & Abolition* 42, 3 (2021): 484–501; Gunvor Simonsen and Rasmus Christensen, "Together in a Small Boat: Slavery"s Fugitives in the Lesser Antilles," *William and Mary Quarterly* 80, 4 (2023): 611–46.

[12]Simon P. Newman, "Rethinking Runaways in the British Atlantic World: Britain, the Caribbean, West Africa and North America," *Slavery & Abolition* 38, 1 (2017): 49–75; Thomas Mareite, *Conditional Freedom: Free Soil and Fugitive Slaves from the U.S. South to Mexico's Northeast, 1803–1861* (Leiden: Brill, 2022); Fernanda Bretones Lane, "To Bury Their Dead: Baptism and the Meanings of Freedom in the Eighteenth-Century Caribbean," *Slavery & Abolition* 42, 3 (2021): 449–65.

[13]Thompson, *Flight to Freedom*, 272–78; J.H.W. Verzijl, *International Law in Historical Perspective*, vol. 5 (Leiden: Brill, 1972), 242; Jeppe Mulich, "Maritime Marronage in Colonial Borderlands," in Nathan Perl-Rosenthal and Lauren Benton, eds., *A World at Sea: Maritime Practices and Global History* (Philadelphia: University of Pennsylvania Press, 2020), 133–48, 142–47.

[14]Jane Landers, *Black Society in Spanish Florida* (Urbana: University of Illinois Press, 1999); Jorge L. Chinea, "A Quest for Freedom: The Immigration of Maritime Maroons into Puerto Rico, 1656–1800," *Journal of Caribbean History* 31 (1997): 51–87; Mareite, *Conditional Freedom*; Linda Rupert, "'Seeking the Baptism of Water': Fugitive Slaves and Imperial Jurisdiction in the Early-Modern Caribbean," in Lauren Benton and Richard J. Ross, eds., *Legal Pluralism and Empires, 1500–1850* (New York: New York University Press, 2013), 199–232; José Luis Belmonte Postigo, "'No siendo lo mismo echarse al mar, que es lugar de libertad plena': Cimarronaje marítimo y política transimperial en el caribe español, 1687–1804," in Consuelo Naranjo Orovio, ed., *Esclavitud y diferencia racial en el Caribe hispano* (Madrid: Doce Calles, 2016), 43–70. The Danish West Indies are another, better-known case: Neville Hall, "Maritime Maroons: 'Grand Marronage' from the Danish West Indies," *William and Mary Quarterly* 42, 4 (1985): 479–98.

The British West Indies in the 1820s were an unlikely refuge for intercolonial escapees from slavery. These islands stood at the center of a still profitable slavery-based economy, and their elites geared up for a fiery struggle against abolitionist policies.[15] British imperial authorities fiercely objected to the free-soil policies embraced by Spanish American authorities and then independent Haitian leaders.[16] The Black Loyalists of the American Revolution and the War of 1812, who left American plantations in the thousands to join British forces, were considered wartime exceptions, settled by compensatory payments in 1826.[17] So-called "refugee slaves" would become an important point of contention between U.S. southern states and British North America before the American Civil War, but in their case slavery had been abolished in British North America, whose economic model had turned away from slavery.[18] With Spanish colonies increasingly falling into line in the early 1800s and peace between European powers after 1814, conditions for intercolonial enslavers' solidarity in the Caribbean improved as fugitives' room for maneuver shrank. That the British West Indies, the power base of British plantocracy, would turn into a place of asylum for enslaved fugitives was hard to grasp for contemporaries, and, as officials would discover, even harder to deal with.

The same seems to hold true for historians. A rich scholarship has looked at how local forms of resistance, in particular violent uprisings, intersected with abolitionist policymaking in Europe.[19] Marronage—arguably the longest-standing form of self-emancipation before state-sponsored abolition—does not figure prominently here.[20] When mentioned, mostly by historians of slavery in the Dutch, French, or Danish Americas, the flight of fugitives into British territories is represented as a natural outgrowth of abolitionist sentiment in the British Empire after the Consolidated Slave Trade Act of 1824.[21] Rationalizing it as a self-evident effect of post-1824 abolition,

[15]Michael Taylor, *The Interest: How the British Establishment Resisted the Abolition of Slavery* (London: Bodley Head, 2020).

[16]Ada Ferrer, "Haiti, Free Soil, and Antislavery in the Revolutionary Atlantic," *American Historical Review* 117, 1 (2012): 40–66; Johnhenry Gonzales, *Maroon Nation: A History of Revolutionary Haiti* (New Haven: Yale University Press, 2019).

[17]On the compensation, see *American State Papers—Foreign Relations*, vol. 6 (1859), nos. 441, 457, 462, 467, 474, and 482. On "Black Refugees," see Kit Candlin, "The Expansion of the Idea of the Refugee in the Early-Nineteenth-Century Atlantic World," *Slavery & Abolition* 30, 4 (2009): 521–44.

[18]"Correspondence between Great Britain and the United States, Respecting the Mutual Surrender of Fugitive Slaves and Deserters, 1826–1828," TNA, CO 23/92; Caroline Shaw, *Britannia's Embrace: Modern Humanitarianism and the Imperial Origins of Refugee Relief* (Oxford: Oxford University Press, 2015).

[19]See, for example, Gelien Matthews, *Caribbean Slave Revolts and the British Abolitionist Movement* (Baton Rouge: Louisiana State University Press, 2006); and Claudius K. Fergus, *Revolutionary Emancipation: Slavery and Abolitionism in the British West Indies* (Baton Rouge: Louisiana State University Press, 2013).

[20]Exceptions are Mulich, "Maritime Marronage"; Elsa V. Goveia, *Slave Society in the British Leeward Islands at the End of the Eighteenth Century* (Westport: Greenwood Press, 1980); Matilde Flamigni, "Vulnerable Freedom(s): Slavery, Diplomacy, and the Law in the Caribbean Age of Abolition (1807–1868)" (PhD diss., Scuola Normale Superiore, Pisa, 2024); and Jessica V. Roitman, "Land of Hope and Dreams: Slavery and Abolition in the Dutch Leeward Islands, 1825–1865," *Slavery & Abolition* 37, 2 (2016): 375–98.

[21]Roitman, "Land of Hope and Dreams," 376, 379; Hall, "Maritime Maroons," 493–95; Flamigni, "Vulnerable Freedom(s)," 87–88, 92; Debbasch, "Marronnage," 45–46; Lowell J. Ragatz, *The Fall of the Planter Class in the British Caribbean, 1763–1833* (New York: Octagon Books, 1963), 437; Caroline Oudin-Bastide, *Travail, capitalisme et société esclavagiste: Guadeloupe, Martinique (XVIIe–XIXe siècle)* (Paris: Découverte, 2005), 302–3.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

however, matches up with neither the chronology nor the embattled nature and vast scope of people involved in the struggles around intercolonial maroons.

The legal and political controversies spreading from Dominica in 1819 do not only reinstate fugitives in the story of abolition. They allow us to study slave-trade abolition and its wider impact as in part a history of unintended, and to a certain extent uncontrollable, consequences resulting from the encounter of ambiguous metropolitan legislation and local agency. The "sanctuary" in the British Caribbean had its legal foundation in the anti-slave-trade law, yet not by design. As this article shows, actors on the ground, in particular fugitives and low-ranking officials, used the law's inherent ambiguities and pursued the material incentives created by it to carve out a loophole for unfree border-crossers other than "liberated Africans." Driven by often-conflicting interests, they thus reset, reinterpreted, and broadened the meaning and scope of freedom granted under the slave-trade legislation and set in motion a dynamic that quickly spiraled out of their own control. This legal grey zone, and the desperate attempts by local, metropolitan, and foreign officials to close it, initiated a fierce debate about the parameters of imperial governance in the 1820s: about the boundaries of freedom and slavery, about the scope of executive power and jurisdiction granted by antislavery; about subjecthood and alienness; and about sovereignty, property rights, and inter-state law. The ways in which actors across the Atlantic sought to regain control over fugitive mobility reflects the trend across the British Empire in the 1820s to cope with imperial problems with the tools of the law, although in this case the law would tend to confuse rather than clarify matters.[22]

Carving Out a Loophole: Dominica, 1819–1821

The idea that the abolition of the slave trade held relevance to the status of enslaved fugitives did not arise from an inherent legal logic or necessity. Fugitives were not comprised in the category of those to be treated as "liberated Africans," nor were they the object of any parallel legislation. The 1824 Consolidated Slave Trade Act recognized the right to escape for individuals "illegally held or detained in Slavery" (5 Geo4 c113, art.23), yet it remained silent about those "lawfully" enslaved, a status ascribed to virtually every fugitive arriving in the British Caribbean during this period. And up to 1825, the metropolitan government did not formulate any general policy on that matter.

The connection between slave-trade legislation and fugitives was instead forged in concrete actions of individuals on the ground, often with limited or no legal training.[23] At the center of these developments stood the often-contentious encounter of two groups: enslaved fugitives and, mostly low-ranking, government officials. Driven by different, at times contradicting, interests, these two groups of actors set in motion a process that would reset and broaden the meaning and scope of freedom granted under slave-trade abolition. They brought forward their own notions of the law and created precedents that would prove hard to challenge.

[22]Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge: Harvard University Press, 2016).

[23]Sue Peabody and Keila Grinberg, eds., *Free Soil in the Atlantic World* (London: Routledge, 2015); Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 23–30.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

These two groups of main actors are unequally covered in the written records. In contrast to Spanish American sanctuary policies and to "liberated Africans" in British colonies, there were no bureaucratic procedures that produced—even if in filtered, altered, or formulaic forms—testimonies, inquiries, or petitions from enslaved fugitives. Nor were fugitives the object of the fact-finding commissions that crisscrossed the British Empire, even though one of these commissions briefly weighed in on the topic.[24] As a result, most of the individuals who escaped from Martinique, Saint Thomas, Sint Maarten, and many other Caribbean islands are left without testimony in the archives. The records do not even provide approximate numbers of fugitives in British colonies, even if their names do filter into official statistics of "liberated Africans."

