

Ante-Possession: A History of Dispossession's Present

David Kazanjian*

Ya esto no se puede sufrir.

**Testimony of Juan Patricio, from
“Certified copy of criminal proceedings brought by Doña
Isabel Solis, resident of Yucatán, against Juan Patricio slave,
for having beaten Don Ignacio de Esquivel, priest” (1696)¹**

In a recent edition of Karl Marx's 1840s articles on the alleged theft of wood by rural peasants in the Rhineland, and Daniel Bensaïd's 2007 essay about those articles, Robert Nichols reveals enduring continuities between nineteenth-century and contemporary systems of dispossession. Both the nineteenth-century privatization of the forest commons (which enriched landowners and criminalized rural people gathering sticks, as Marx shows) and the twentieth and twenty-first-century patenting of the genes of seeds (which enriches agrobusiness and impoverishes peasant farmers, as Bensaïd shows) transformed collective social relations into property appropriated by the privileged. While the means, locations, and scales of these two systems of dispossession differ across the centuries, they both required the legal fashioning of new objects of appropriation (wood and genes) out of prior social relations (gathering sticks and planting crops). In both instances, too, it would be wrong to think of dispossession as “theft,” since no one properly owned the wood or the genes prior to their appropriation. Since the “theft” framework presumes prior possession, it obscures the social relations that preceded and opposed or apposed dispossession, and it restricts redress to juridical disputes over who should be recognized as a proper

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“We could call these social relations ante-possessive to capture the many ways they thrive before, against, or alongside racial capitalist modes of possession.”

possessor. We could call these social relations *ante-possessive* to capture the many ways they thrive before, against, or alongside racial capitalist modes of possession.² Nichols’s juxtaposition of Marx and Bensaïd reveals how possession must be fabricated for dispossession to proceed and how such fabrication continues right up to our present moment. However, Nichols also notes a shortcoming of both Marx’s and Bensaïd’s accounts: they focus primarily on the actions of the dispossessors and the logics of dispossession without attending adequately to the actions of the dispossessed and the logics that resisted dispossession.³ Thinking the latter is especially essential to moving past the still widespread “theft” framework and toward an understanding of efforts by the dispossessed to challenge dispossession without claiming prior possession or demanding renewed possession as a singular remedy.

In this article, I flesh out some such efforts by juxtaposing two conjunctures of dispossession that are even more historically distant from one another than Marx’s wood theft and Bensaïd’s gene patents: the contemporary wave of migration from Central America and Mexico to the US and the late seventeenth-century enslavement and colonization of Black and Indigenous people on the Yucatán peninsula. My first aim is to reveal some of the ways the fabrication of possession is an enduring feature of racial capitalism’s process of accumulation in the Americas. Given that the category of “dispossession” has become so widespread in a range of fields (including American studies, Latin American studies, Black studies, and Indigenous studies), I hope to contribute to that vast scholarship by proposing a shift away from the presupposition of prior possession and toward a theory of ante-possession. Hence, my second aim is to reveal how the dispossessed have lived lives that do not conform to possession: lives lived prior to, in opposition to, or in apposition to possession as such. As Nichols suggests, and Marx and Bensaïd exemplify, that second aim is more difficult to accomplish since archival traces of dispossession are so often narrated from the perspective of the dispossessors. I thus juxtapose these seemingly disparate scenes of dispossession, not to mark empirical continuities that characterize racial capitalism’s ongoing fabrication of possession, but rather to highlight a method for discerning traces of ante-possession and to show how dispossession entails not just the theft of someone else’s possession, but rather the interruption of ante-possessive social relations among the dispossessed. In turn, I hope to show how such social relations persist among the dispossessed at great peril but also with the effect of challenging and remaking possession as such.

Why juxtapose these two seemingly disparate conjunctures? Because I want to show how my recent work as a volunteer

translator and advocate for migrants detained at the US–Mexico border has taught me to read more carefully for the *poiesis* of late seventeenth-century sources. Such a reading extends the kind of critiques Marx and Bensaïd offer in the direction Nichols indicates. On the one hand, I have come to better understand how advocates like myself mediate the accounts migrants give of their migration and, in turn, attend to the ways colonial translators, scribes, and notaries similarly mediated the accounts Black and Indigenous people offered of their dispossession in seventeenth-century court records. This mediation is part of what Michel Foucault called a *dispositif*: the apparatus or system of relations that shape power and knowledge at a given conjuncture.⁴ On the other hand, attention to that mediation has helped me notice textual instances that unsettle a given *dispositif*: instances in which expected phrases are absent, unexpected phrases are repeated, or grammatical and syntactical regularities give way to irregularities. These instances reveal the importance of ongoing social relations among the dispossessed over and against efforts to gain or regain individual possession over land, labor, or even bodies.

When such instances surface in the archive, they can be considered a kind of *poiesis*, or the imaginative remaking of what we know and how we act. *Poiesis* is here distinct from *praxis*, or the intentional, willful act of doing something in material and practical terms. *Poiesis* designates a bringing of something into being, a making-present that discloses a possibility, or the opening of a potentiality, in which the emphasis is on that which has been made present rather than the doer's will. It is continually in process and in excess of any specific principle of production, like the skills of a maker, the intention of an individual, or the apparently limiting conditions of a given context. In a strictly Aristotelian sense, there is a best or final form of anything created through *poiesis*, but older and broader meanings of the term refer simply to an ongoing making. And while *poiesis* has often been understood in the modern era as the effect of an individual's imagination, inspiration, or authorial genius, it need not be so; it can be a textual trace of a set of social relations.⁵ As such, I am not after a verifiable account of the willful final intentions of contemporary migrants or turn of the eighteenth-century Black and Indigenous people. Rather, I am after lively, granular, textual traces of ante-possessive *poiesis*.

If contemporary migration is an effect of ongoing accumulation by dispossession, and such dispossession is a condition of possibility for an enduring racial capitalism that, in the Americas, began in the late fifteenth century, then we ought to be able to construct histories of the present that link seemingly remote dispossessive pasts to our current conjuncture of accumulation.⁶ Thus, my

contribution to this special issue of *American Literary History* on “Exiles, Migrants, and Refugees” proffers a history of the present not only of dispossession, but also of ante-possession in the Americas.⁷

1. Migration’s Poetic Present

The most astute scholarship on the most recent waves of migrants coming to the US from Central America and Mexico has shown that such migration is an effect of enduring structures of accumulation by dispossession. People have left Central America and Mexico for the US not because the US is a wonderful land of dream fulfillment, but because trade agreements like NAFTA (1994) and USMCA (2020) decimated local control over industries like corn, sorghum, and shoe production, increasing unemployment and poverty in Central America and Mexico and enlarging the capital (principally land and labor) controlled by transnational corporations, which then expanded into decimated local industries. The narco economy, which emerged in Central America and Mexico to employ the newly unemployed and to supply the US and Europe with cheap drugs for recreational consumption, generated enough violence and instability in Latin America to push more people to migrate north for work. Many of the most powerful drug syndicates or “gangs” that run this narco economy were first organized in the US by Central American migrants who had been displaced from Central America to the US by the US-led hot wars of the Cold War era. When those migrants were later deported back to Central America as “gang members” by “tough on crime” policies that also funneled other Black and Brown people into US prisons in unprecedented numbers, they brought their US-made “gangs” to Central America and Mexico where they became powerful forces in the narco economy. While that ongoing incarceration wave enables capital expansion by the public-private venture of the US prison industry, the drug syndicates in turn generate a massive amount of capital that pools in transnational finance systems, which in turn funds further capital expansion by so-called legitimate transnational enterprises with access to those systems.⁸

Still, much public discourse about migration to the US from Central America and Mexico describes this system of accumulation by dispossession in individualistic terms. Individuals are presumed to migrate, first, because they lost possession over something they previously owned—such as their labor, their land, their autonomy, their safety—and second, because they want to regain the possessions they lost. This is perhaps true for some people. Yet my

experience over the last few years working as a translator and advocate for migrant detainees seeking asylum in detention centers in and around El Paso, Texas has taught me that at least some migrants seem to have migrated for other effects. In fact, it is often advocates like me who must teach migrants how to frame their needs and desires in the terms of possessions previously owned, lost, and now sought, because those are the terms that US asylum law will recognize and accept—terms that in other contexts have been called “possessive individualism.”⁹

Specifically, I have often helped prepare detained migrants for one of the first steps in the asylum process, the “credible fear interview,” in which an immigration official examines a migrant, usually alone and without representation. To have even a chance at beginning the asylum process the migrant must show that they have come to the US, as the US Citizenship and Immigration Services (USCIS) explains, out of “a well-founded fear of persecution on account of your race, religion, nationality, membership in a particular social group, or political opinion if returned to your country.” The possessive pronoun “your” does a lot of work in that formulation. Migrants must show, effectively, that they fear persecution or harm as a result of a quality about themselves that they cannot be expected to change: an inalienable aspect of their being, something of themselves that they ought rightly to possess. So it is not enough for a migrant seeking asylum to describe how drug gangs have been extorting them for money or how they have been unable to work and feed their families. Rather, that extortion or that poverty must be shown to US immigration officials to have been directly caused by exploitation based on, for instance, their religion, gender, sexuality, or the expression of their political beliefs. Additionally, they must show that they have no viable, local avenues for recovering their losses. More often than not, in my experience, these are not terms in which migrants initially describe their experiences of exploitation or migration. Thus, they must learn how to think in such individualistic and possessive terms and then revise their narratives to conform with those terms. So what can we learn from how migrants represent their migration before it is renarrated in the terms of US immigration law?

