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# On the importance of legal history to Afro-Hispanic linguistics and creole studies

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## Abstract

This paper claims that legal history has much to offer to the study of the Afro-European languages that developed in the Americas. In particular, it is suggested that a comparative analysis of colonial slave laws may help us better understand why certain colonies were more conducive to the formation/preservation of creole languages than others. This study builds on the recently-proposed Legal Hypothesis of Creole Genesis (Sessarego, 2015, 2017) and, in so doing, it provides data that weaken the assumptions on which the Afrogenesis Hypothesis was based (McWhorter, 2000).

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## 1. Introduction

The main goal of this paper is to show that Afro-Hispanic linguistics and creole studies have much to gain from interdisciplinary research. In particular, I would like to argue that, in order to cast light on the genesis and evolution of the Afro-European languages that formed in the Americas, it is of fundamental importance to pay close attention to the sociohistorical scenarios that characterized the European colonies in the “New World”, and specifically, to the legal systems that regulated black slavery in such territories.

This is the research philosophy that underlies the Legal Hypothesis of Creole Genesis (LHCG) (Sessarego, 2015, 2017), an hypothesis I will present here to address some of the main questions that gravitate around the so-called “Spanish creole debate” (i.e., the debate concerning the paucity of Spanish creoles in the Americas) (cf. Lipski, 2005; Sessarego, 2017). Indeed, it is a well-known fact that there are only two contact varieties in the Americas that have traditionally been classified as Spanish creoles: Papiamentu (spoken on the islands of Aruba, Curaçao and Bonaire, Dutch Antilles) and Palenquero (used in a former maroon community, the village of San Basilio de Palenque, Colombia). The paucity of Spanish-based creoles, therefore, is in sharp contrast with the relative abundance of English- and French-

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based creole varieties. Several models have been proposed to account for such a situation (cf. [Granda, 1968, 1970](#); [Schwegler, 1991, 1999](#); [Lipski, 1993](#); [McWhorter, 2000](#); [Sessarego, 2013a,b, 2014, 2015, 2017](#)), but no common consensus has yet been achieved in the field and, as [Lipski \(2005:304\)](#) would put it, “the last word [. . .] has yet to be written” on this issue.

Stating that historical and legal research is key to the formulation of well-informed theories of creole language evolution may appear common sense to many readers; nevertheless, I have to say, interdisciplinary perspectives of this type have never been that common in Afro-Hispanic creole studies. Indeed, the formulation of the main hypotheses that have been proposed to account for the scarcity of Spanish creoles have primarily been built on linguistic data. When historical analyses have been attempted, they have been carried out, for the most part, without paying much attention to details and, consequently, such models never analyzed in depth the heterogeneous systems that regulated black slavery across the different European colonies in the Americas (cf. [Granda, 1968, 1970](#); [Schwegler, 1991](#); [McWhorter, 2000](#)). Indeed, some models either implicitly or explicitly suggest that colonial slavery should be seen as a quite homogeneous phenomenon, apparently invariable—from their point of view—across the American continent. A clear example of this is [McWhorter's \(2000: ch. 2, present volume\)](#) Afrogenesis Hypothesis (AH), whose assumptions we will examine in more details in the following sections.

I do not agree with such a homogenizing perspective. Slavery existed since antiquity and assumed, depending on the times and places, *different* forms and legitimations ([Winks, 1972](#); [Watson, 1989](#)). For this reason, I feel there is still plenty of work to do—from within a variety of fields and disciplines—to cast light on the genesis and evolution of the Afro-European languages of the Americas and, especially, on the Spanish creole debate. In this paper, I will first explain why two of the main assumptions on which the AH ([McWhorter, 2000, present volume](#)) was built are not backed by the available historical and legal data, and, second, show how such data, on the other hand, do support the LHCG ([Sessarego, 2015, 2017](#)).

This study consists of six sections. Section 2 summarizes the main AH claims and assumptions. Section 3 shows why each of the colonies indicated by the AH as ideal places for Spanish creole formation did not actually show the suggested sociohistorical characteristics. Section 4 presents the LHCG and provides a comparative analysis of colonial slave laws to show that colonial slavery was highly heterogeneous across the Americas. Section 5 tests the LHCG on colonial Chocó, which is the most important region for McWhorter's hypothesis as well as a challenging colonial scenario for the LHCG. In fact, it was a remote department, far away from urban centers and legal courts, where law could hardly be enforced ([Sharp, 1976](#)). Finally, section 6 summarizes the article and provides my concluding remarks.

## 2. Some problematic assumptions on which the Afrogenesis Hypothesis was built

In his book, *The Missing Spanish Creoles*, [McWhorter \(2000\)](#) proposed what he called the Afrogenesis Hypothesis (AH), the model according to which all Atlantic and Indian Ocean creoles would have developed out of pidgins that formed on the western African coast. In his view, the presence of coastal slave castles in colonial Africa is key to understanding the genesis and evolution of these contact varieties. The author claims that all French-based creoles developed out of a single French-based pidgin, which originally formed in Senegal, on the Île de Bieuert, when the French started their slave trade activities around 1638 (cf. [Delafosse, 1931:111](#); [McWhorter, 2000:173](#)). In a similar way, all English-based creoles would have developed out of a single English-based pidgin, which formed around 1632 in Ghana, in the Cormantine Castle (cf. [Porter, 1989:128](#); [McWhorter, 2000:111](#)).

The author tries to back his claims by providing linguistic and sociohistorical data. In particular, he suggests that his model can perfectly account for the Spanish creole debate. As his book title suggests, the absence of Spanish creoles would be the most important piece of evidence in favor of the AH. Indeed, according to McWhorter, the paucity of Spanish creoles in the Americas would be due to the fact that Spain did not directly trade in African slaves, since it did not have sub-Saharan colonies. For this reason, there were no Spanish slave castles in colonial Africa. Thus, the lack of Spanish creoles in the Americas would be linked to the absence of Spanish-based pidgins on the other side of the Atlantic Ocean.

Such a model, according to the author, would explain the non-creolization of Spanish in the Americas, in a context in which black slavery is assumed to be quite homogeneous across the different European colonies. In particular, McWhorter points out five specific Spanish colonies which, in his view, presented all the conditions that have been reported in other contexts as factors responsible for language creolization (i.e., massive introduction of African-born slaves, big numeric disproportions between blacks and whites, harsh working conditions, etc.). The Spanish-ruled regions characterized by such a scenario would be: Chota Valley (Ecuador), coastal Venezuela, coastal Peru, Veracruz (Mexico), and *especially* the Department of Chocó (Colombia) ([McWhorter, 2000:6–12](#)). The author suggests that the idea according to which creoles existed in those regions and then, somehow, decreolized and disappeared is not realistic, since it is difficult to believe that people would “give up” their language so easily and in so many regions only across Spanish America ([McWhorter, 2000:20–30](#)).

The author also suggests that the existence of Papiamentu and Palenquero can be easily explained if we consider that these two varieties are Spanish creoles only in a “synchronic sense”, since, from a diachronic perspective, they started

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