And still, these records do provide glimpses into the informal networks and channels across colonial borders through which the fugitives communicated, and into their aspirations and strategies. As in other cases of marronage, the motives behind their flight varied broadly.[25] Many fugitives stated that they escaped ill-treatment, punishment, or uncertainty due to an impending sale or transfer to other colonies. Some wanted to reunite with relatives or give birth in freedom. The records are murky as to whether these fugitives always actively sought out British officials, but several cases suggest they did so increasingly, and sometimes on their own terms. Twenty-year-old Deborah Hodge, for instance, only reached out to British officials four years after escaping from Dutch Sint Maarten to Anguilla, to seek protection against efforts by her previous owner to re-enslave her.[26] And some fugitives would refuse the kind of "emancipation" offered to them—some form of bonded labor—and thus exhibit a keen vision of the kind of freedom they wanted to claim.[27]

While their ambitions and strategies were not unlike previous generations of intercolonial maroons, abolition-era fugitives encountered an institutional setting and officials who were, for their own reasons, receptive to their quests for freedom. Such a momentous encounter occurred for the first time when George, Ferdinand, Alexander, and Laurent arrived in Dominica in 1819. Only a short boat ride from the major French Caribbean plantation colonies, Dominica was predestined to be a refuge for men and women escaping enslavement.[28] But geography alone does not explain why this happened at this particular place and moment. The crucial factor was that the four men from Guadeloupe, and those who followed them, encountered a set of officials who considered antislavery a relevant and highly flexible legal framework.

The flexibility of this framework, and the significant personal benefits it could generate, had become clear, in the preceding decades, in far-away Sierra Leone. Within

[24]Thomas Moody and John Dougan to Robert Wilmot-Horton, 31 May and 3 June 1822, TNA, CO 318/81. On these commissions, see Lisa Ford, Kirsten McKenzie, Naomi Parkinson, and David Andrew Roberts, *Inquiring into Empire: Colonial Commissions and British Imperial Reform, 1819–1833* (Cambridge: Cambridge University Press, 2025).

[25]Newman, "Rethinking Runaways."

[26]Affidavit Deborah Hodge, 12 May 1829, TNA, CUST 34/731.

[27]Bridgwater to George Murray, 1 Jan. 1829, TNA, CO 71/68.

[28]Raphaël Bogat, "Dominique, terre de refuge," *Bulletin de la Société d'Histoire de la Guadeloupe* 11–12 (1969): 149–54. For Dominica's integration in regional mobilities, see Murphy Tess, *The Creole Archipelago: Race and Borders in the Colonial Caribbean* (Philadelphia: University of Pennsylvania Press, 2021); Heather Freund, "'A Place of Refuge for Republicans and Royalists': The French Revolution in British Dominica," *Journal of British Studies* (FirstView, Nov. 2024), https://doi.org/10.1017/jbr.2024.87.

the entire British Empire only a few officials had similar knowledge and experience of the inner workings and workability of the antislavery system as did Charles Maxwell, since 1816 governor of Dominica. As lieutenant-general of the Royal African Corps and governor of Sierra Leone (1811–1815), Maxwell created an "outsize impact on the early history of the practices of antislavery in the British Empire."[29] He built the anti-slave-trade campaign into a system to expand British jurisdiction and to benefit the colonial state, the military, and individuals from the "forfeiture" of captured slaves and their reassignment as military recruits and bonded laborers ("apprentices"). This system was geared toward wartime prize law that incentivized privateers for each (allegedly) enslaved African they seized and brought to court. It ran into trouble after 1814 when peacetime agreements usually passed captured Africans to bi-national "mixed commissions." These peacetime treaties did not address enslaved foreign fugitives, which made them a new potential target for a system that had created vested material interests, which were now threatened.

Whether the idea of maintaining the profitable business of antislavery by extending it over new categories of people was on Maxwell's mind in 1819 is unclear, but his actions toward George, Ferdinand, Alexander, and Laurent point in that direction. He first raised the idea of treating the fugitives as equivalent to enslaved Africans aboard captured ships—and thus subject to the system he had excelled at in Sierra Leone—and instructed his customs officers accordingly.[30] During his various replacements as governor across the West Indies (Saint Kitts, Virgin Islands) in the following years, Maxwell continued to adopt similar initiatives. Before he was recalled from the Caribbean, he and officials under his guidance produced contentious antislavery cases about foreign fugitives that their successors would try to undo, often in vain. Though largely disregarded in scholarship, Maxwell's post-Sierra Leone career was crucial, as he sought to turn the West Indies into a new experimental ground for the antislavery system.

At the heart of this system stood the Vice-Admiralty Court. During wartime, the largely unregulated network of Vice-Admiralty Courts served to process seizures of enemy vessels and their cargo and to turn them quickly into prize money.[31] The Slave Trade Act harnessed the commercial and military logics of this court system for antislavery. When condemned by the court, an enslaved person would be "forfeited" to the Crown (analogous to contraband), nullifying any previous property title and making the person available for further employment. The charge of receiving and providing for captured Africans, bringing them to court, and "disposing" of them as military recruits, apprentices, or free settlers, fell to customs officers. These low-ranking officers, usually junior bureaucrats in charge of the everyday business of regulating trade, has been generally treated as a sideshow in imperial administrative history.[32] During the period of revolution, warfare, and abolition, however, these individuals were propelled into a crucial position of gatekeepers: overseeing the

[29]Scanlan, *Freedom's Debtors*, 165 (the quote), and 167–209 for what follows it.

[30]Minute [James Stephen, ca. 1824], TNA, CO 318/101.

[31]On the Caribbean, Michael John Craton, "The Caribbean Vice-Admiralty Courts, 1763–1815: Indispensable Agents of an Imperial System" (PhD diss., MacMaster University, 1968); Mulich, *In a Sea of Empires*, 81–101. On Sierra Leone, Scanlan, *Freedom's Debtors*, 97–129.

[32]The empirically richest study remains Henry Atton and Henry H. Holland, *The King's Customs*, 2 vols. (London: Cass, 1908–1910). From a cultural studies perspective, Isabel Hofmeyr, *Dockside Reading: Hydrocolonialism and the Custom House* (Durham: Duke University Press, 2022).

"liberated Africans'" journeys between slavery and freedom and regulating the colonies' inward and outward mobility. In Sierra Leone, the Vice-Admiralty Court and Customs Office interlocked seamlessly in a well-honed machinery.

The West Indies were different, though. Here, antislavery encountered a much more hostile social environment. Maxwell, reportedly "exceedingly unpopular … on account of his interference for the amelioration of the slave population," left Dominica in 1819 to become governor of Saint Kitts.[33] Afterwards, Customs Officer Bridgwater encountered open hostility from assemblymen, magistrates, and bureaucrats, and from the judiciary led by Judge Archibald Gloster. Both Bridgwater and Gloster boasted decades-long imperial careers in the West Indies and had crossed paths before in Grenada.[34] Their legal training appears to have been patchy; the Judge admitted that he had not been to England for seventeen years, had not "attended Doctors' Commons to learn Admiralty Law," and was "confined to a limited sphere of reading and information."[35] Nevertheless, both entered the legal fight by positioning themselves as the defenders of the law in Dominica. Bridgwater's ambitions as the self-appointed standard-bearer of British antislavery culminated in his styling himself as "S. Blackwater, The Son of the Old Judge [i.e., William Blackstone] of that Name," and author of the leading *Commentaries on the Laws of England*.[36]

Maxwell's and Bridgwater's actions in 1819–1820 were driven by a desire to obtain an authoritative direction on the extent of British abolition. Their decision to place enslaved fugitives in the customs officer's custody challenged long-standing practice on the ground. As French enslavers and diplomats, and most of Dominica's White elite, would loudly claim, there was a mutual, though customary, agreement "from time immemorial" between Dominica and adjacent colonies acknowledging "the restitution of the runaway Slaves claimed by either."[37] When French enslavers requested the return of fugitive individuals, Bridgwater saw the chance to force a decision by trial. In case the planters succeeded and "restitution be decreed," Bridgwater planned "to make an immediate appeal home with a view of obtaining the legal decision of a higher Tribunal for my future guidance … from the want of Instructions and the great diversity of opinion existing on this important subject which is replete with innumerable consequences which nothing but time will be able to unfold."

A first trial before the Vice-Admiralty Court in January 1820 against five men from Marie-Galante—Moïse, François, Casar, Etienne, and Noël—ended with their "forfeiture," followed by their apprenticeship, and a huge legal bill.[38] The French planter had withdrawn his claims, which left Bridgwater without the chance to force a decision by a higher court. Still, he clearly felt emboldened, suggesting to the Colonial Secretary "issuing an order throughout His Majesty's Islands and Colonies extending protection to such Africans as have been brought from the coast since the passing of

[33]Bridgwater to Commissioners of the Customs, 27 June 1823, TNA, CUST 34/368.

[34]On Gloster's career, see James Epstein, *Scandal of Colonial Rule: Power and Subversion in the British Atlantic* (Cambridge: Cambridge University Press, 2012), xiv.

[35]Gloster to Bathurst, 24 Oct. 1823, TNA, CO 71/60.

[36]*Dominica Chronicle*, 21 Nov. 1821.

[37]Quotes (and what follows them) from Bridgwater to Bathurst, 5 Jan. 1820, TNA, CO 71/58.

[38]Court Proceedings, 30 Jan. 1821, NAD, CVA, Minute Book 1821.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

the abolition acts, and to such slaves as had been illegally removed from British to Foreign Colonies; as shall arrive in any of them."[39]

However genuine Bridgwater's and Maxwell's abolitionist stance may have been, it was reinforced by personal ambitions and financial interests. For each of the fugitives, including those condemned in the absence of claimants, they insisted on receiving a "bounty" of £10–13—as the seizing and the receiving agents—guaranteed by the Slave Trade Act; in some cases, Bridgwater claimed the money twice, as seizing and receiving agent in one person, issuing himself the respective certificates.[40] In their continued applications to the State Treasury, they sought to conceal the particularity of the cases—their status as fugitives—suggesting instead they were no different from any other enslaved individual seized on a slaving ship.[41] Bridgwater registered them as having been "removed or imported by certain persons to this informant unknown."[42] The interest in profits generated by the fugitives' bureaucratic transformation into "liberated Africans" even brought foes together. Their efforts to reign in Maxwell's and Bridgwater's actions notwithstanding, the subsequent governors Robert Reid (1819–1820) and Samuel Ford Wittingham (1820–1821) joined them in requesting "bounty money" for several of these fugitives.[43]

Fueled by antislavery politics and personal interest, Bridgwater defined his jurisdiction as far-reaching. By June 1823, the number of fugitives in his custody had risen to thirty-four.[44] Their group included a man by the name of Augustin, who had not been "recently imported" from Africa but born in the Americas. Bridgwater urged the government to extend the abolition act's protections to all fugitives, no matter when they were enslaved and whether or not their importation violated the slave-trade ban. He evoked a vision that could emanate from a planter's nightmare: "The results from such measures … will be these—the Slave Trade in a short time will cease of itself in the French and foreign colonies. The Africans who have been brought from the Coast into them will find their way to our Colonies wither as Fugitives, or in Redemption for others. And in a few years by far the greater proportion of our black population will be composed of free persons."[45]

As Bridgwater, under the watchful eyes of the local press,[46] was preparing a new trial that would determine the fate of fifteen individuals in his custody, Governor Wittingham and Judge Gloster were working to ensure that this time the French planters' case was presented more forcefully. By supporting an act "to prohibit and prevent the coming of fugitive slaves from any foreign Island or Colony … to this island," passed by the Assembly after the first trial, Wittingham took a clear stance in the conflict.[47] At his and the Judge's insistence, the trial was adjourned four times to

[39]Bridgwater to Bathurst, 5 July 1821, TNA, CO 71/58.