I cannot describe cases of individual migrants I worked with since I did not do that work under the so-called Common Rule, or the Federal Policy for the Protection of Human Subjects, in which I would have needed consent to publish even anonymized accounts of individuals.¹⁰ I also cannot claim to know the “authentic truth” of any individual migrant’s story since no one I spoke with knew much of anything about me and so could not have been expected to share such truths, even if they knew them. But I can draw on conversations

I had with scores of migrants in detention centers in and around El Paso between 2019 and 2021 to give a composite sense of how migrants' accounts of exploitation and migration cannot be reduced to the possessive individualist *dispositif* of US immigration law. I spoke with many shopkeepers from Central America who had migrated to the US because they were being harassed by local gangs. Often, the gangs would demand money, then demand free meals, and then demand the shopkeeper's daughter for sex. This last, very common demand was typically the last straw that led the shopkeepers to leave for the US. Unfortunately, none of those experiences are remotely likely to help such migrants pass their credible fear interviews and qualify for asylum given the arbitrarily strict standards US immigration officers typically impose. However, if a migrant mentioned to me, often incidentally, that they were queer, evangelical, or had participated in political demonstrations, that detail enabled us to fashion their account of migration in a way that emphasized how they were uniquely subject to such harassment because of a part of themselves they possessed and could not be expected to change: their sexuality, their religion, their political beliefs. In other words, they had to show that they had been deprived of the ability to have such an identity, properly and safely. For any number of reasons, they rarely gave those identities special import in their initial accounts of why and how they migrated. This should not surprise us. Scholarship on migrant communities shows how particular threads of identity cannot be easily unraveled from the many other threads that hold social relations together, both before and during migration itself. For instance, people who migrate are deeply integrated with the conditions and people from which they flee; they are relatives with, lovers of, and neighbors to the very gang members who might make their lives untenable, and of course they are sometimes involved in gangs themselves.¹¹

The migrants I worked with had to learn how to narrate their migration in terms that emphasize one thread of their lives, highlighting the loss of a particular aspect of themselves that US immigration law recognizes as one they should properly and individually possess. Even that revised version of their migration, of course, gave them only the smallest chance at qualifying for asylum but still a greater chance than a general account of exploitation by gangs that were themselves a product of the much larger and longer-term system of accumulation by dispossession I described above.¹² The *dispositif* of immigration to the US systematically rewrites people's migrant lives in this way, obscuring meanings that do not fit within its juridical frames. Whatever else such migrants might have said or thought or felt about why they left their home countries and what they came for—and they often shared some of this in our

conversations—we quickly put that aside in the instrumental interest of figuring out how to narrate their migration according to the possessive individualist protocols of the credible fear interview. Any extant records of these migrants' cases would, in turn, foreground that narrative effort at the expense of whatever other account of their migration they might have given without my mediation or the mediation of US courts.

Again, my point is not that migrants told me authentic truths about their lives which we then revised into different accounts that would get them asylum. The accounts they initially gave me were just as likely shaped for my ears, mediated by my presence as an advocate—other whom they did not know but from whom they needed help. We also never produced false accounts of their lives to fool the legal system, at the very least because such fabrications have little chance of holding up in the face of typically vigorous interrogation by unsympathetic US officials. Rather, the accounts they gave me were often over-full of details, thoughts, and impressions which we edited down into a compact narrative focused solely and instrumentally on how they lost a part of themselves that the US legal system considered something they ought rightly to possess, so that they could be positioned as eligible for the very narrow conception of asylum-worthiness recognized by that system. Or, sometimes, their accounts were under-full, which is to say warily sparse and clipped, such that advocates like myself had to ask countless questions to get past their wariness in the hope of extracting (and there is an element of force to be sure) details that could form a plausible asylum narrative. These over-full or under-full aspects of their accounts—all they said or did not say that could not fit into the kind of narrative I knew they needed to tell—are what interest me as formal features of migrant discourses.

We could call those formal features instances of *poiesis*: not the sharing of authentic or secret truths expressing an individual's will, but rather a textual making or bringing forth of something other, a possibility not dependent upon an individual will. A number of scholars have traced the "eclipse of the sphere of poiesis" as a way of understanding "making" or "doing" among the ancient Greeks due to the gradual privileging of *praxis* as the principle meaning of "making" or "doing" in the modern world system. As Giorgio Agamben writes,

[T]his ascent [of *praxis* over *poiesis*] begins at the moment when Locke discovers in work the origin of property, continues when Adam Smith elevates it to the source of all wealth, and reaches its peak with Marx, who makes of it the expression of

man's very humanity. At this point, all human "doing" is interpreted as praxis, as concrete productive activity. (70)

Such activity was understood to stem from the actor's willful desire, intention, or imagination—whether that actor was making objects (the craftsperson, the worker) or aesthetic works (the artist, the creative "genius"). Writing specifically of aesthetics in the early modern Iberian world, Anthony J. Cascardi and Leah Middlebrook call for attention to the ongoing traces of *poiesis* against and in the midst of a world of *praxis*, "a world in which things have meaning, are determined to be true, or hold value only in relation to a subject who represents them" (x). *Poiesis* could be found "in the opening of a world," in an utterance that brings forth something irreducible to the maker's will or the conditions of their making. What is more, that which is brought forth need not be (as in the narrower Aristotelian sense) a final form, or (as in the modern era) an individually authored work of art like a poem. Cascardi and Middlebrook offer numerous examples: for instance, "that the first thesaurus of any European language took its place alongside miscellanies (*flores*), in which accounts of miracles and folkloric material are intercalated with scientific inquiry" (x–xi).¹³ R. A. Judy has robustly theorized this potential as a "poiēsis in black," or "practices-of-living" enacted by "those populations designated and constituted within the political economy of capitalist modernity as Negro," practices "not fully comprehensible by the semiosis of that economy, particularly its grammar of ontology." Judy further suggests that "those practices articulate appositionally, opening up infinities of other ways of being human in community becoming, ever becoming" (19). Here, *poiesis* designates the open-ended potential of a broad social making, akin to what Anthony Bogues has called "common association" (40) and Fred Moten and Stefano Harney have called the undercommons, as Judy himself notes (15).

Valeria Luiselli has captured this potential quite well in her *Tell Me How It Ends: An Essay on Forty Questions* (2017), a book about advocacy work she started to do in 2015 with migrant children in immigration court in New York. Writes Luiselli:

I recall every nuance of the first story I heard and translated in court. . . . perhaps because it's a story condensed in a very specific, material detail that has continued to haunt me: a piece of paper that the boy pulled from his pocket toward the end of his interview, the creases and edges worn. He unfolded it gently, slowly, treated it with the same careful precision a surgeon might have when making a decisive incision. He laid it in front of me on the table. As I skimmed through it, still unsure about

what he was showing me, he explained that the document was a copy of a police report he'd filed more than a year and a half ago. The report stated . . . that the subject in question raised a complaint against gang members who waited for him outside of his high school every day, frequently followed him home, and began threatening to kill him. It ended with the vague promise to "investigate" the situation. After showing it to me, he folded the document back up and put it in his pants pocket, rubbing his palm now and then against the denim, like he was activating a lucky charm.

. . . It was just a piece of paper, damp with sweat, eroded by friction, folded and tucked inside a boy's pocket. Originally, it had been a legal document. . . . In a less obvious but equally material way, the document was also a road map of a migration, a testimony of the five thousand miles it traveled inside a boy's pocket, aboard trains, on foot, in trucks, across various national borders, all the way to an immigration court in a distant city, where it was finally unfolded, spread out on a mahogany table, and read out loud by a stranger who had to ask that boy: Why did you come to the United States? (42–43)

I am interested in the difference between the boy's "piece of paper" considered, on the one hand, as a "legal" document, and, on the other hand, as something he guarded carefully, "rubbing his palm now and then against." Luiselli says the latter, from her perspective, was "like . . . a lucky charm." Her simile marks a moment of *poiesis*: in this case, the imaginative remaking of a legal document as something other. Whether that "something other" was exactly "a lucky charm" to the boy, as Luiselli speculates, or something else altogether is less important than the unverifiable possibility that the piece of paper has meaning—for the boy, for Luiselli, and for the scene of interaction between the boy and Luiselli—beyond its juridical meaning, and apart from any intention we could attribute to an individual's will.

From the perspective of US immigration law, the piece of paper is in fact significant because it could be considered evidence that the boy was being persecuted (which is to say, had lost his freedom, his safety, his autonomy) in his home country, potentially for a feature about himself that he could not change (such as his youth). It could also be considered evidence that he unsuccessfully sought help from local law enforcement to recover his losses and so could be presumed to have migrated only after all local avenues for redress were exhausted (indeed, as evidence that the police could have been in league with the gang members who harassed the boy, as is often the case). Understood in these ways, the piece of paper is a kind of

praxis. Certainly, the boy knew to keep it because others had told him it would be important in these ways once he arrived in the US; migrants share just such knowledge widely among themselves and their friends and families back home, forging and maintaining social relations that are central to the entire scene of migration itself. While US immigration law demands the narrative transformation of those social relations into individual possessions lost and sought, the rich particularities of the boy's guardianship of the piece of paper—" [h]e unfolded it gently, slowly, treated it with the same careful precision a surgeon might have when making a decisive incision," "he folded the document back up and put it in his pants pocket, rubbing his palm now and then against the denim, like he was activating a lucky charm"—point to extrajudicial meanings, such as those social relations among migrants. The *poiesis* of the boy's performance of and with the piece of paper in front of Luiselli can be said to figure all the open-ended excess of what it means to "come to the United States," over and beyond the strict limits US immigration law places on the document's meaning as *praxis*.

When we presuppose that migrants have always wanted what they have to say they want in US courts for any chance at parole or asylum—namely, proper possessions they have lost and aim to regain—we risk erasing potentials that fall outside the orbit of possession and that appose or oppose the *dispositif* of US immigration law. We risk misperceiving the contextually specific, practical performance of interests and desires (*praxis*) as an individual's essential truth and entire horizon, and then generalizing that to the social world of all migrants. I heard detained migrants articulate such exorbitant, oppositional, or appositional potentials. For instance, migrants often migrate to protect or restore social relations or to begin new social relations: between themselves and their children, their other kin, their co-workers, their friends, or as-yet-unknown people they imagine they could be in community with. Migration itself, including the often maligned "caravans" of migrants moving from Central America to the US, can be understood as a kind of improvised community, an effort to configure new social relations in the face of threats to prior social relations. I might not describe those potentials as "like a lucky charm," as Luiselli does. And I do not claim special knowledge of migrant truths based on my advocacy work; again, people I worked with performed their narratives for me, too. But I would claim that migration can make social relations that are at least *like* something other than the recovery of possessions lost due to "a well-founded fear of persecution or harm on account of your race, religion, nationality, membership in a particular social group, or political opinion." My simile "like something other"

figures a potential migrant *poiesis*, in and through narratives of possession and dispossession.

This experience has given me a new perspective on my own research into archives that bear witness to the beginning of today's systems of accumulation by dispossession, the period Marx called "so-called original accumulation" (873), in which colonizers began to appropriate land, labor, and bodies in order to galvanize the expansion of capital, sending people into forced migrations around the world.¹⁴ On the one hand, it has helped me notice the ways the translators, scribes, notaries, and other elements of the colonial *dispositif* mediate what we can know about Black and Indigenous people who show up in the court records of New Spain, much as I and many others have done by mediating the accounts migrants detained on the US–Mexico border give of their reasons for migrating. On the other hand, it has helped me attend to traces in the archives of the ways the dispossessed fought against dispossession without necessarily claiming prior possession (of their bodies, their lands, their labor) and without demanding renewed possession as a singular remedy. As a result, I have come to discern the many, albeit mediated ways the dispossessed of the colonial period write to us about relations that did not conform to the logics of possession.

While my interpretation of these archives relies in part on verifiable histories of colonial New Spain, I also supplement those histories with a speculative attention to the unverifiable *poiesis* of the archive. That attention entails a close reading of highly mediated texts that typically include statements about and by subaltern subjects with little control over the juridical *dispositif* in which they were caught up—indeed, statements sometimes given under torture. If we are to supplement our understanding of accumulation by dispossession with traces of anticolonial life and struggle, however, we must make room for such speculative unverifiability and learn how to read our archives for such *poiesis*. Indeed, I contend, the archives of colonial New Spain overflow with lives lived in and through, but also exorbitant of, possession as well as dispossession: lives of ante-possession, at once before, alongside, or against possession.¹⁵ In the next section, I will attend to such ante-possessive life in a case of dispossession during the 1690s on the Yucatán peninsula.

2. "He was going to see what the said *india* wanted"

In Seville's Archivo de Indias, one finds a 2,447-page *legajo*, or file of a legal case, entitled "Certified copy of criminal proceedings brought by Doña Isabel Solís, resident of Yucatán, against Juan Patricio slave, for having beaten Don Ignacio de Esquivel, priest."¹⁶

The file contains judicial decrees and testimony, transcribed by colonial notaries (*Escrivanos Reales*) from a large cast of characters. These characters all intersect in various ways with a central conflict between a priest (*Bachiller*), Don Ignacio de Esquivel, and an Afro-Yucatecan or Black man, Juan Patricio (usually called *negro* or *esclavo*), who was enslaved to Don Pedro Enríquez de Noboa, a landowner (*encomendero*), accountant, and colonial administrator (*Contador, Capitán, and Juez Oficial Real*). Throughout the *legajo*, Juan Patricio shows himself to be much less interested in gaining or regaining any possessions he or his master putatively lost before or during this conflict than he is in animating the social relations he has with Black and Indigenous people as well as both Spaniards and Creoles (Spaniards born in the Americas). It is Esquivel's interruption of those relations that seems most to outrage Juan Patricio, an outrage he ultimately risks everything to challenge.

The conflict unfolded in July and August of 1690 in a group of villages about 26 miles east of the city of Mérida. Apparently, in late July, the priest Esquivel sent some of his Maya deputies (*tupiles*) to the village of Tahmek to bring a Maya woman named Fabiana Pech (usually just called *la india*) back to Mérida to work for his mother, Doña Isabel Solís y Casaus. While going to check on the work of some of his master Enríquez de Noboa's stonemasons, Juan Patricio ran into the deputies forcibly leading Pech through Tahmek, and Pech called out to him for help. After talking with Pech for an hour, he told the deputies they could not take her because, first, she did not want to go with them; second, his master had not given permission for them to take her; and third, she was "ill" (*enferma*, which might also mean "pregnant," though this is unclear). Instead, Juan Patricio said they should take another woman to work for Solís. When the deputies insisted that Esquivel wanted Pech in particular (*aquella y no otra*), Juan Patricio forcibly drove them off and sent Pech to Enríquez de Noboa's residence in nearby Xtabay. When Esquivel found out about this, he ordered Juan Patricio to appear before him in Tahmek, and when Juan Patricio did on 28 or 29 July, Esquivel insulted and beat him, declaring, "the dog now understands that he is speaking with the shameless arrogance of his master" (*entiende el perro que está hablando con el Baladrón deslenguado de su amo*). Which is to say, Esquivel punished Juan Patricio for assuming airs, or acting outside the limits of his station.¹⁷

Juan Patricio seems to have been intensely outraged by this mistreatment at the hands of Esquivel, and he set out to secure some remedy. First, he traveled to Mérida—a distance of about eight hours on a horse—to lodge complaints with various church officials. Unsatisfied with their responses, on 6 August Juan Patricio attended

one of Esquivel's masses back in Tahmek, walked out in the middle of communion in some distress, and then intercepted Esquivel after he finished the mass, a quarter league (*legua*, or about one and a third kilometers) outside Tahmek along the road toward the neighboring village of Hochtún.¹⁸ After an argument, Juan Patricio struck Esquivel several times with a stick, breaking the priest's arm. Juan Patricio might have done this in part at the urging of his master Enríquez de Noboa, who (according to testimony from Juan Patricio and from his enslaved friend Feliz de la Paz) had encouraged Juan Patricio to confront Esquivel on his behalf because, as Juan Patricio's owner (*amo*), Enríquez de Noboa considered Esquivel's mistreatment of Juan Patricio to be a mistreatment of himself. Juan Patricio immediately fled to the Black and Indian barrio of Santiago in Mérida and then took refuge in one of his master's houses in a neighboring barrio. Solís, the priest's mother, quickly initiated a criminal case against both Juan Patricio (who was soon captured and held in prison in Mérida while the judicial proceedings unfolded) and Enríquez de Noboa (who was also initially imprisoned in Mérida and then, after he successfully petitioned the court for his release, confined in his own home). At the conclusion of the case, Enríquez de Noboa was sentenced to two years of voluntary exile from Mérida and a series of fines. Juan Patricio, in turn, was sentenced to 200 lashes and a brand on the very arm with which he beat Esquivel, a punishment that was performed publicly in Tahmek on 29 November 1690, according to the sentencing document, "in the place and spot where he committed the offence, to serve as an example" (*Manda se le den dozientos asottes y se le marque el brazo con que cometi6 el Sacrilegio en la parte y lugar donde cometi6 el delicto, para que sirva de exemplo, y que sea con un ynstrumentto de fuego*). Then, on 2 December 1690, Juan Patricio was deported to the infamous San Juan de Ulúa prison in Veracruz to serve a life sentence of perpetual servitude (*y más le condena por esclavo perpetuo de San Juan de Ulúa*)—a term that was reduced to four years on appeal.¹⁹

At the most general level, this case exemplifies conflicts that characterized late seventeenth-century New Spain among the competing agents of colonization (the Catholic Church, Spanish landowners, and officials of the colonial Spanish state), as well as between those agents and the people subject to colonization (the Maya majority and Blacks or Afro-Yucatecans). At the turn of the eighteenth century, according to Matthew Restall, there were approximately equal numbers of "whites" (Spaniards or Creoles) and Afro-Yucatecans in Yucatán, while there were approximately eight times as many Maya as either of those groups (2).²⁰ While Maya could not be enslaved and maintained specific rights and privileges

under Spanish rule, some Afro-Yucatecans were enslaved while others were formally free. Yet even enslaved Afro-Yucatecans at times served as overseers to Maya laborers; Juan Patricio was one such enslaved overseer, which is why he was going to check on the work of his master Enríquez de Noboa's (presumably Maya) stonemasons when he encountered the priest Esquivel's deputies absconding with Fabiana Pech. Of course, by 1690 Spaniards, Afro-Yucatecans, and Maya in Yucatán had also mixed and commingled for over 160 years, sometimes by apparent choice but often under various degrees of coercion, thus forming groups that the Spanish colonial state categorized as *mestizos*, *pardos*, and *mulatos*, among many other shifting *casta* labels. At the granular level of quotidian life, then, these communities constantly interacted and overlapped in countless ways.