[40]"Five Slaves at Dominica"; "Fifteen Slaves Seized at Dominica," TNA, HCA 35/1.

[41]Bridgwater, Certificates to Bridgwater, 24 Apr. 1821 and 21 Apr. 1822, TNA, HCA 35/1 and TNA, HCA 35/2.

[42]Vice-Admiralty Court Proceedings, Dominica, 7 July 1821, TNA, CUST 34/368.

[43]Bridgwater, Certificate to Reid, 9 Jan. 1822, TNA, HCA 35/1; Bridgwater, Certificate to Wittingham, 25 Apr. 1821; "Five Slaves Dominica"; "Fifteen Slaves Dominica," TNA, HCA 35/2.

[44]Bridgwater to Commissioners of the Customs, 27 June 1823, 21 Apr. 1822, TNA, CUST 34/368.

[45]Bridgwater to Bathurst, 5 July 1821, TNA, CO 71/58.

[46]*Dominica Chronicle*, 15 and 22 Aug. 1821, 12 Sept. 1821, 24 Oct. 1821, and 7 Nov. 1821.

[47]Wittingham to Bathurst, 15 Feb. 1821, TNA, CO 71/58.

provide time for the French claimants and their governors to gather material and send witnesses.[48]

When the trial finally took place in November 1821, two French planters would not retract their claims over five persons—Hilaire, Adrien, Lafleur, Larose, and Achille—and Judge Gloster ruled in their favor. Considering these individuals "fugitives from the French Colonies, after being once held and considered as part and parcel of the reality therein," he discharged them "of all confiscability under the special clause which they are libeled upon, as also under all our laws for the more effectual abolition of the Slave Trade."[49] Gloster's lengthy sentence dismissed any legal relevance of the slave-trade ban for fugitives. Gloster stressed that Parliament "never could design, or intend … that the doors of the British Colonies should be open to 'voluntary Self Importers' which these five objects of the present prosecution, evidently are." Himself a Trinidadian plantation owner who hailed from an Antigua planter family and was on friendly terms with Guadeloupe's governor, Gloster embraced intercolonial planter solidarity against self-emancipation: "Since I have known the Colonies now near 40 years, I have always seen fugitive negroes when claimed, restored, on both sides. They were not permitted to be at large, but liable to arrest and committal to gaol by any person."

Bridgwater appealed to the High Court of Admiralty of England. He and Gloster, however, both made their cases beyond the confines of the courtroom. Gloster published his sentence in the local newspaper, countered by a fiery response from a pseudonymous Bridgwater.[50] Bridgwater also disseminated his view to the customs officers "in all the Islands throughout," since they would most likely also face foreign fugitives.[51] As the battle between Bridgwater and his Dominican foes descended into personal invectives and threats, libel suits, and allegations of treason, the legal case at its core quickly spun out of their initiators' control.

Ambiguity and Freedom: Rethinking the Slave Trade Act, 1822–1825

The debate about foreign fugitives and antislavery legislation moved to Great Britain, where government officials, lawyers, and abolitionists got involved. In response to local conflicts and pressure from outside, the metropolitan government sought to provide clarity, yet instead, they came to stare at an ever-growing legal conundrum. As they began to systematize the issue, government officials quickly got entangled in a series of complicating problems, such as whether the place of birth of the fugitives played a role, and how anti-slave-trade legislation, British common law, and interstate law intersected. Instead of finding an easy exit, they transformed and amplified the legal issue of fugitives in a way that went beyond what the local initiators had imagined or intended.

The Dominica case quickly reached the highest-ranking law officers, the Crown Lawyers. Consulted by the Commissioners of the Customs, they declared in mid-1822, "Fugitive slaves from foreign colonies do not, in any case, come under the provisions of the [Slave Trade Act] and cannot be proceeded against under that

[48]Court Proceedings, 19 July 1821, 18 Aug. 1821, 18 Sept. 1821, and 25 Oct. 1821, NAD, CVA, Minute Book 1821.

[49]Court Proceedings, 3 Nov. 1821, NAD, CVA, Minute Book 1821; Judge's Sentence, TNA, CUST 34/368.

[50]*Dominica Chronicle*, 14 and 21 Nov. 1821.

[51]Bridgwater, circular letter, 23 Nov. 1821, TNA, CUST 34/368.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

Statute."[52] Based on this opinion, the Commissioners decided not to "prosecute [Bridgwater's] appeal on the part of the Crown against the acquittal of the 5 negroes before mentioned" and thus to uphold Judge Gloster's sentence. Gloster felt jubilant about what he considered a vindication.[53] Yet, the Crown Lawyers' opinion came with a major twist: "fugitive Slaves from foreign colonies cannot be removed from the colony or settlement to which they have come."

The Crown Lawyers' opinion was based on the observation that fugitives had not been included in the list of exemptions from the slave-trade ban. The result of this omission was that the prohibition of being removed "as a Slave or Slaves, or for the purpose … of being dealt with as a Slave or Slaves" (51 Geo. 3 c. 23) automatically extended to them, as the Colonial Office's leading legal officer later confirmed: "The case of fugitive slaves arriving in British colonies from Foreign colonies, is plainly within the scope of the general prohibitions [of the Slave Trade Act]. That case is not included within the subsequent relaxations. Consequently, a Fugitive Slave cannot, without a violation of this Statute, be removed from the British colony at which he may arrive."[54] The fact that they were neither exempted from the slave-trade ban nor explicitly included in its provision had another major consequence for the fugitives' status: they were to be treated as free persons, unlike "liberated Africans," whose freedom was highly restricted, and very much unlike what Maxwell and Bridgwater had intended.

The Crown Lawyers had issued the same explosive opinion already three years before, when Maxwell had pushed the Colonial Office to weigh in on the case of George, Ferdinand, Alexander, and Laurent in May 1819: "The case of runaway slaves may not have been foreseen, and if such cases should become so frequent as to be attended with public inconvenience, they may require to be made the subject of special Legislative Enactments; but under the Law as it now stands we do not think that the Governor will be warranted in giving up these slaves on permitting any restraint on their personal liberty without their consent."[55] In view of its sweeping consequences, Bathurst had kept this opinion confidential and instructed Dominica Governor Wittingham that "at the same time that you yield a punctual obedience to the provisions of the law … that you should refrain for the present at least from any public declaration of it."[56]

With its reiteration in a trial in 1822, and with Maxwell now based in Saint Kitts, it became increasingly hard to keep this legal opinion from spreading. While officials were still grappling with a response, actors on the spot continued to break new ground. Individuals, both enslaved and colonial officials, set out to define "protection" and freedom granted by the Slave Trade Act from below. From Nevis, the Colonial Office received word that Governor Maxwell set a foreign fugitive named Thomas free, "in a state of unqualified liberty."[57] In contrast to Bridgwater and Maxwell, many other local authorities seemed to ignore, as long as possible, the new understanding of the status of foreign fugitives. In 1824, Colonial Office legal counsel James Stephen stated

[52]Commissioners of the Customs to Bridgwater, 22 Aug. 1822, TNA, CO 71/60, also the quotes that follow.
[53]Gloster to Bathurst, 24 Oct. 1823, TNA, CO 71/60.
[54]Stephen, Memorandum [ca. 1825], TNA, CO 318/99.
[55]Christopher Robinson, Robert Gifford, and John Singleton Copley to Bathurst, 22 Sept. 1819, TNA, CUST 34/368.
[56]Bathurst to Wittingham [confidential], 11 Oct. 1819, TNA, CUST 34/368.
[57]Stephen to Wilmot-Horton, 20 Dec. 1823, TNA, CO 318/94.

that "the present State of the Law is hitherto but very imperfectly known and that the Evil [resulting from it] is therefore but in its infancy"; in other words: colonial governments continued to return foreign fugitives to those proprietors who claimed them.[58]

As fugitives continued to arrive, conflicts on the ground spread and pressure from foreign states increased, the government's strategy of containing the legal problem by simply concealing it became untenable. Behind the scenes, Colonial Office officials scrambled to find a way to close the legal loophole highlighted by the Crown Officers. While this solution had to align with abolitionist legislation, the main aim was to fight the destabilizing effects from growing communities of de facto free fugitives: "The preservation of the established system of Government must always be an object of paramount importance either in passing Laws, or in framing national compacts.… Slavery forms a most important, and for the present at least, an essential part of the Colonial Institutions of both Nations [France and Great Britain]—that any offence (however venial regarded) which directly tends to the abolition of that State by abrupt and violent means must therefore be unavoidably suppressed with severity."[59] While the object—the removal of fugitives, and ideally their return to their enslavers—was clear, the means were not: "There is great difficulty in coming to any satisfactory decision with regard to the manner in which Slaves from Foreign Colonies with whose Government we are in amity, ought to be disposed of."[60]

Various proposals were put forth: The straightforward way would be "to alter the present state of the Law" by Parliament, either by exempting enslaved fugitives from the Slave Trade Act or by introducing "a Clause enabling His Majesty to make any Treaties with Foreign powers which may appear to Him necessary for the mutual restitution of fugitive slaves."[61] This was the solution that foreign governments and the planter lobby pushed for. The Colonial Office had prepared such a bill as early as 1823, but after informal talks with legislators, including abolitionist Stephen Lushington, principal author of the Consolidated Slave Trade Act, it was shelved. Fugitives (from "lawful" slavery) were not addressed in the major revision of the Slave Trade Act in 1824.