If we focus on the granular level of the written testimony in this case—and, eventually, if we attend to the *poiesis* of that archive—we can discern some of the surprising ways dispossession was not only sought but also intricately fought. This is no easy task. First, as in the contemporary credible fear interviews I discussed above, all the testimony in this case is mediated by officials, notaries, and other functionaries.²¹ Marking that mediation is the formal legalese into which the statements are cast (“the said *negro*,” *el dicho negro*), and the third-person into which the witness giving the testimony is interpolated (“the said declarant saw,” *vio este dicho declarante que*). Additionally, the flurry of officials' and bureaucrats' names at the beginning and end of each statement discloses the mediated (and crowded) scene of each testimony.²² In the case of indigenous witnesses like Ignacio Pech, Lorenzo Chi, Lorenzo Coba, Matheo Can, Alonso Canche, or Fernando Chan, the notaries record that translators were on hand to render their Maya into Spanish.²³

So there is no such thing as “direct testimony” in this archive; nothing that is “said” can be verifiably attributed to a witness's authentic thoughts, feelings, desires, or intentions. In and through these formal, juridical conventions, however, certain textual moments pierce the regularities and so ought to command our attention, as moments of *poiesis* rather than *praxis*, or what Roland Barthes might have called *puncta* in the *studia* (26–27). Like the boy rubbing his palm on the carefully folded police report in Luiselli's *Tell Me How It Ends*, or the over-full and under-full utterances I so often heard from migrants in detention centers around El Paso, there are moments in this archive in which the expected is absent, the unexpected is uttered, or formal or grammatical regularities yield to irregularities. These moments of *poiesis* are not reducible to the claims made or the descriptions offered by witnesses, nor are they

attributable to their willful intentions. I do not insist that they express the verifiable truth of what happened or the real meanings of what people said. Rather, they mark an unverifiable potential: an opening to some other meaning, something anew, something we might just miss because we are not accustomed to reading for it.

One of the remarkable absent aspects of the testimony in this case is that Juan Patricio never suggests, and is never said by any other witnesses to have suggested, that he has been dispossessed of any possession, and he never seeks redress in the form of regaining lost possessions, such as his freedom—which is to say ownership over himself or his labor. While this might seem unremarkable in a criminal case where his enslaved status is not centrally at issue, his testimony in fact ranges extensively over topics well outside the limits of the charges against him. Notably, he offers nuanced critiques of those with power over him, challenging their views and actions as well as explaining his own, and yet never in terms of freedom or servitude. This lack of a discourse of individual freedom would also likely not surprise historians of the region and period, but from a US academy whose focus has more often been on discourses and practices of slavery and freedom in the nineteenth-century US and Caribbean, this absence thwarts expectations.

I want to look more closely at the precise terms in which Juan Patricio challenges this scene of dispossession and seeks redress according to his testimony and that of other witnesses. Juan Patricio himself testifies numerous times in the case, always while imprisoned, sometimes under torture. He tells his interrogators that he was born in Santo Domingo on the island of Hispaniola in what is now the Dominican Republic (*natural de la ciudad de Santo Domingo de la Isla Española*), that he is unmarried (*soltero*), more or less 32 years old in 1690 (*treinta y dos años poco más o menos*), and unable to sign his own name (*no firmó porque dixo no saver*), meaning he was likely unable to read or write.²⁴ There is no account in the court records of how or when Juan Patricio migrated from Santo Domingo to Yucatán, but there was an extensive slave trade throughout the circum-Caribbean region to which Yucatán was much more closely connected than it was to central Mexico. What we today call dispossession thus organized Juan Patricio's entire migrant life—from his likely birth into slavery, to his migration from Santo Domingo to Yucatán, to his deportation and imprisonment in Veracruz—as it did the other Black and Indigenous people amongst whom he lived.

Indeed, the testimony in the case shows how intimately he was linked to a large community in Yucatán and how involved he was in collectively shaping those links. Most decisively, his extensive efforts on behalf of Fabiana Pech suggest that he knew her well

enough to risk antagonizing a powerful priest and his powerful mother to stop them from forcing Pech against her will into their service—and antagonize them he did, as his trial and severe sentence show. According to Sergeant Francisco de la Motta, who claims to have been talking with Juan Patricio in front of the government buildings in Tahmek when the Priest’s deputies walked by with Pech, she called out to Juan Patricio for help, who then spoke with her for quite a while before telling the deputies they could not take her. Testifies de la Motta:

[T]he said *negro* moved away from this declarant [de la Motta] saying that he was going to see what the said *india* [Pech] wanted, that she was calling him, and having gone he spoke with her for about one hour at the door of the jail, and having returned to this declarant [de la Motta], he said of this *india*, I don’t understand her well, but it seems she is saying that they want to take her to serve the mother [Solís] of the *compañero* of the *Beneficiado Bachiller* Don Ignacio de Esquivel, and that she resists because of how the aforementioned [Solís] mistreats them and that she wants first to be sent to serve in the city but not in her house.²⁵

Pech apparently sought help from Juan Patricio in particular. The sheer fact that they spoke “for about an hour” at such a crucial moment suggests they had deep connections with one another. She was probably speaking in Maya or both Maya and Spanish, and while perhaps Juan Patricio’s Maya was not fluent, having come from Santo Domingo (“he said of this *india*, I don’t understand her well”), he seems to have understood her central concerns. Pech has a critique of Solís’s labor practices (“she resists because of how the aforementioned [Solís] mistreats them”), and Juan Patricio apparently agrees with or accepts this critique in so fully and dangerously taking Pech’s side.

Since Juan Patricio was charged, not with helping Pech, but with his 6 August assault on the priest Esquivel, the court shows little interest in his late July intervention on behalf of Pech, rarely asking about her or about this prior incident described by de la Motta. And Pech herself never testifies, as Indigenous women rarely did. Still, many other witnesses mention that Pech had this critique of Solís’s treatment of her workers and communicated it to Juan Patricio, even when they disagree with that critique and defend Solís as a good mistress. Juan Patricio himself is only asked about this incident once, but his response is revealing:

[A]nd she [Pech] having availed herself to said declarant [Juan Patricio], he told them [the priest’s deputies] to leave her, and to

take another who was healthy. And they having replied saying it had to be her and no other, he became furious and took the said sick *India* from them, giving the said deputies various punches (*y ella aver se valido deste dicho declarante les dixo la dexassen, y que llevassen otra que estuviesse sana. Y aviéndoles replicado diciendo avía de ser aquella y no otra, este declarante se enfureció y les quitó la dicha India enferma dándoles a dichos tupiles algunos golpes*).²⁶

The phrase I have translated as “and she having availed herself to”—*ella aver se valido*—is crucial here, since it points to a deep level of trust between Pech and Juan Patricio. *Valido* in particular carries an older sense, from *valer* or “worth,” of someone enjoying the trust of someone else with more power than they have; as in the phrase “*Olivares fue el valido de Felipe IV, su mano derecha*” or “Olivares was Philip IV’s favorite, his right-hand man.”²⁷ Juan Patricio’s relative power when compared with Pech is situational and provisional here. As a formally free Maya woman, she has certain rights and privileges he does not have as an enslaved Black man, as reflected by her opposition to working for Solís in her appeal to him for help. As part of Enríquez de Nobsa’s *encomienda*, her labor is potentially available to him, within specified limits, but her labor is not subject to Esquivel’s whims. Once taken by Esquivel’s deputies, Pech’s appeal to Juan Patricio registers his relative power as an overseer of Maya workers for his master. The very fact that he and all the other men involved in this case testify, but she does not, shows too that Juan Patricio carries a relative gender privilege.

When Juan Patricio intervenes to stop Esquivel’s deputies from taking Fabiana Pech, he does not seem to have charged the deputies or Esquivel with theft from his master’s *encomienda* or to have been principally concerned with the question of who possesses whom. Rather, he seems to have focused on Pech’s critique of Solís, a critique she communicated to him in asking for his help. Juan Patricio’s validation of Pech’s critique of Solís in his confrontation with the priest’s deputies made her his *valido*, his trusted one; similarly, we might say that her appeal to him made him her *valido*, or her trusted one. What is more, Juan Patricio’s anger (*se enfureció*) at the deputies’ disregard for Pech’s critique of Solís effectively elevates his connection to her over all else.

How might we characterize this connection, and, in turn, the social relations Juan Patricio and Fabiana Pech seem to prioritize against dispossession and over possession? In Marx’s articles on wood theft with which I began this essay, he calls the practice of peasants gathering wood “customary right” and writes at one point that “we demand for the poor a *customary right*, and indeed not one

that is only of a local character, but is a customary right of the poor in all countries” (Bensaïd 65). E. P. Thompson famously elaborated this kind of argument into a theory of popular “moral economy” against dispossession. In colonial Spanish America, certain aspects of what we might call the customary rights or moral economies of Indigenous people were formally recognized by the Crown as *usos y costumbres*, including relatively autonomous forms of Indigenous self-government known as *repúblicas de indias*. Such codified forms of recognition certainly controlled and delimited Indigenous life, but Indigenous people also leveraged them against some aspects of dispossession.²⁸ These are the very powers I mentioned above as those Pech could be seen to be asserting, and Juan Patricio could be seen to be backing, when she critiques Solís’s labor practices.

More recently, we have seen Marx’s and Thompson’s arguments take the form of efforts to elevate so-called commons or commoning—popular, collective practices against dispossession.²⁹ However, such efforts are complicated in the Americas, where commons were as much a tactic of colonization as an opposition to it. Spaniards not only had private property in Iberia well before the Conquest, but they also had commons, and they imposed both systems on Indigenous and Black communities as part of their practice of *reducción*, or the colonial ordering of people and places. Furthermore, while Indigenous people had their own commoning practices before and after the Conquest, some also had conceptions of private property.³⁰ Certainly, enslaved Black people like Juan Patricio would not have had access to Indigenous or colonial commons. So we cannot simply oppose colonial privatization to colonized commons, much less romanticize commoning as a mode of resistance to racial capitalism.

I am thus less inclined to see “commoning” in the relationship between Pech and Juan Patricio, or the survival of precolonial or precapitalist social relations that could be grouped under the heading of a “moral economy” or “customary right.” Pech’s alliance with Juan Patricio against Esquivel’s *tupiles*, who were themselves Maya, and Juan Patricio’s anger at them on her behalf point beyond Manichean distinctions or romantic survivals. Rather, their connection across *casta* distinctions points to an improvised and open-ended community being forged anew, to an experiment in ante-possession more in the mode of *poiesis* than *praxis*.

3. “This is intolerable!”

Consider some of the ways this *poiesis* reaches beyond the connection between Juan Patricio and Pech. The fact that he fled to

Mérida's Black and Indian neighborhood of Santiago, 26 miles from the villages where he lived, after breaking Esquivel's arm extends his community across the peninsula. It is not clear with whom he stayed, but he must have known people who would take him in under urgent and dangerous conditions. It also seems as if Juan Patricio was close friends with Feliz de la Paz, who is described as a *mulato* and a driver (*cochero*) also enslaved to Enríquez de Noboa. Like Juan Patricio, de la Paz was tortured for some of his testimony. Both men say they spoke only to each other about how Enríquez de Noboa told Juan Patricio to harm Esquivel (since Enríquez de Noboa considered the priest's rough treatment of Juan Patricio to have been effectively directed toward Enríquez de Noboa), and that they discussed at length what Juan Patricio should do about their master's risky demand.³¹ Moreover, a number of witnesses testify that Juan Patricio had close relationships with Black and *mulato* men and women who were enslaved to another local *encomendero*, Don Gregorio de Chávez, who lived in the town of Izamal. In fact, Juan Patricio and a woman named Nicolaza del Chávez, who was enslaved by Don Gregorio, at one point had a plan to get married, perhaps to loosen Enríquez de Noboa's control over Juan Patricio, since ecclesiastical law typically allowed the enslaved to spend time with their spouses and prohibited masters from obstructing their conjugal relationship, as Herman Bennett has shown in *Africans in Colonial Mexico* (2003).³²

Juan Patricio was also closely connected to more than a few Spaniards and Creoles. For instance, testimony from numerous witnesses shows that just hours before he beat Esquivel on Sunday, 6 August, and about a week after he himself was disrespected and beaten by the priest for having interrupted the taking of Fabiana Pech, Juan Patricio met up in Tahmek with a group of men. Some are described as *mestizos* and others as *vecinos*, which literally means "resident" or "neighbor," from *vecinidad*. In the Americas, as Tamar Herzog shows in *Defining Nations* (2003), *vecino* named membership in a settled, civil community—something like "citizenship." In seventeenth and eighteenth-century Yucatán, this often meant Spaniards and Creoles, although Indigenous people and *mestizos* could also be *vecinos* if they were deemed members of a settled community, while Black people usually could not.³³ In socializing with *vecinos*, then, Juan Patricio forges relationships that defy even the distinction between the dispossessed and the disposers. Others who were in the vicinity of the group who gathered in Tahmek on Sunday, 6 August testify in Maya and so were certainly Indigenous. These men knew each other intimately enough to spend Sunday together, socializing in Tahmek's public square among themselves and alongside others, and eventually walking

over to the church to attend mass together—a mass everyone knew would be held by Esquivel.³⁴

I want to conclude with the statements that members of this group give about the fateful afternoon of 6 August, which is to say the hours just before Juan Patricio had his last, violent encounter with Esquivel outside Tahmek along the road to Hoctún. For instance, Lucas Maldonado (sometimes called Malonado), a Creole (*vecino*) from Mérida, describes the last time he saw Juan Patricio, about an hour before he broke Esquivel's arm.³⁵ Maldonado says he went to Tahmek on 6 August and met up with Juan Patricio outside the town's government buildings (*Casas Reales*) with the brothers Antonio and Francisco del Canto, as well as Nicolás de Bobadilla and Sebastián Sansores (sometimes called Sansoles), all of whom seem to have worked for or with Juan Patricio's master, Enríquez de Noboa. As I mentioned, they eventually walked together to the village church to attend Esquivel's mass. During the service, Maldonado says he stood at the entrance to the church with Francisco del Canto and Bobadilla, while Juan Patricio and Antonio del Canto went inside. Maldonado further testifies that in the middle of communion, just after Esquivel held up the host, "the said *negro* Juan Patricio got up and while walking out of the church placed his hand on his chest saying: this can no longer be suffered" (*el dicho negro Juan Patricio se levantó y al salir de la puerta puso la mano en el pecho diciendo: Ya esto no se puede sufrir*).³⁶ Sansores, a foreman in Xtabay, the small settlement just outside Tahmek where Enríquez de Noboa had a house, gives a very similar account of this moment, testifying that after the mass he asked the others where Juan Patricio went and they said, "we don't know where he went, because as they [seemingly the officiants] rose [seemingly to prepare the host], he got up saying: this can no longer be suffered. And he left the Church" (*No sabemos dónde ha ido, porque así que alzarón se levantó diciendo: Ya no se puede sufrir esto. Y se salió de la Yglesia*).³⁷

Consider the utterance *Ya esto no se puede sufrir* or *Ya no se puede sufrir esto*, imputed to Juan Patricio by both Maldonado and Sansores and performed, according to Maldonado, with some gravity: he "placed his hand on his chest while saying. . . ." Given that within about an hour of walking out of mass with that performative exclamation, Juan Patricio will intercept, argue with, and then assault Esquivel, *Ya esto no se puede sufrir* reads as more adamant than my literal translation "this can no longer be suffered" quite captures. It could be translated more colloquially as "I can't take this anymore!" However, there is no "I" or first-person verb in Spanish. Rather, according at least to Maldonado and Sansores as mediated by the court scribes, Juan Patricio generalizes the suffering as

something that befalls not just himself, as an individual, but the third person singular. Perhaps a better colloquial translation is: “This is intolerable!”

What is intolerable, exactly? Perhaps that Esquivel disrupted so many of the community’s social relations—first by trying to abscond with Pech, and then by insulting and beating Juan Patricio for thwarting that effort, and finally by escaping any responsibility for these disruptions—and then dared to celebrate mass for the whole community. Juan Patricio could be claiming that, since Catholic mass aims to make a community out of disparate members of the faith, forging one body out of the body of Christ, Esquivel ought not to lead that effort in church after having undermined it in the village streets. The social relations Esquivel disrupted were, in particular, those among Black and Indigenous people (between Pech and her Maya community, from whom Solís wanted to take her; between Pech and Juan Patricio, whom she had sought out for help; between both of them and the Indigenous deputies whom Esquivel ordered to take her), but also between Juan Patricio and those who have power over him (his master Enríquez de Noboa and Esquivel himself). From that perspective, Juan Patricio’s defense of Pech could be understood not so much to destroy Esquivel’s station as to enforce certain widely accepted limits upon it, such as making Esquivel respect Pech’s right not to work for Solís unless Enríquez de Noboa commanded it. While Esquivel repeatedly failed to respect those limits, even retrospectively when Juan Patricio sought some sort of apology from him or his superiors, it was Juan Patricio who was ultimately made to suffer without redress.