Under pressure, the Colonial Office circulated a directive on the legal situation of foreign fugitives among all the governors in late 1825.[62] With no legislative solution in sight, the government reiterated what had been stated by the Crown Lawyers more than five years before: that fugitives should no longer be removed as slaves or to be treated as such, which in practice meant the end of restitution. At the same time, they advised the governors to close the sanctuary by expelling the fugitives as unwanted foreigners. Governors and legislatures were encouraged to make "provision, if such do not already exist in their Laws, for enabling you to cause the removal of any aliens of this description to such of His Majesty's Colonial possessions as His Majesty may be pleased to direct."

The 1825 instructions did nothing to close the controversy over enslaved fugitives. They neither legitimized Maxwell's, Bridgwater's, and their allies' push to expand the

[58]Minute [Stephen, ca. 1824], TNA, CO 318/101.

[59]Stephen, "Statement," Apr. [ca. 1825], TNA, CO 318/99.

[60]Minute [Stephen, ca. 1824], TNA, CO 318/101.

[61]Stephen, "Statement" [Apr. 1825], TNA, CO 318/99.

[62]Bathurst, circular letter, 31 Dec. 1825, Archives des Affaires Etrangères, La Courneuve (henceforth AAE), Mémoires et Documents (MD), Amérique, vol. 61, also the quote that follows.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

profitable antislavery system, nor did they restore the practice of restitution. Rather, they recognized how hard it was to undo the unintentional free-soil sanctuary. With this admission, the instructions laid bare the larger legal problems that had taken shape as a consequence of the local uses of the ambiguous slave-trade legislation. By acknowledging the legal loophole and making it a problem of migration control, the 1825 instructions spawned debates on three interlocking topics: the actual scope of the slave-trade abolition and jurisdictional power founded upon it; property and sovereignty rights in colonial, imperial, and inter-state law; and the status of subjects and aliens.

A Sanctuary to Crime in the Making? Freedom, Protection, and Jurisdiction

The reluctant acknowledgment of the legal grey zone for enslaved fugitives had been forced upon the metropole by local interactions between fugitives and low-ranking officials and by attempts to expand the lucrative antislavery system. Amplified into an unintentional free-soil policy, the issue of non-restitution circled back to the Caribbean. Both foreign fugitives and low-ranking officials felt emboldened by the 1825 instructions. Yet the actual meaning and effects of non-restitution, and the power to define its terms, remained unresolved, setting the stage for intricate negotiations and power struggles across the British Caribbean.

Increasing numbers of enslaved people in the French, Danish, and Dutch Caribbean seized the opportunity offered by Great Britain's unintended free-soil policy. Within a few years, decades-old routes of flight from slavery reversed themselves: The British Virgin Island of Tortola, for example, once a launching pad for flights to Sankt Thomas (Saint Thomas), turned into a favorite destination of fugitives from the Danish West Indies,[63] and a prime site where belonging and freedom under British anti-slave-trade law were renegotiated. In places like Tortola, non-restitution was transformed into active "protection." In close interaction with fugitives, Tortola's Customs Officer Robert Claxton and his colleagues gradually expanded the notion of "protection." When informed that a man named Charles Bryan, who had escaped from Danish Sankt John (Saint John), had been arrested in August 1829 as a runaway, Claxton immediately put Bryan under his protection. Based on the 1825 reading of antislavery legislation, he wondered whether protection should extend to all those "on the Island in a similar situation" and "seek the prevention of other runaway Slaves not under my protection returning to their owners."[64]

While in this instance Claxton would extend protection to people who may not have sought it, he more often responded to individuals seeking him out. Such was the case of an African woman named Margaret Moodley in October 1829. Moodley had been enslaved in Dutch Sint Eustatius and escaped to Saint Christopher (Saint Kitts), where, according to her account, she became "one of those African Negroes that were given out for seven years."[65] While this suggests that she had been apprenticed, she had apparently never been condemned in court. How vulnerable the unregulated,

[63]Johan Frederik Bardenfleth, Governor-General, Danish West Indies, to Frederick VI, 16 Nov. 1826, Rigsarkivet, Copenhagen (henceforth RA), Generalguvernementet Dansk Vestindien (GG-DVI), Kopibøger for skrivelser til kongen, 2.7.2.

[64]Claxton to Governor Maxwell, 14 Aug. 1829, TNA, CUST 34/817.

[65]Moodley to Claxton, 20 Sept. 1829, TNA, CUST 34/817, also for the quotes that follow.

and uncertified, freedom granted to fugitives was became clear when Moodley was kidnapped by a man and forcibly returned to Sint Eustatius, sent as a slave to Saint Thomas, then to be resold to Puerto Rico. Turning to Claxton, she forcefully rejected claims by her kidnapper that "the Custom House Officer in deep Bay [Dieppe Bay?]" had confirmed the legality of her re-enslavement. In doing so, she drew on information collected from various sources, both official and informal. Referring to a statement by the governor's secretary she obtained when "I used to stop in Governor Maxwell's Yard," she was "protected […] by the English Law" as long as she remained in a British colony. Yet Moodley also tapped into informal networks of communication when she planned her escape and turned to Claxton upon the advice of "many of my country people that are here from Tortola."

Many other cases also showcase the importance of inter-island networks and the role of what Julius Scott characterized as the "Common Wind"—informal communication among enslaved and free Black communities across the Caribbean—in spreading information about the new opportunities for intercolonial maroons.[66] In mid-1820s Dutch Sint Maarten, for example, rumors circulated "that [Anguilla Customs Officer] Mr Hay was protecting the Slaves that came over."[67] In the close-knit world of the Caribbean, family ties also played a crucial role. Many fugitives from French Saint-Martin, for example, joined close family members, including their parents, in nearby Anguilla.[68] In their effort to seize these opportunities, enslaved fugitives would also join racially mixed groups comprising Black, mixed-race, and white persons, who for various reasons sought to hide themselves in British territories, or joined forces with local enslaved individuals.[69] And these opportunities for some offered new business opportunities for others. In 1830, French authorities in Martinique saw evidence that free Black and mixed-race merchants from Saint Lucia involved in coastline trade (*cabotage*) had set up a business of "organized hiring, in which deck boats were sent, at night, to the coasts of our islands and receive on board the deserters and transport them to the British possessions."[70]

Individuals like Margaret Moodley and Charles Bryon in Tortola could easily count as fugitives. Less obviously categorizable escapees also used the legal grey zones of antislavery, further pushing the boundaries of who might claim "protection." At the time Moodley reached out to Claxton, the customs officer was also sought out by Charles, Little Jimmy, Nero, Nicholas, Kitty, and William Fisher, five enslaved men and one enslaved woman from Saint John. Unlike Moodley, Bryon, and many others, they had not made the journey between the islands clandestinely, but in the open. They came from a plantation owned by Elizabeth Braithwaite Threlfall, who also had a plantation in Tortola. For her inter-imperial commute between her estates, Threlfall

[66]Julius S. Scott, *The Common Wind: Afro-American Currents in the Age of the Haitian Revolution* (London: Verso, 2018). See also Chinea, "Quest for Freedom," 76–77.

[67]Affidavit Deborah Hodge, 12 May 1829, TNA, CUST 34/731.

[68]Affidavit Bacchus Nile, 30 Apr. 1829; Affidavit Deborah Hodge, 12 May 1829, TNA, CUST 34/731.

[69]François de Bouillé, Governor, Martinique, to Christophe de Chabrol-Crouzol, Minister of the Navy, 27 Oct. 1827, AAE, MD Amérique, vol. 61; Bridgwater to Commissioners of the Customs, 15 Apr. 1822, TNA, CUST 34/368.

[70]Note to British Ambassador, Paris, 1 Nov. 1830, AAE, MD Amérique, vol. 61. See also Directeur général de l'intérieur, Martinique, Report to Governor, 1 Sept. 1830, Archives nationales d'outre-mer, Aix-en-Provence (henceforth ANOM), MAR6. All translations are my own.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

used enslaved mariners, benefitting from an exemption in the slave-trade ban for domestics and enslaved boatmen. On 3 October 1829, Charles and Little Jimmy, who were sent over to Tortola to deliver a letter, escaped to the Customs House, claiming ill-treatment and hard labor as field slaves. Claxton seized them for violation of the slave-trade ban, and two days later, when Threlfall came over to reclaim them, Nero, Nicholas, Kitty, and William Fisher also successfully sought his protection. Despite Threlfall's denial of the allegations, the customs officer chose to side with the "'ipse dixit' of the slaves themselves whose grievances I felt bound as Collector to attend to."[71] A former plantation manager from Saint John partly corroborated the escapees' claims. Since there was "no rule by which to determine how much labour by a slave is sufficient to render him in contemplation of Law as *servus rusticus*," the King's Proctor in Tortola ruled that only Kitty and William Fisher were to be returned to Saint John.[72]

Fugitives and low-ranking officials across the British Caribbean explored the legal loophole of intercolonial maroons, blurring and resetting the boundaries of who could claim freedom, and under what conditions. Numerous reports of growing free communities of fugitives, some completely at large, others mixed up with "liberated Africans" or incarcerated at great expense, reached London in the late 1820s and early 1830s. Within a few years, the group of "foreign fugitive slaves … in the woods of Dominica"—the colony where it had all begun in 1819—had reportedly risen to three hundred people.[73]

Officials like Maxwell, Bridgwater, and Claxton had helped open the fugitives' legal pathway to freedom, but under their self-interested terms. Now, they wrestled with the consequences of how the government's understanding of the law had changed. As it removed the fugitives from legal procedure of abolition, this understanding of the law upset antislavery's political economy as Maxwell had known it. Without condemnation by trial, seizing agents could not obtain bounties. And with no right to turn them into soldiers or bonded laborers, officials did not know what economic terms their "protection" would follow. Having established themselves as "protectors" of fugitives, Tortola's customs officers were regularly at a loss about what to do once they had seized individuals. Lacking any official guidance, they began to consider "these people as under the immediate care of the Revenue Officers and as such afforded them protection," thus granting them assistance and confronting their superior Maxwell not only with the loss of profit but also a potential drain on state revenues.[74] Recasting "protection" of fugitives as a kind of "superintendence over them to prevent their becoming a burden upon the public," Maxwell regularly reminded his officers that fugitives "are not to be supplied by you with any pecuniary assistance on the part of the crown, which extreme necessity alone would justify."[75] Fearing the uncontrollable dynamics of the fugitives' legal grey zone, Maxwell was wary of creating a financial "inducement to the foreign Negros to make their escape to Tortola or any other British Island, if they had the prospect of being

[71]Claxton to Maxwell, 12 Oct. 1829, TNA, CUST 34/817.