The word *Ya* in “this is intolerable,” *Ya esto no se puede sufrir*, gives Juan Patricio’s claim a punctuality, immediacy, specificity, and particularity, while the third person singular *no se puede* adds an open-ended or ongoing generality, declaring and decrying what is “intolerable” *as such*, for all. Clearly, Juan Patricio has been dispossessed of his freedom, his labor, his body. But he does not challenge dispossession here by claiming he once owned himself or anything else, or by demanding anything back as possessions. Rather, he insists on his community’s ongoingly improvised social relations; indeed, he further claims the authority to speak on behalf of those relations. Juan Patricio’s challenge to dispossession—a bold, powerful, and exceedingly dangerous challenge—is ante-possessive, in that it is at once before, against, and apposite to possession itself: *before* possession, because he acts in a world that has not yet been entirely subsumed under racial capital’s form of value; *against* possession, because he opposes Esquivel’s attempt to possess the likes of Fabiana Pech and himself; and *apposite* to possession, because he asserts his active role in social relations among Afro-Yucatecans,

Maya, and Creoles alongside the dispossessors' ongoing power of accumulation.

Of course, when I write here of "Juan Patricio's claim," I myself cannot claim to have access to his claim-making aims or intentions, given the many mediations between whomever he may have been and the textual trace of him that appears in a late seventeenth-century *legajo* now archived at the Archivo de Indias in Seville. So the Juan Patricio of whom I write here is more figure than individual, more trace than referent. And *Ya esto no se puede sufrir* is more *poiesis* than *praxis* because it is an unverifiable yet vividly textual utterance that could be said to assert the improvisation of unfolding social relations among Afro-Yucatecans and Yucatec Maya over and against both possession and dispossession.

I hope to have shown here how attention to *poiesis*—or the ways the language of our archives imaginatively remakes the world in a manner irreducible to the actions or willful intentions of individuals—helps us not only to understand the structures of accumulation by dispossession, but also to discern the ongoing ante-possessive potentials of the dispossessed. Learning how contemporary migrants come to the US to restore, forge, or encounter new social relations after having their lives stressed or even destroyed by the relentless logics of dispossession, and then are required to narrate those interests and desires as lost individual possessions, has taught me how to read dispossession in the colonial record for traces of ante-possession, traces that form a history of dispossession's present. From seventeenth-century villages like Tahmek to twenty-first-century detention centers in El Paso, varied, vigorous challenges to accumulation by dispossession could be said to thrive, refusing possession itself in the name of lives otherwise lived.

Notes

1. I want to thank the archivists at the Archivo General de Indias in Seville for helping me locate the *legajo* containing the case of Juan Patricio, and (against all odds!) for quickly providing me with a digital copy. I was alerted to the existence of this case by passing references to it in Matthew Restall's important *The Black Middle: Africans, Mayas, and Spaniards in Colonial Yucatan* (2009), pp. 86, 278–79, and 283; thanks also to him for encouraging me to dig further into the case. I also want to thank Norma Edith Betancourt Amador for expertly transcribing the case for me, as well as Gabriel Salgado, Laura Pensa, and Valeria Nicol Mora Hernández for working with me to translate the intricate irregularities of colonial Spanish. Thanks to Las Americas Immigrant Advocacy Center in El Paso, Texas, especially Linda Corchado, Rosa De Jong, and Stephen Weiss, for teaching me about asylum advocacy. An early version of this talk received welcome input during the 2019 "Exile and Exodus" conference at the Clark Library, and a more complete version during a follow-up conference in 2022 at the University of Chicago and Hong Kong University, graciously organized by Jo McDonagh, Jonathan Sachs, Julia Kuehn, and Kendall Johnson.

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2. On the power of the “ante-,” see Stefano Harney and Fred Moten, “Black (ante)-heroism,” 15 Apr. 2021, web; Fred Moten, “The Case of Blackness,” *Criticism*, vol. 50, no. 1, 2008, pp. 177–218; Jared Sexton, “Ante-Anti-Blackness: Afterthoughts,” *Lateral: Journal of the Cultural Studies Association*, vol. 1, 2012, web.

3. Writes Nichols: “To think the latter would require delving into . . . the status of those subjects who have not been integrated in to the wage-labor system. . . . [such as] the rural peasants in Southeast Asia, Indigenous peoples of the Americas, or the racialized slave classes of the world whose lives have been rendered expendable or, what is even worse, obstacles to natural resource extraction and development projects” (xx–xxi). For a brilliant recent example of such work on colonial Spanish America, see Karen Graubert, “*Pesa más la libertad*: Slavery, Legal Claims, and the History of Afro-Latin American Ideas,” *William and Mary Quarterly*, vol. 78, no. 3, 2021, pp. 427–56. Graubert also rigorously summarizes the last half century of historiography on nonelite Spanish, Black, and Indigenous intellectuals in the region, referencing much of the work that also inspires my efforts here. Some of the most recent key texts not cited elsewhere in my essay are: Herman Bennett, *African Kings and Black Slaves: Sovereignty and Dispossession in the Early Modern Atlantic* (2019); Larissa Brewer-Garcia, *Beyond Babel: Translations of Blackness in Colonial Peru and New Granada* (2020); Sherwin K. Bryant, *Rivers of Gold, Lives of Bondage: Governing through Slavery in Colonial Quito* (2014); Sherwin K. Bryant, Rachel Sarah O’Toole, and Ben Vinson III, editors, *Africans to Spanish America: Expanding the Diaspora* (2014); Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (2010); Michelle A. McKinley, *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600-1700* (2016); María Elena Martínez, “Sex and the Colonial Archive: The Case of ‘Mariano’ Aguilera,” *Hispanic American Historical Review*, vol. 96, no. 3, 2016, pp. 421–43; Anna More, “Necroeconomics, Originary Accumulation, and Racial Capitalism in the Early Iberian Slave Trade,” *Journal for Early Modern Cultural Studies*, vol. 19, no. 2, 2019, pp. 75–100; Daniel Nemser, *Infrastructures of Race: Concentration and Biopolitics in Colonial Mexico* (2017); Nemser, “Possessive Individualism and the Spirit of Capitalism in the Iberian Slave Trade,” *Journal for Early Modern Cultural Studies*, vol. 19, no. 2, 2019, pp. 101–29; Bianca Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire* (2017); Tamara J. Walker, *Exquisite Slaves: Race, Clothing and Status in Colonial Lima* (2017).

4. Writes Foucault: “What I am trying to pick out with this term is, firstly, a thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral, and philanthropic propositions—in short, the said as much as the unsaid” (*Power/Knowledge* 194).

5. See Giorgio Agamben, *The Man without Content* (1999), pp. 68–93; Jay M. Bernstein, *The Fate of Art: Aesthetic Alienation from Kant to Derrida and Adorno*

(1992); Anthony J. Cascardi and Leah Middlebrook, editors, *Poiesis and Modernity in the Old and New Worlds* (2012); Martin Heidegger, “The Origin of the Work of Art,” *Poetry, Language, Thought* (1971); Jean-Luc Nancy, *The Muses* (1996); R. A. Judy, *Sentient Flesh: Thinking in Disorder, Poïesis in Black* (2020). See also Emanuela Bianchi, “Review Essay: Black Studies meets Aristotle; a Feminist Reading,” forthcoming.

6. The phrase “accumulation by dispossession” is usually associated with David Harvey, *The New Imperialism* (2003); see also Sam Ashman, “Symposium on David Harvey’s *The New Imperialism*,” *Historical Materialism*, vol. 14, no. 4, 2006, pp. 3–166. The idea that dispossession has been an ongoing feature of capitalism, rather than just a feature of its beginnings, however, has a much longer history. Karl Marx’s notion of “so-called primitive accumulation” suggested this argument; see Marx, *Capital*, pp. 873–940; Marx, “A Letter on Russia,” *The New International*, vol. 1, no. 4, 1934; Marx, *The Poverty of Philosophy* (1995); Marx, “On Proudhon,” Letter to J. B. Schweizer. *Der Social-Demokrat*, no. 16, 1 Feb. 1865. See also the work of Peter Kropotkin, Rosa Luxemburg, and W. E. B. Du Bois in the nineteenth and early twentieth centuries; dependency theory, world-system theory, South Asian and Latin American subaltern studies, Eric Williams, Cedric Robinson, David Harvey, and Glen Coulthard among many others in the twentieth and twenty-first centuries. “History of the present” is Michel Foucault’s phrase for his genealogical method; see for instance *Discipline and Punish*, p. 31. See also David Garland, “What is a ‘history of the present’? On Foucault’s genealogies and their critical pre-conditions,” *Punishment & Society*, vol. 16, no. 4, 2014, pp. 365–84. *History of the Present: A Journal of Critical History* continues to publish scholarship that revisits and renews this method.

7. For a reading method that has inspired some of my concerns here, particularly in its reflection on the play of the verifiable and the unverifiable, see Gayatri Chakravorty Spivak, *Death of a Discipline* (2003); and Spivak, “Our Asias—2001: How to Be a Continentalist,” *Other Asias*, 2008, pp. 209–38. For a different version of a similar claim, to different ends, see Hartman, “Venus in Two Acts,” *Small Axe*, vol. 12, no. 2, 2008, pp. 1–14.