[72]Henry Woodcock to Claxton, 24 Oct. 1829, TNA, CUST 34/817.

[73]Note, H. Taylor, West India department [ca. 1827], TNA, CO 318/103.

[74]Henry Bentall, Customs Officer, Tortola, to Commissioners of the Customs, 10 Sept. 1827, TNA, CUST 34/816.

[75]Maxwell to Henry Bentall, Customs Officer, Tortola, 26 Dec. 1826, TNA, CUST 34/816, also for the quote that follows.

maintained in idleness." Other customs officers simply ignored the instructions of the 1825 circular and their superiors, and turned fugitives, via the Vice-Admiralty courts, into "liberated Africans."[76]

Maxwell was concerned with financial burden and loss of profits. Local assemblies and planter communities voiced much more fundamental opposition against an interpretation of the law they saw as an existential threat. They and their agents assailed the government with petitions, warning that the British Caribbean was turning into "a sanctuary to crime," or as Foreign Secretary George Canning put it, "a receptacle to idle and rebellious slaves."[77] The emergence of un-returnable and un-confiscable, hence de facto free communities of foreign fugitives in their midst constituted, in their eyes, a major threat to the social order. Dominica's Judge Gloster referred to them as a social group "without religion or moral discipline, and under no sort of superintendence or restraint…, [an] anomalous population, … an idle, drunken, noisy, quarrelsome, fighting raw of no use."[78] (By contrast, Customs Officer Bridgwater saw the same group as "of a laborious and industrious turn,… fully competent to provide themselves all the year round if [lands] were given to them for that purpose."[79])

Planters' representatives in Europe chimed in, painting the free fugitive communities as a dangerous thorn in slavery's moral order: "seeing a recently imported African enjoying the same privileges of freedom from having absconded from his Master in a French Island during Peace, will certainly have a dangerous effect in the minds of the best disposed slaves, who cannot be expected to reason accurately upon the principles on which these fugitive Africans were freed."[80] Assemblies declared that "they never will be parties to the spoliation of the property of the Inhabitants of the French Islands in their neighbourhood by Sanctioning the emancipation of slaves who have left their Owners."[81] The Colonial Office concurred that the fugitives "have in some cases proved a heavy and unprofitable burthen": "These slaves have exhibited to the slaves of the British colonies a dangerous example of the benefits to be derived from escaping from Slavery, imbuing in their minds the opinion that such conduct is in some cases at least not a crime to be visited with punishment but rather a meritorious act, to be compensated by the highest possible reward."[82] Reports of an increase in fugitives from plantations in British Saint Kitts, for example, seemed to confirm these concerns.[83]

Whether the issue of enslaved fugitives escalated into an open rift depended on a variety of factors, including on the degree to which a governor, a customs officer, or an attorney-general was aligned with the interests of the planter elite or not. Beyond local variations, however, the conflict over enslaved fugitives became enmeshed in

[76]Charles Woodley and William Henry Male, Customs Officers, Saint Kitts, to Commissioners of the Customs, 3 May and 12 July 1832, TNA, CUST 34/731.

[77]Memorial of the Agents for Colonies in the West Indies, 12 May 1827, TNA, CO 318/103; Canning to Prince de Polignac, 11 Nov. 1825, AAE, MD Amérique, vol. 61.

[78]Gloster to Commissioners of Legal Inquiry, 18 Apr. 1822, TNA, CO 318/81.

[79]Bridgwater to Commissioners of Legal Inquiry, 18 Apr. 1822, TNA, CO 318/81.

[80]Memorial, 12 May 1827, TNA, CO 318/103.

[81]Assembly of Saint Vincent, Address to the Governor, 6 June 1832, TNA, CO 260/49.

[82]Stephen, "Fugitive Slaves," 7 Nov. 1827, TNA, CO 318/103.

[83]Ibid.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

institutional power struggles that played out across the British Empire.[84] At the core of these struggles lay questions of legal uniformity and the uses—and limits—of executive power. Customs officers like Bridgwater, Claxton, and Antigua's George Wythe did not hesitate to claim sweeping powers derived from what they considered a quasi-sacred antislavery mandate. They seized fugitives not only from foreigners but also from the custody of magistrates, marshals, and governors. In doing so, they turned the Customs House into a center of power that defied and antagonized the highest levels of colonial government.

Assemblies, Privy Councils, local magistrates, and judges sought to curtail the jurisdictional claims by these customs officers through counter-seizures. Rarely did the larger constitutional conflicts at stake surface so openly as in Antigua in 1825. On the first day of that year, nine male fugitives from Guadeloupe were taken up on the island of Barbuda and brought to Antigua, where they were seized by Collector of Customs Wythe with the plan to adjudicate them as "very recently" imported Africans.[85] As the first major conflict of this type in Antigua, it stirred shockwaves among the island's elite that echoed those in Dominica in 1819–1820. Planters' representatives in the Assembly and the Privy Council were up in arms against an action with "consequences highly prejudicial to the welfare of this and the neighbouring Islands."[86] Urged by his Privy Council, Commander-in-chief Samuel Athill prevented the trial and readied himself to seize the fugitives from the customs officer and return them to Guadeloupe.[87]

The ensuing legal battle pitted two members of one of Antigua's most influential families against each other: Advocate and Attorney-General William Musgrave, arguing on the customs officer's side, and his brother, Solicitor-General Richard Musgrave, making the case for restitution. Very quickly the dispute centered on the question of who was allowed to use royal prerogative, the king's supreme authority that unified the empire in one legal space.[88] Advocate-General William Musgrave argued for bringing the fugitives to the Vice-Admiralty Court, based on "the powers with which [Wythe] is vested by the Lords Commissioners of His Majesty's Treasury, and the Honorable Commissioners of His Majesty's Customs."[89] In a nod to antislavery's political economy, he also cautioned that restoration without trial would deprive the seizing officers of their bounties. His brother served as counsel for those seeking to restore the superior authority of the Commander-in-chief. He argued that there was "nothing which militates against the right of the Crown to restore fugitive slaves to French owners." Rather, "all considerations of Public Policy" made it necessary for the Commander-in-chief to wield executive power against a judicial process.[90] Both men wanted to force a local decision, either trial or extrajudicial restoration. They had to accept the decision of the commander-in-chief to ask the

[84]Benton and Ford, *Rage for Order*; McKenzie, *Imperial Underworld*.

[85]Whyte to Athill, 10 Jan. 1825, TNA, FO 27/345.

[86]Privy Council, Antigua, Meeting, 19 Jan. 1825, TNA, FO 27/345.

[87]Athill to Bathurst, 10 Feb. 1825; Board of Council and Assembly of Antigua, Petition, 9 Mar. 1825, TNA, FO 27/345.

[88]On the imperial dimension of royal prerogative, see Paul Halliday, *Habeas Corpus: From England to Empire* (Cambridge: Belknap Press, 2010).

[89]William Musgrave to Athill, 12 Feb. 1825, TNA, FO 27/345.

[90]Richard Musgrave to Athill, 28 Jan. and 12 Feb. 1825, TNA, FO 27/345.

metropolitan government's opinion.[91] What may appear as a local family drama was in fact a fierce debate about essential parameters of imperial governance on a global scale.

Property, Sovereignty, and Inter-State Law

The outcry over the legal conundrum in Britain's Caribbean colonies also came from their foreign neighbors. Until the mid-1820s, the mutual practice of returning intercolonial fugitives continued unabatedly, even to and from British colonies. That slavery-based colonies would embark on an inflexible non-restitution policy was unheard of. That non-restitution came about as the unintended byproduct of metropolitan legislation added to the consternation of foreign officials and planters, who struggled to make sense of what struck them as a "very odd" policy.[92] The fugitives thus sparked a fierce debate about the ill-defined connections between enslaved fugitives, property claims, and restitution in inter-state law.

Starting with the earliest cases in Dominica, French governors protested British unwillingness to return fugitives, and from 1823 the French metropolitan government did so as well. The Danish and the Dutch governments followed suit. Only a few years after they had objected to Haiti for not returning men who had escaped from Jamaica in 1817, British authorities found themselves in the dock for breaching "immemorial" pacts between European colonies.[93] Had Guadeloupe and Martinique not recently returned twenty-two enslaved escapees claimed by British enslavers in Dominica, Montserrat, Saint Lucia, Grenada, and Antigua?[94] And did the governor of Danish Sankt Croix (Saint Croix) not render the English government "a considerable service" by returning the enslaved crew of a shipwrecked sloop to Saint Lucia?[95] Other objections were less diplomatic. Planters in the Danish West Indies, for example, accused Tortola authorities of using a "kidnapping code" to promote the "depopulation not only of St John, but of all their Islands" and of supplying a "weekly allowance of money" to slaves who deserted foreign plantations.[96]

The British government claimed to be receptive to the "much earnest remonstrance and discontent on the part of Foreign States holding West India Colonies,"[97] but it could not, as Foreign Secretary Canning explained to French Ambassador Jules de Polignac in 1825, "according either to the maxims of our common Law, or to the Letter of positive Statute," comply with the longstanding practice of restitution.[98] Sympathy for foreign complainants was even more pronounced in intercolonial diplomacy on the ground. When John Laidlaw, head of a local planter family, became acting governor of Dominica in 1827, he made the issue of enslaved fugitives a top priority. He assured his counterpart in Guadeloupe that he "would do my utmost

[91]Athill to Bathurst, 10 Feb. 1825, TNA, FO 27/345.

[92]W. A. van Spengler, Governor, Sint Eustatius, to Cornelis Theodorus Elout, Colonial Minister, 10 Oct. 1825, Nederlands Nationaal Archief, The Hague (henceforth NL-NaHa), 2.10.01_4313_0112.

[93]Ferrer, "Haiti, Free Soil, and Antislavery."