8. José Miguel Fidel, “Maras and the Politics of Violence in El Salvador,” *Global Gangs: Street Violence across the World*, edited by Jennifer M. Hanzen and Dennis Rodgers, 2014, pp. 123–44; Lirio Gutiérrez Rivera, “Discipline and Punish? Youth Gangs’ Response to ‘Zero-tolerance’ Policies in Honduras,” *Bulletin of Latin American Research*, vol. 29, no. 4, 2010, pp. 492–504; Kristen Howarth, “Unpacking Post-Conflict Violence and Crime in El Salvador: The Role of Public Security,” *Linking Political Violence and Crime in Latin America: Myths, Realities, and Complexities*, edited by Kirsten Howarth and Jenny H. Peterson, 2016, pp. 51–73; Robert Mandel, *Global Security Upheaval: Armed Nonstate Groups Usurping State Stability Functions* (2013), p. 129; María Josefina Saldaña-Portillo, “The Violence of Citizenship in the Making of Refugees,” *Social Text 141*, vol. 37, no. 4, 2019, pp. 1–21; *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment*, United Nations Office on Drugs and Crime, Sept. 2012; Al Valdez, “The Origin of Southern California Latino Gangs,” *Maras: Gang Violence and Security in Central America*, edited by Thomas C. Bruneau, Licia Dammert, and Elizabeth Skinner, 2011, pp. 23–42; Harry Vanden, “Maras, Contragoverned Spaces, and Sovereignty,” *US National Security Concerns in Latin America and the Caribbean: The Concept of Ungoverned Spaces and Failed States*, edited by Gary Prevost et al., 2014, pp. 81–92.

9. C. B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (2011). See also Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review*, vol. 106, no. 8, 1993, pp. 1707–91; Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (2015); Carole Pateman and Charles Mills, *Contract and Domination* (2007).

10. See "American Anthropological Association Statement on Ethnography and Institutional Review Boards," American Anthropological Association, 4 June 2004, web.

11. See especially Ana Raquel Minian, *Undocumented Lives: The Untold Story of Mexican Migration* (2018). See also Jason De Leon, *The Land of Open Graves: Living and Dying on the Migrant Trail* (2015); Karla Cornejo Villavicencio, *The Undocumented Americans* (2021); Óscar Martínez, *The Beast: Riding the Rails and Dodging Narcos on the Migrant Trail* (2014); Martínez, *A History of Violence: Living and Dying in Central America* (2017); Sonia Nazario, *Enrique's Journey: The Story of a Boy's Dangerous Odyssey to Reunite with His Mother* (2007); Rachel Nolan, "Guatemalan Child Refugees, Then and Now," *NACLA*, 13 Nov. 2020.

12. The percentage of migrants granted asylum is difficult to calculate because it depends on what set of migrants one is measuring: the total number of migrants, the number of migrants who file for asylum "affirmatively" (people physically present in the US but not in removal proceedings) and/or "defensively" (people in standard removal proceedings), among other possible sets. The percentage also varies over time, depending on interpretations of the law by immigration courts, as a result of individual judge's tendencies (particular regional tendencies) or even national policy shifts (as for example in 2018 when Attorney General Jeff Sessions suddenly excluded all claims of domestic violence or gang violence from consideration as grounds for asylum). That said, the overall rate of migrants granted asylum between 2016 and 2020 is generally said to have ranged between 12% and 26% per year. D'Angelo Gore, "FactChecking Claims about Asylum Grants and Immigration Court Attendance," 1 Apr. 2021, web; Ingrid Eagly and Steven Shafer, "Measuring *In Absentia* Removal in Immigration Court," *University of Pennsylvania Law Review*, vol. 168, no. 4, 2020, pp. 817–76; Ryan Baugh, "Refugees and Asylees: 2019," *Annual Flow Report*, Office of Immigration Statistics, Office of Strategy, Policy, and Plans, US Department of Homeland Security, Sept. 2020. It should also be noted that there are other grounds for claiming asylum that I do not have the space to consider here, such as claims of disability or claims to having been the victim of a crime in the US.

13. This example is explored in Cascardi and Middlebrook's volume in essays by Marina Brownlee, "Encyclopedism, Poiesis and Modernity," pp. 67–86 and David R. Castillo, "From the Bibliotheca, to the Garden, and the Graveyard: Origins of the Poiesis of the Fantastic in Late Sixteenth-Century Miscellanea," pp. 87–116.

14. See Marx, *Capital*, pp. 873–940. Though typically translated as "so-called primitive accumulation," the phrase Marx used was "*Die sogenannte ursprüngliche Akkumulation*," which is perhaps better translated as "so-called original accumulation." The "so-called" marks Marx's skepticism about, or mockery toward, those who argue that dispossession was a peaceful process that happened in a distant past which is now definitively over. For excellent work on Marx's concept, see Robert Nichols, *Theft is Property: Dispossession and Critical Theory* (2020); Nichols, "Disaggregating Primitive Accumulation," *Radical Philosophy*, vol. 194, 2015, pp.

18–28; Nichols, “Indigeneity and the Settler Contract Today,” *Philosophy and Social Criticism*, vol. 39, no. 2, 2013, pp. 165–86. See also Daniel Bensaïd, *The Dispossessed: Karl Marx’s Debates on Wood Theft and the Right of the Poor* (2021). I have also discussed this concept in “Dispossession: Reimagined from the 1690s,” *A Time for Critique*, edited by Didier Fassin and Bernard E. Harcourt, 2019, pp. 210–29 and “‘I am he’: A History of Dispossession’s Not-Yet-Present in Colonial Yucatán,” *Accumulation and Subjectivity*, edited by Karen Benezra, 2022.

15. On the practice and theory of recovering dispossessed lives in the context of North American slavery, see Marisa J. Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive* (2016); Hartman, “Venus in Two Acts”; Hartman, *Wayward Lives, Beautiful Experiments: Intimate Histories of Social Upheaval* (2019); Laura Helton et al., editors, Special Issue on “The Question of Recovery: Slavery, Freedom, and the Archive,” *Social Text*, vol. 33, no. 4, 2015; Brian Connolly and Marisa Fuentes, editors, Special Issue on “From the Archives of Slavery to Liberated Futures?” *Journal of the History of the Present*, vol. 6, no. 2, 2016. I have also written about this question in *The Brink of Freedom: Improvising Life in the Nineteenth-Century Atlantic World* (2016).

16. *Compulsa de autos criminales seguidos por Doña Ysabel Solis, vecina de Yucatán, contra Juan Patricio esclavo, sobre haber apaleado à Don Ygnacio de Esquivel, clérigo: Año de 1696*, henceforth cited as AGI_MEX_0368. For each reference, I will also cite my transcript of this *legajo*, expertly produced by Norma Edith Betancourt Amador, as Author’s Transcript, Part 1 and Part 2 (in the author’s possession).

17. Author’s Transcript, Part 1, p. 48; “*Compulsa*,” AGI_MEX_0368_0092. I discuss this encounter between Esquivel and Juan Patricio at length in “I am he.”

18. On the location of the conflict, see Author’s Transcript, Part I, pp. 93, 95, and 108; “*Compulsa*,” AGI_MEX_0368_0171-0174, 0202. On the contested question of the length of a colonial Spanish *legua*, see Roland Chardon, “The Linear League in North America,” *Annals of the Association of American Geographers*, vol. 70, no. 2, 1980, pp. 129–53, and Chardon, “The Elusive Spanish League: A Problem of Measurement in Sixteenth-Century New Spain,” *Hispanic American Historical Review*, vol. 60, no. 2, 1980, pp. 294–302.

19. For references to the sentences, see Author’s Transcript, Part 2, pp. 112, 77–82, 166–75; “*Compulsa*,” AGI_MEX_0368_0876–0877, 0885–0887, 0990–0991, 1005–1007, 1019, 1061, 1106–1107, 1115–1135. For the orders of deportation (*el entriego del negro*) from Campeche to Veracruz, see Author’s Transcript, Part 1, pp. 117–18, 120–21; “*Compulsa*,” AGI_MEX_0368_1005–1011, 1013–1015. On the region’s and period’s prisons and imprisonment, see Valeria Sánchez Michel, *Usos y funcionamiento de la cárcel novohispana: El caso de la Real Cárcel de Corte a finales del siglo XVIII*, Mexico City: El Colegio de México, 2008.

20. On Afro-Mexicanos in the legal system, see Bennett, *Africans in Colonial Mexico*; Joan Cameron Bristol, *Christians, Blasphemers, and Witches: Afro-Mexican Ritual Practice in the Seventeenth Century* (2007).