[94]Polignac, Memorandum, Nov. 1824, TNA, FO 27/345; Maxence de Damas, Foreign Minister, to Polignac, 11 Oct. 1824, AAE, MD Amérique, vol. 61.

[95]Peter von Scholten, Governor-General, Danish West Indies, to Frederick VI, 11 Oct. 1828, RA, GG-DVI, Kopibøger, 2.7.2.

[96]"Extract from Mr Manning's letter," Saint John, TNA, CO 318/103.

[97]Stephen, "Fugitive Slaves," 7 Nov. 1827, TNA, CO 318/103.

[98]Canning to Polignac, 11 Nov. 1825, AAE, MD Amérique, vol. 61.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

to put an end to the abuse of which you have complained, and against which I have made energetic representations to the government of His Royal Highness, at the same time asking for orders that will put me in a position to dispose of the fugitives currently here."[99] He ordered the incarceration of all fugitives on the island, reinforced coastline surveillance, and shared intelligence from arrested fugitives "so that your Excellence can take every necessary step to prevent others from imitating their example."[100] But Laidlaw, whose proclamations were published in Martinique's newspapers,[101] waited in vain for new instructions that would allow him to resume restitution.

Foreign governors and diplomats castigated non-restitution as a breach of time-honored practice, of "traditional" or "general laws" governing relations between Caribbean colonies. French diplomats and government officials regularly accused Great Britain of a "formal violation of the Law of Nations [that] should not be tolerable among civilized nations."[102] They saw this violation as twofold. First, it was "a violation of property as it takes slaves from their lawful masters,"[103] hence "repealing" the fundamental "right of property."[104] Second, it was a violation of sovereignty, since "the English government would claim for itself the right to police our colonies [*établissements*], the right to judge the status of the slave, his origin, and the time of his introduction into the colony."[105] This "false interpretation" of the British slave-trade legislation would inevitably lead to the destruction of the whole plantation complex: "One power would only need to abolish slavery … in its overseas possessions to turn itself into the receptacle of rebel slaves. This would create a predicament from which no colony would be safe."[106] Martinique's governor invoked the "dreadful time" of "the *terreur* organized in the Antilles in 1794," when revolution ended slavery.[107] And the French Foreign Ministry considered Great Britain even less collaborative than the pariah state Haiti, whose "current rulers … return to colonies whose metropoles have relations with them, and in particular to the colonists of Jamaica, foreign slaves who are found in the extent of their government."[108]

The "Law of Nations" was not just invoked by those pushing for restitution, however. Abolitionist Stephen Lushington made clear to government lawyers that to his eyes "by the Law of Nations no State was bound or even entitled, to send back Fugitives to a Neighbouring friendly State unless they were accused of crimes of such atrocity (such for example as Murder) as to render them *Hostes humani generis*; or unless some particular Treaty exacted their restitution," and that "the crime of escaping from slavery could not be regarded as an offence of any peculiar

[99]Laidlaw to Baron des Rotours, Governor, Guadeloupe, 1 Sept. 1827, AAE, MD Amérique, vol. 61.

[100]Laidlaw to Rotours, 9 Oct. 1827, AAE, MD Amérique, vol. 61.

[101]*Gazette de la Martinique*, 1 and 8 Aug. 1827.

[102]Bouillé to Chabrol-Crouzol, 27 Oct. 1827, AAE, MD Amérique, vol. 61. See also Rotours to Chabrol-Crouzol, 26 Aug. 1828, AAE, MD Amérique, vol. 61; Stephen, "A Statement of the Various Defects which Have Been Pointed Out in the Consolidated Slave Trade Act" [Apr. 1825], TNA, CO 318/99.

[103]Damas to Polignac, 11 Oct. 1824, AAE, MD Amérique, vol. 61.

[104]Polignac to Adrien Laval, Ambassador to London, Apr. 1830, AAE, MD Amérique, vol. 61. See also Admiral Jacob, Governor, Guadeloupe, to Athill, 25 Nov. 1825, TNA, FO 27/345.

[105]Damas to Polignac, 11 Oct. 1824, AAE, MD Amérique, vol. 61. See also Jacob to Athill, 25 Nov. 1825, TNA, FO 27/345.

[106]Damas to Polignac, 11 Oct. 1824, AAE, MD Amérique, vol. 61.

[107]Bouillé to Chabrol-Crouzol, 27 Oct. 1827, AAE, MD Amérique, vol. 61.

[108]Damas to Polignac, 11 Oct. 1824, AAE, MD Amérique, vol. 61.

malignancy in its own nature."[109] French officers retorted that he was confusing conventional (i.e., treaty-based) law and "traditional law," with the latter governing enslaved fugitives.[110]

Inter-imperial controversy was also beset with confusion. While non-restitution was born out of an absence of explicit authorization, it quickly came to be seen by foreign officials as a universal right of free soil and asylum. Had not "an act of the King of England in Counsel declared free every slave, from whatever country he may be, once he manages to touch British soil"?[111] Was there now a "right of asylum that deserters, people of color and others, find without any punishment in the territory of the English colonies"?[112] Even among British officials, confusion reigned. They revisited the famous Somerset decision of 1772, (incorrectly) understood as granting freedom to "any Slave landing in England," and wondered whether this right now extended across the empire.[113] The Crown Lawyers did not clarify matters. While they had ruled out restitution to foreign territories, they did not prohibit the return of people in the opposite direction. British enslavers continued to reclaim enslaved men and women who had escaped into territories under foreign jurisdictions and foreign authorities continued to return them. Local officials did not seem to find any contradiction in this continued inflow of restituted fugitives. The Crown Lawyers concurred in that practice. When in mid-1825 a group of enslaved men escaped from British Honduras (Belize) to now-independent Guatemala, where slavery had been abolished, they ruled, "It could not have been the *intention* of the Legislature that [the Slave Trade Act] should apply to such a case, for the effect of this construction would be that if a slave, in any of our colonies could succeed in passing the boundary for a distance however small, it would become unlawful to retake him and bring him back to his former state of slavery."[114] The logic of this flexible interpretation of the law escaped even well-meaning officials who could "neither concur in their opinion…, nor understand the reason assigned for it."

In the absence of a turnaround by London, Dutch and French authorities tried to crack down on continuing marronage.[115] They reinforced and militarized the surveillance of their coastal borders, and Martinique and Guadeloupe even suspended inter-island coastline trade.[116] Stories of dramatic flights by their slavers and captains from British customs officers reached Europe. One example was that of a shipwrecked *caboteur* from Guadeloupe who clandestinely removed himself and four enslaved crewmen from the custody of Montserrat's customs officer in 1827.[117] Missions to "convince" fugitives to return met the resistance of the fugitives or the pushback from local courts.[118] As voluntary returns into slavery

[109]Stephen, "Statement" [Apr. 1825], TNA, CO 318/99.

[110]Polignac, Memorandum, Nov. 1824, TNA, FO 27/345.

[111]Henry de Freycinet, Governor, Martinique, to Baron d'Haussez, Minister of the Navy, 16 Jan. 1830, AAE, MD Amérique, vol. 61.

[112]Laval to Polignac, 15 Apr. 1830, AAE, MD Amérique, vol. 61.

[113]Minute [Stephen, ca. 1824], TNA, CO 318/101; Planta to Wilmot-Horton, 5 Aug. 1825, TNA, CO 318/99.

[114]Stephen, "Fugitive Slaves," 7 Nov. 1827, TNA, CO 318/103, also the quote following.

[115]Rotours to Chabrol-Crouzol, 6 Apr. 1827, ANOM, GEN631, doss. 2737.

[116]Arrêté, Martinique, 3 Aug. 1830, AAE, MD Amérique, vol. 61.

[117]Pierre Numa, Déclaration du naufrage, 28 Aug. 1827, AAE, MD Amérique, vol. 61.

[118]Dupotet to Rigny, 11 Aug. 1830 and 25 Dec. 1831, AAE, MD Amérique, vol. 61; Scholten to Frederick VI, 10 Sept. 1833, RA, GG-DVI, Kopibøger, 2.7.3; "Report of the Select Committee on the Subject of the Repeal of Certain Clauses in the Slave Trade Consolidated Bill," Apr. 1828, TNA, CO 318/104.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

rarely worked, planters and authorities would rely on force. This culminated in an incidence when a Danish war ship chased a boat with seven fugitives into British maritime space, killing one and forcibly returning two others.[119]

In the mid-1820s, French, Danish, and Dutch colonies began to retaliate and refused to comply with demands for restitution from British planters.[120] French authorities were said to incentivize enslaved individuals to flee from British plantations, although they admitted that "as things stand, it is not likely that slaves from English possessions come to seek asylum in our colonies."[121] They began to indiscriminately incarcerate people of African descent or origin from British colonies unable to prove their freedom. While some British officials had passed fugitives as "liberated Africans," free Blacks—including "liberated Africans"—now languished in Danish and French prisons as "runaways."[122] While retaliatory measures did not prompt a turnaround in British policy, it provided a lever in interactions between colonial governors, who could couch restitution as mutual "exchange." The largest of such "exchanges" occurred after dozens of fugitives from Antigua were captured in French Saint-Martin in spring 1828. The governors of Saint Christopher (Saint Kitts) and Guadeloupe agreed to keep this interaction in the hands of low-level administrators in Anguilla and Saint-Martin, respectively. As part of this "exchange," British authorities returned at least fifty fugitives "free of charge" and with the promise to "get hold of the rest of our refugees," as the commander of Saint-Martin enthusiastically reported.[123] Transactions like these happened in clear violation of the metropolitan reading of the anti-slave-trade legislation. British officials sought to lend them a semblance of legality by claiming that "the slaves that were tried and condemned by the Vice-Admiralty Court of St. Christopher" were protected from it and that the receiving officials were asked to "not treat them with rigor."[124]

French officials saw transactions like these as models for an interim solution, keeping statutory law, Parliament, and metropolitan public opinion at bay. Through "tacit approval" the "two governments would only verbally agree to authorize officials in their respective colonies to conclude, on their private authority, the exchange of slaves seeking asylum in the islands under their control."[125] Officials of other colonial powers also sought to build on transactions like these.[126] Yet while they looked in the other direction in particular cases, the British government would not commit to "exchanges" as models for general practice, for they would go against the new understanding of the slave-trade ban. Hence, in the late 1820s, pro-slavery observers on all sides feared that the policy precipitated by the "novel case" in

[119]Scholten to Christian VIII, 11 Aug. 1840, RA, GG-DVI, Kopibøger, 2.7.3; Viscount Palmerston to Watkin Williams-Wyunn, 31 Dec. 1840, TNA, CO 239/66.