21. For brilliant accounts of juridical practices in colonial Spanish America, see Burns, *Into the Archive*; and Premo, *Enlightenment on Trial*. On crime and punishment in colonial Spanish America, see Woodrow Wilson Borah, *Justice by*

Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real (1983); Mark A. Burkholder, *Politics of a Colonial Career: José Baquíjano and the Audiencia of Lima* (1980); Caroline Cunill, *Los defensores de indios de Yucatán y el acceso de los mayas a la justicia colonial, 1540–1600* (2012); Charles R. Cutter, *The Protector de Indios in Colonial New Mexico, 1659–1821* (1986); Cutter, *The Legal Culture of Northern New Spain, 1700–1810* (2001); Gabriel Haslip-Viera, *Crime and Punishment in Late Colonial Mexico City, 1692–1810* (1999); Tamar Herzog, *Upholding Justice: Society, State, and the Penal System in Quito (1650–1750)* (2004); Patricio Hidalgo Nuchera, *Antes de la acordada: La represión de la criminalidad rural en el México colonial (1550–1750)* (2013); Mark W. Lentz, *Murder in Mérida, 1792: Violence, Factions, and the Law* (2018); Ethelia Ruiz Medrano, *Mexico's Indigenous Communities: Their Lands and Histories, 1500–2010*, trans. by Russ Davidson (2010); Matthew C. Mirow, *Latin American Law: A History of Private Law and Institutions in Spanish America* (2004); Brian Philip Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (2008); Bianca Premo and Yanna Yannakakis, “A Court of Sticks and Branches: Indian Jurisdiction in Colonial Mexico and Beyond,” *American Historical Review*, vol. 124, no. 1, 2019, pp. 28–55; Michael C. Scardaville, “Justice by Paperwork: A Day in the Life of a Court Scribe in Bourbon Mexico City,” *Journal of Social History*, vol. 36, no. 4, 2003, pp. 979–1007; Victor Tau Anzoategui, *La ley en América hispana: Del descubrimiento a la emancipación* (1992); Zeb Tortorici, *Sins against Nature: Sex and Archives in Colonial New Spain* (2018); Victor Uribe Urán, *Fatal Love: Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic* (2016); Nancy Elizabeth Van Deusen, *Global Indios: The Indigenous Struggle for Justice in Sixteenth-Century Spain* (2015); Juan Pedro Viqueira Albán, *Propriety and Permissiveness in Bourbon Mexico* (1999).

22. See for example Author's Transcript, Part 1, pp. 46 and 52; “*Compulsa*,” AGI_MEX_0368_0088–0089, 0100.

23. For instance, see Author's Transcript, Part 1, pp. 52–3 and 87–96; “*Compulsa*,” AGI_MEX_0368_0101-0103, 0161–0177.

24. Author's Transcript, Part 1, pp. 141 and 52; “*Compulsa*,” AGI_MEX_0368_0271, 0100.

25. The Spanish reads: “*hallándose este declarante en las Casas Reales del pueblo de Tahmec, llegó a ellas Juan Patricio, esclavo del Contador Don Pedro Enríquez, y estando juntos en dichas Casas Reales como a las onze del día que fue Sábado, vio que el Alguacil Mayor y unos Topiles del dicho pueblo traían una India a la cárcel, y en dicha ocasión el dicho negro se apartó deste declarante diciendo iba a ver que le quería la dicha India que le llamaba, y aviendo ido se estuvo cerca de una hora hablando con ella a la puerta de la cárcel, y aviendo vuelto a este declarante le dixo a esta India, y no la entiendo bien, pero parece que dice que la quieren llevar a servir a la madre del compañero del Beneficiado llamado Bachiller Don Ignacio de Esquivel, y que se resiste por el maltrato que la susodicha les da y que quiere antes que la lleven a servir a la ciudad que no a su casa; a lo qual le respondió este declarante que esso lo podía negociar con los Indios, y aviéndole hecho el negro al Alguacil Mayor que la soltasse y embiasse otra, no aviéndolo querido hacer diciendo dicho Alguacil Mayor que le tocaba su vez a aquella y que no quería ir otra, el dicho negro la hizo echar a la cárcel y le*

dio unos golpes al dicho Alguacil Mayor y la llevó personalmente al sitio del dicho su amo volviéndose dentro de una hora a las dichas Cassas Reales” Author’s Transcript, Part 1, pp. 57–58; “*Compulsa*,” AGI_MEX_0368_0110-0111.

26. Author’s Transcript, Part 1, p. 47; “*Compulsa*,” AGI_MEX_0368_0090.

27. See Laura Prieto Fernández, “Retrato Conde-duque de Olivares, Velázquez,” *La Guía*, 26 Apr. 2013, web.

28. See Abelardo Levaggi, “Repúblicas de indios y repúblicas de españoles en los reinos de indias,” *Revista de Estudios Histórico-Jurídicos*, no. 23, Valparaíso, Chile, 2001, pp. 419–28; and Xochil Leyva Solano, “Del común al Leviatán,” *América Indígena*, vol. 55, no. 1–2, 1995, pp. 201–34.

29. On commons and commoning, see Veronika Bennholdt-Thomsen and Maria Mies, *Subsistence Perspective* (1999); David Bollier and Silke Helfrich, editors, *Wealth of the Commons* (2012); Cesare Casarino and Antonio Negri, *In Praise of the Common: A Conversation on Philosophy and Politics* (2008); Silvia Federici, “Women, Land Struggles,” *WorkingUSA: The Journal of Labor and Society* (WUSA), vol. 14, no. 61, 2011, pp. 41–56; Federici, “Witch-Hunting, Globalization and Feminist Solidarity in Africa Today,” *Journal of International Women’s Studies*, vol. 10, no. 1, 2008, pp. 29–35; Federici, “Feminism and the Politics of the Commons,” web; Peter Linebaugh, *Stop, Thief! The Commons, Enclosures, and Resistance* (2014); and Linebaugh, *Magna Carta Manifesto: Liberties and Commons for All* (2008).

30. See Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (2018).

31. Author’s Transcript, Part 1, pp. 16–17, 102–105, 113–115, 234–237, and 239–40; “*Compulsa*,” AGI_MEX_0368_0025-0026, 0189–0194, 0212–0216, 0475–0483, 0488–0489.

32. Author’s Transcript, Part 1, p. 284; “*Compulsa*,” AGI_MEX_0368_0588; Author’s Transcript, Part 2, p. 26–28; “*Compulsa*,” AGI_MEX_0368_0674–0680.

33. During one of his interrogations, Juan Patricio is asked where he is from in these terms: “*Preguntando cómo se llama, qué edad y oficio tiene, dónde es natural y vecino, y si es cassado o soltero*,” Author’s Transcript, Part 1, p. 141; “*Compulsa*,” AGI_MEX_0368_0271. This could be taken to suggest that Juan Patricio was considered a *vecino* by the court, though by linking his *vecinidad* to his *naturaleza*, it also could be taken to ask where he is originally from other than Yucatán, namely Santo Domingo, and thus to presume that he could not be a *vecino* of Yucatán. As Herzog explains, “in Castile in the eleventh and twelfth centuries. . . [*vecinidad*] designated the privileges and duties of individuals who were willing to abandon their communities of origin and come to settle in lands recovered from the Muslims and now under Christian control” (6). By the seventeenth and eighteenth centuries, the term’s connection to immigration and physical residence had been lost, and it designated “a wide range of fiscal, economic, political, social, and symbolic benefits in return for the fulfillment of certain duties” (9). In Spanish America during the colonial period, *vecinidad* was eventually “‘essentialized’ . . . by allowing Spanish Americans

to exclude all non-Spaniards from citizenship and by expanding citizenship inside the Spanish community. At the same time, citizenship, which originally applied only in the Spanish community, gradually found its way to the Amerindian one, eventually creating a citizenship regime common to both Spanish and Indian communities" (8).

34. The group included Lucas Maldonado (or Malonado), Sebastián Sansores (or Sansoles), Nicolás de Bobadilla, Francisco del Canto and his brother Antonio del Canto, and possibly also Ignacio Pinelo and Joseph Valencia. For Maldonado, see Author's Transcript, Part 1, pp. 134–36, and 241–42; "Compulsa," AGI_MEX_0368_0256–0260, 0491–0493. For Sansores, see Author's Transcript, Part 1, pp. 61–65, 84, and 135; "Compulsa," AGI_MEX_0368_0118–0126, 0157, 0224–0225. For Bobadilla, see Author's Transcript, Part 1, p. 79; "Compulsa," AGI_MEX_0368_0151. For Francisco del Canto, see Author's Transcript, Part 1, p. 84ff; "Compulsa," AGI_MEX_0368_0157ff. For Pinelo, see Author's Transcript, Part 1, p. 84; "Compulsa," AGI_MEX_0368_0157. For Valencia, see Author's Transcript, Part 1, p. 79; "Compulsa," AGI_MEX_0368_0151.

35. Maldonado is called "vecino de esta dicha ciudad," namely Mérida, Author's Transcript, Part 1, p. 134; "Compulsa," AGI_MEX_0368_0256. He also signs his name to his testimony and so is literate, Author's Transcript, Part 1, pp. 136, 241–42; "Compulsa," AGI_MEX_0368_0260, 0491–0493.

36. Author's Transcript, Part 1, p. 135; "Compulsa," AGI_MEX_0368_0258.

37. Author's Transcript, Part 1, p. 63; "Compulsa," AGI_MEX_0368_0121.

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