[120]E.g., Spengler to Elout, 25 June 1827, NL-NaHa, 2.10.01_4313_0113; Bardenfleth to Frederick VI, 3 Dec. 1826, RA, GG-DVI, Kopibøger, 2.7.2.

[121]Haussez to Polignac, 26 Mar. 1830, AAE, MD Amérique, vol. 61 (quote); Stephen, "Fugitive Slaves," 7 Nov. 1827, TNA, CO 318/103.

[122]"The Case of an 'African Apprentice' Named Jim," TNA, CO 318/81; British Embassy, Paris, to Duc de Broglie, Foreign Minister, 25 Nov. 1832, AAE, 5ADP/4.

[123]Commander, Saint-Martin, to Rotours, 22 July 1828, AAE, MD Amérique, vol. 61.

[124]President, Anguilla, to Commander, Saint-Martin, 16 July 1828, AAE, MD Amérique, vol. 61.

[125]Polignac to Laval, Apr. 1830, AAE, MD Amérique, vol. 61.

[126]Bardenfleth to Frederick VI, 3 Dec. 1826; Scholten to Frederick VI, 31 Aug. 1832, RA, GG-DVI, Kopibøger, 2.7.2.

Dominica had unleashed a dynamic of mutual destruction of the entire Caribbean system of slavery.[127] As the Colonial Office's Under-Secretary of State put it in 1827: "Something must be done."[128]

Neither Slaves nor Subjects—Restricting Protection

Throughout the 1820s and early 1830s, British officials scrambled to close the legal loophole of non-restitution-turned-protection being used by a growing number of enslaved people. They were searching for a legal way to contain the jurisdictional claims from the (self-appointed) agents of antislavery by shifting executive power away from them. The strategy of the 1825 instructions was to turn enslaved fugitives into an issue of migration control. In doing so, government officials sought to exploit an area of the law that was no less ambiguous than the anti-slave-trade legislation.

By the mid-1820s, the British government had come to the conclusion that it was "wholly impossible … to have recourse to the Legislature for the enactment of any measures to carry into effect an engagement with the Government of France" for the mutual restitution of fugitives.[129] They nevertheless continued to draft bills, while also searching for preexisting treaties with other powers.[130] The influential West India Committee included it as the crucial element in a sweeping 1828 bill to alter "certain clauses in the consolidated slave trade act … injurious to the interests of the West India Planters."[131] It won the support of then-Colonial Secretary George Murray but failed again to convince Parliament. These late-1820s initiatives saw a shift in rhetoric. Instead of insisting on enslavers' property rights and the preservation of slavery, West India lobbyists and officials couched their proposals in humanitarian terms, as concerned with "the welfare of the [British] slaves"[132]: "It is to be observed here that every principle of humanity requires that the restrictions in the act in this case [fugitives] should be amended because British Slaves have been and continue to be confined in the Port of the Island [of Sint Eustatius] under a Guard and in Hulks in the harbor under many privations."[133]

Lacking a clear path to parliamentary legislation, officials turned to the local level. Acts for the restitution of foreign fugitives passed by colonial assemblies were merely symbolic measures of defiance since the Slave Trade Act superseded them, yet two local legislative solutions were given serious consideration. One was situated in criminal law: criminalizing the act of escaping from "lawful slavery" even in foreign territories by means of "a law constituting a fugitive slave guilty of an offence punishable by transportation to the colony from whence he had escaped."[134] Such a law, however, came with a few pitfalls. A return to the foreign colony meant they would be transported "as slaves," again in violation of the new understanding of abolition legislation; dealing with fugitives by criminal law would

[127]Memorial, 12 May 1827, TNA, CO 318/103; Polignac to Laval, Apr. 1830, AAE, MD Amérique, vol. 61.
[128]Note "Fugitive Slaves" [ca. 1827], TNA, CO 318/103.
[129]Canning to Polignac, 11 Nov. 1825, AAE, MD Amérique, vol. 61.
[130]Bathurst to Canning, 26 Apr. 1826, TNA, CO 324/74; Wilmot-Horton to Planta, 15 and 16 Mar. 1825; Wilmot-Horton to Stephen, 30 May 1825, TNA, CO 324/98.
[131]"Report of the Select Committee," Apr. 1828, TNA, CO 318/104.
[132]Note, H. Taylor [ca. 1827], TNA, CO 318/103.
[133]"Observations on the Consolidated Slave Law" [ca. 1828], TNA, CO 318/104.
[134]Note, H. Taylor [ca. 1827], TNA, CO 318/103.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

also require a court trial in each case, along with the necessary evidence and expenses. Related efforts to punish fugitives for theft along the way (e.g., of a canoe) would present the same requirements, costs, and court proceedings, and thus not strengthen extra-judicial executive power.

The other local solution, which legal experts homed in on, was to employ preexisting or newly created alien laws. The regulation of alien status had undergone major changes since the 1790s, both in Great Britain and in the British Caribbean.[135] In response to the influx of refugees from revolutionary conflicts, metropolitan and colonial legislatures passed stringent measures to curb the arrival of foreign border-crossers. These acts were the first statutory controls on migration and aliens as such. On their surface, the 1793 British Aliens Act and contemporaneous alien laws in colonies like Jamaica, Saint Vincent, and Dominica shared some major features. First, Britain and its colonies adopted similar policies regarding the status of aliens. They required the registration of all foreigners upon arrival, regulated their movements within the territory, and, most importantly, included provisions for the removal of unwanted foreigners. Second, governments and legislatures emphasized that these regulations were emergency measures in response to the immediate threat by foreigners. The regulations strengthened executive power and extra-judicial procedures. Third, while alien laws usually applied to all foreigners, they also singled out particular groups. British Caribbean alien regulations generally placed their main target on border-crossers from Saint-Domingue/Haiti, in particular people of African descent, both free and enslaved.

As they were (re-)regulating alien status during the 1790s and early 1800s, colonial legislatures drew on preexisting efforts to control mobility. Long before the slave insurrection in Saint-Domingue broke out, authorities had sought to regulate foreign ship crews, and especially seamen of color, in British ports. The most important mechanisms of mobility control, however, were the laws targeting the enslaved population. Marronage had long been a major concern behind the mobility controls built into British Caribbean slave acts.[136] These acts sought to discourage and monitor the movement of enslaved individuals through passport or ticket systems. They also established punitive transportation of enslaved people to non-British colonies. Rooted in these earlier efforts, British Caribbean legislation in the 1790s and early 1800s transferred these racialized policies of control and deportation to free individuals categorized as "aliens."

In the 1820s, the struggles around slave-trade abolition would (re)connect the alien laws to the topic of marronage. As Great Britain removed its controversial metropolitan Aliens Act in 1824, officials feigned ignorance of the alien laws that proliferated across British colonies. When the metropolitan public learned about the indiscriminate use of these laws during a high-profile legal battle in Jamaica in 1823 (the so-called Lecesne-Escoffery affair), the government sought to distance itself from the openly racist provisions of these regulations.[137] At the same time, officials began to consider these very laws as the best solution to the legal loophole for enslaved fugitives. How did they come to this conclusion? Given their ambiguous status as

[135]Jan C. Jansen, "Aliens in a Revolutionary World: Refugees, Migration Control and Subjecthood in the British Atlantic, 1790s–1820s," *Past & Present* 255 (2022): 189–231.

[136]Elsa V. Goveia, *The West Indian Slave Laws of the 18th Century* (Barbados: Caribbean University Press, 1970).

[137]Jansen, "Aliens in a Revolutionary World."

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

neither included nor exempted from the Slave Trade Act, enslaved fugitives were not to be treated as slaves—and thus were free. Yet, neither were they granted some sort of British subject status: "The abolition act does not convert Fugitive Slaves of Foreign birth into British subjects; nor does it invest them with any right of residing within His Majesty's dominions."[138] They thus constituted free aliens, "and may be dealt with and disposed of in the same manner as any other aliens of free condition."

As they revisited colonial alien legislation, the Colonial Office began to appreciate the large leeway these laws provided to get rid of unwanted people of African descent or origin. Their 1825 instructions embraced the use of colonial alien laws against enslaved fugitives as official policy.[139] In a nod to legal pluralism, they recommended the strategic use of preexisting deportation regulations in Roman-Dutch law in recently conquered colonies. Encouraged by the instructions, others looked into what provisions French law would offer. Saint Lucia's administration, for example, turned to French law to remove undesired "French" individuals.[140] Such removals under colonial alien legislation, however, remained subject to the limitations of the Slave Trade Act: as they could prevent fugitives from entering the unintentional free-soil sanctuary, authorities could not directly return them to their enslavers. Extra-judicial deportation, however, provided a tool to thwart "protection" towards fugitives and discourage others to follow their example, while avoiding both Parliament and the courts.

There is evidence that the Colonial Office's 1825 policy sanctioned what had been practiced on the ground for years. In the early 1820s, Customs Officer Bridgwater raised accusations against the use of "Colonial Acts authorizing the taking up and sending off improper and suspicious persons, probably designated as Foreigners in order to afford a pretense for such proceedings."[141] And after the 1825 circular, at least some officials across the Caribbean considered (or continued to consider) alien laws an abolition-era equivalent to restitution. In Tortola in 1827, for example, a bench of magistrates used executive power based on the alien act to wrestle John William and William, two fugitives, from the custody of the customs officer, incarcerate them, and "banish" them as vagrants—directly back to their enslaver in Saint Thomas.[142]

Even if this use of the law went beyond what the British government officially allowed, officials sought to sell alien laws to foreign governments as the best—and only—solution to the legal loophole for fugitives. While they could not engage in restitution, deportation under alien law would serve as a deterrent, "a preventive measure," against future fugitives and show "the extent to which, without exceeding the bounds of duty and discretion, the British Government can meet the object of France."[143] After British officials had studied preexisting Dutch and French laws permitting the removal of individuals, French officials now began to examine British alien laws, and assess how these could be weaponized to their advantage.[144] Fairly quickly, however, they rejected them as a solution, for fugitives would be removed as

[138]Stephen, Memorandum [ca. 1825], TNA, CO 318/99, also the quote that follows.

[139]Bathurst, circular letter, 31 Dec. 1825, AAE, MD Amérique, vol. 61.

[140]John Jeremie, Chief Justice, to Governor Moore, 8 Nov. 1827, TNA, CO 253/23.

[141]Bridgwater to Bathurst, 5 July 1821, TNA, CO 71/58.

[142]G. R. Porter to Stedman Rawlins, 29 Feb. 1828, TNA, CO 239/18.

[143]Canning to Polignac, 11 Nov. 1825, AAE, MD Amérique, vol. 61.

[144]Polignac to Damas, 25 Nov. 1825; Chabrol-Crouzol to Damas, 17 Mar. 1826, AAE, MD Amérique, vol. 61; Adolphe de Bacourt, French Embassy, London, to Duke of Wellington, Colonial Secretary, 13 Dec. 1834, TNA, CO 318/119.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

free aliens, not returned as slaves. Racialized mobility controls thus did not mitigate the rising tensions with other powers.

It did not please internal critics, either. While some colonies did pass new or rewrite their alien laws, most assemblies insisted on the direct restitution of fugitives.[145] In Saint Vincent, for example, the 1825 official instructions set off a years-long standoff between Assembly and governor. The Assembly rejected any budget for the accommodation and transportation of fugitives or new alien legislation, leading to its dissolution by the governor in 1832.[146] Even those who were given supposedly sweeping authority through the alien laws were unsure about how to use it. Slave codes had been one of the blueprints for revolutionary-era alien legislation, and governors were uncertain what provisions still applied in the period of abolition. Was he still expected to whip the aliens, one governor mused, before sending them off the island?[147]

This situation lingered on when, in 1833, Parliament abolished slavery throughout the empire. While the British state claimed that this act would not apply to other nations and their systems of slavery, foreign fugitives thought otherwise. In the years following slavery abolition, British and foreign authorities registered a renewed influx of enslaved fugitives into British colonies, and thus into a legal limbo.[148] Despite their failure to deter fugitives, the Colonial Office insisted that alien laws were the only viable solution and urged colonial administrations to reinforce them with compulsory labor as punishment.[149] The continued arrival of fugitives was thus one of the reasons why the policing of "vagrants" and aliens became a tool through which colonial administrations sought to govern the era of emancipation.

Conclusions

Despite the combined efforts of British and foreign authorities, the push of foreign fugitives into British territories continued as long as there remained people legally held in slavery in the Caribbean. Throughout the 1820s and 1830s, British authorities appeared as almost helpless—sometimes gleeful, mostly furious—bystanders as people used and remodeled British law to their advantage. Officials' efforts to stem the tide had serious consequences for particular individuals—some of whom were re-enslaved, incarcerated, deported, or killed—but they did not stop people from coming. At the same time, the panic surrounding fugitives has not registered as a major factor in the abolition of slavery. Is this thus another tale of individuals' unbroken yet inconsequential resistance against a persistent system of exploitation and dehumanization? It certainly is, yet the multifaceted legal wranglings about the fugitives' status mattered also beyond individual lives in different ways. How?

It is difficult to ascertain the number of fugitives. Because they fell between the cracks of legal categories and bureaucratic procedures, no official statistics or approximations are available. Contemporary statements suggest considerable

[145]E.g., Assembly, Barbados, Address, 18 July 1826, TNA, CO 28/97; Assembly, Barbados, Address, 2 Jan. 1827, TNA, CO28/100.

[146]Assembly of Saint Vincent, Address to the Governor, 6 June 1832; George Hill, Governor, Saint Vincent, to Viscount Goderich, Colonial Secretary, 21 Sept. 1832, TNA, CO 260/49.

[147]Hill to Goderich, 16 Jan. 1832, TNA, CO 260/49.

[148]Prince de Talleyrand to Lord Palmerston, 2 Aug. 1834, TNA, CO 318/118.

[149]Spring Rice, Colonial Secretary, circular dispatch, 4 Nov. 1834, TNA, CO 318/119.

numbers. Despite continued efforts to remove them, a hundred fugitives from Martinique were present in tiny Saint Lucia alone in mid-1830, and roughly four hundred "French Slaves" were estimated to be in Dominica in early 1833.[150] Estimates from the French Caribbean suggest that several thousand fled into British territories during the decades before French abolition in 1848.[151] From the 1820s, hundreds of people every year escaped from the Dutch and Danish West Indies.[152] Taken together, these fugitives may have even equaled the roughly twenty thousand "liberated Africans" emancipated in the British West Indies during this period. As they did not have an official bureaucratic status, it is unclear how many among them obtained what kind of freedom. Records suggest the range of fates awaiting them: free status under British "protection" or outside it; incarceration and forced labor; kidnapping and murder; restitution and re-enslavement; deportation to unknown destinations. Yet, they do not allow us to establish the proportion between them. Unknown also is the number of those fugitives who passed through the legal procedures modelled on the Slave Trade Act, as actors like Maxwell and Bridgwater had initially planned it, and thus how many entered the status of "liberated Africans." The most important numerical lesson that can be drawn is thus the flawed nature of official numbers.

The effect of blurring and cracking open legal categories and statuses is one of the most important aspects of the fugitives' case. As Anita Rupprecht has argued, practices built on the ambiguous Slave Trade Act produced new "scripts" of coercion and immobilization that defined post-slavery after 1833.[153] But, as the fugitives' case shows, slave-trade abolition also enabled others to write new scripts for emancipation and pathways into freedom. Enslaved fugitives were among a growing number of people not originally included in anti-slave-trade legislation that nevertheless made use of it, carving out loopholes and exploiting unintended consequences. Their quests would meet with an anti-slave-trade system that vested executive power in some local officials whose ideological and material interests were aligned with enslaved fugitives. The "script" for fugitives taking shape in the 1820s was thus co-produced by enslaved fugitives and low-ranking officials on the ground. The consequences were far-reaching and often uncontrollable. In this regard, the fugitives' cases resemble the ways in which other groups carved out pathways by appealing to British "protection," often involving the same laws and bureaucratic apparatuses: enslaved individuals in domestic service who were being moved between islands or between the metropole and a colony; and "emancipated negroes," especially in Cuba, who sought protection by British diplomats.[154]

The struggles involving enslaved fugitives were not a sideshow. The Customs House dispute in Dominica in 1819 quickly led into the heart of the conflict-ridden

[150]Dupotet to Rigny, 11 Aug. 1830, AAE, MD Amérique, vol. 61; James Culquhoun, Agent for Dominica, to George Stanley, Colonial Secretary, Apr. 1833, TNA, CO 71/77.

[151]Debbasch, "Marronnage," 47; Bogat, "Dominique," 152.

[152]Roitman, "Land of Hope and Dreams," 383; Hall, "Maritime Marronage."

[153]Anita Rupprecht, "From Slavery to Indenture."

[154]On these cases, see Stephen Waddams, "The Case of Grace James (1827)," *Texas Wesleyan Law Review* 13, 2 (2007): 783–93; Edlie L. Wong, *Neither Fugitive nor Free: Atlantic Slavery, Freedom Suits, and the Legal Culture of Travel* (New York: New York University Press, 2009), 36–48; Flamigni, "Vulnerable Freedom(s)," 181–233; Ines Roldán de Montaud, "En los borrosos confines de la libertad: El caso de los negros emancipados en Cuba, 1807–1870," *Revista de Indias* 71, 251 (2011): 159–92.

https://doi.org/10.1017/S0010417524000331 Published online by Cambridge University Press

transformations of the British Empire during the period of emancipation. Since it involved the renegotiation of the boundaries of freedom and slavery, it raised crucial questions related to imperial governance. It intersected, first, with fierce struggles over competing claims of jurisdiction and executive power that complicated imperial and colonial (local) governance. The conflicts dividing and uniting customs officers, governors, law officers, legislatures, and judges over the status of foreign fugitives show that these struggles did not align with a monolithic executive branch facing the judiciary, but with local alliances across all branches of government. Second, as it involved other empires, the fugitives' case also fueled struggles over the connections between antislavery, sovereignty, and interstate law. While their departures were destabilizing, the reception and non-restitution of fugitives did not lead to the immediate breakdown of slavery systems in Martinique, Guadeloupe, Saint John, Saint Thomas, et cetera. Yet, these serious and protracted conflicts show how interconnected legal regimes and jurisdictions in the close-knit world of the Caribbean actually were.[155] Despite British claims to the contrary, enslaved border-crossers as legal subjects and objects opened up a channel through which British legislation would have an immediate effect on other powers' systems of slavery. Finally, in their attempt to restrengthen central executive power against the uncontrollable dynamics of "protection" under anti-slave-trade legislation, authorities also engaged in struggles over the boundaries of subjecthood and (un) belonging. Hence, the law was being reinvented not just by those working to open up the slave-trade ban to new categories of people; it was also actively pursued by those seeking to close it again. As they lifted colonial alien laws from their original context —that of revolutionary "emergency"—authorities turned them into a tool to manage abolition-era mobilities and subvert the unintended consequences of the slave-trade law. Legal ambiguity was a double-edged sword.

Acknowledgments. Previous versions of this article were discussed at the University of Cambridge and the University of Tübingen. For all their fruitful comments and suggestions, I wish to thank Martin Biersack, Nicolás González Quintero, Ruby Guyot, Sabine Hanke, Jannik Keindorf, Dane Kennedy, Thomas Mareite, Kirsten McKenzie, Jürgen Osterhammel, Sophie Overkamp, A. Sophie Rose, Padraic X. Scanlan, Renaud Morieux, and the members of Cambridge's "Mobility and (Im)mobility" Research Cluster, as well as the anonymous reviewers of *CSSH*. For precious research assistance, I would also like to thank Johannes Pegel and Simon Schnebel. Research for this paper has been supported by the German Research Foundation (DFG, Research Unit 2600 "Ambiguity and Distinction") and by the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation program (grant agreement no. 849189).

[155]Roitman, "Land of Hope and Dreams," 376; Mulich, *In a Sea of Empire*.

Cite this article: Jansen, Jan C. 2025. "'A Sanctuary to Crime'? Enslaved Fugitives, Antislavery, and the Law in the Caribbean, 1819–1833." *Comparative Studies in Society and History*, 1–28, doi:10.1017/S0010417524000331