The Origins and Authors of the Code Noir

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I. INTRODUCTION

The Code Noir marked France's historic rendezvous with slavery in the Americas. It was one of the most important codes in the history of French codes. First promulgated by Louis XIV in 1685 for his possessions in the Antilles, then introduced in Louisiana in 1724, this code was, unlike the Custom of Paris, the only comprehensive legislation which applied to the whole population, both black and white. In these colonies where slaves vastly outnumbered Europeans and slave labor was the engine of the economy as well as its greatest capital investment, the Code was a law affecting social, religious and property relationships between all classes.

The Code was also an important sociological portrait, for no legislation better revealed the belief system of European society including its fears, values and moral blindspots. No legislation was more frequently amended and regularly adapted to adjust to France's evolving experience with slavery. Furthermore, perhaps no aspect of the Code—whether one refers to its motives and aims, compares it to other slave systems, or questions its enforcement—is free of contemporary controversy.¹

However, no set of issues is more important than the Code's antecedents and origins. Who were its authors and what sources did they use in drafting the Code? And what difference does it make? Some have claimed that the Code Noir derives from Roman law and that once again we have an example of legislation from the civil law which contrasts with slave legislation in the English colonies. But to what extent is this conclusion justified? Indeed, the claims about Roman sources usually include the argument that slave laws like those of France and Spain were susceptible of being codified because the Roman reservoir of rules was available, whereas English law developed ad hoc experientially, and

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could not be codified at the outset. Some even argue that Rome's legal influence improved the quality of life of slaves in the New World. France and Spain's laws, they argue, were relatively more "humane" or less dehumanizing than slavery rules developed by English colonies, and Spanish slavery regulation was milder than that of France because of the greater degree to which Spain absorbed Roman law into its law of slavery.

Scholars had no basis for these assertions other than by looking directly at the text of the Code Noir, by noting certain similarities to solutions arrived at by the Romans, and by then arguing that these similarities were unmistakable signs of Roman indebtedness. "Roman law," Alan Watson declares categorically, "was thus the inevitable model for the French law of slavery." It is not without importance that these scholars are usually specialists in Roman law.

The attribution of Roman origins to the slavery law of a country such as France has, initially, a plausible ring because we are well aware of France's romanist tradition. That tradition, however, was stronger in the southern region of France (les pays de droit écrit) and less vigorous in the northern two-thirds of the country, which included Paris where customs were the primary source of law. At the time of the drafting of the Code Noir, moreover, France had no tradition of slavery and no laws on slavery had been in force in metropolitan France for centuries. French custom was silent on the subject. The Coutume de Paris, the compilation of Parisian custom in statute form which was chosen by the King to govern his subjects in the New World, had no slavery provisions. Roman law in the north of France was a subsidiary system ready to fill gaps where customs and edicts were silent, yet it had never been called upon in the past as a source of slavery regulation. If it was indeed used in the seventeenth century to fill a "need" faced by the ancien régime, we should examine the evidence carefully before yielding to the conclusion.

Professor Watson states that France acquired slaves in the American possessions before France possessed a law of slavery. In his view, the legal needs generated by the institution preceded formal legislation, and where else, he asks, would the French draftsman have turned if not to Roman rules? As we shall see below, however, in the fifty year period preceding the Code Noir (1685), the French developed slave law and usages in the Antilles almost as

2. Thus, Leonard Oppenheim alluded to this alleged difference between civil-law and common-law slave systems by stating:

Louisiana drew its law from civilian sources, but since the other slaves states had no common law of slaves to turn to, they had to seek other channels, namely, statutes, jurisprudence built up within a particular state, analogies to existent common law doctrines and slight borrowings from the Roman law and other civilian sources.


4. Slavery was abolished in France by a series of edicts issued by French kings, beginning with the order of Louis le Gros emancipating the serfs in 1135.
quickly as they imported slaves. The claim that slavery preceded law in France’s case may be chronologically correct but substantively quite misleading. Equally misleading is Watson’s theory that France’s alleged recourse to Roman rules was “artificial.” According to Watson, it was not law made “on the spot” in Louisiana or Hispaniola where local conditions and needs would have been of paramount interest to the legislator. Rather, he supposes that the Code Noir was made far away in the “very different circumstances of Paris.” On this assumption he presumes Paris adopted non-racist rules of an ancient society that held slaves of many nationalities and extended these rules overseas to a white supremacist society holding African slaves. Though social conditions in ancient Rome were not those in French America, this did not deter French lawyers trained in Roman law and accustomed to its use from adopting these artificial rules of slavery. Professor Watson primarily supports his conclusion by noting how closely the Code Noir’s provisions on emancipation resemble the Roman law of emancipation, and he suggests that France’s civil law roots made recourse to Roman texts an inevitable matter. Indeed, if this account of the Code Noir’s history were accurate, it would lend further support to the distinguished author’s well-known theory that legal culture and legal tradition, in this case France’s, aided by the indifference of monarchs with better things to do, can provide a sufficient explanation for the migration of legal ideas into different settings and distant lands.

In addition to Watson, other writers have focused upon the legislative preferences and biases shown by the codifiers of the King’s Code. The selection of Roman rules found in the Code Noir, it is argued, produced qualitatively different law than Spain’s Siete Partidas, even though both rested upon Roman sources. In Professor Hans Baade’s eyes:

France had, as it were, codified those parts of the Roman law of slavery that were to the advantage of slaveholders. . . . Spanish law, on the other hand, had received, implemented and expanded the rules and

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5. The French began to acquire slaves at St. Christophe and other islands as early as 1635. By 1654, there were about 12,000 slaves distributed in the Islands. Alfred Martineau & Louis Philippe May, Trois siècles d’histoire antillaise, Martinique et Guadeloupe 23, 29 (1935).

6. Watson, supra note 3, at 85.

7. French philosophes seemed to contrast the Roman institution with their own. “The first Romans treated their slaves with more generosity than any other peoples. Masters regarded their own slaves as companions. They lived, worked and ate with them.” M. le Chevalier de Jaucourt, Esclavage, in Dictionnaire encyclopedique 492 (Denis Diderot ed., 1821).

8. Watson, supra note 3, at 1-4. The difficulty here may not be the general theory but the particular application. To think that Louis XIV was indifferent to the minutia of law reform or to slave regulation in particular is to ignore his genius for detail and to overlook entirely the commanding presence, restless energy and meticulous oversight of Jean-Baptiste Colbert who produced (in the King’s name) five great ordonnances prior to his death, as well as his posthumous creation, the Code Noir. See infra notes 34-36 and accompanying text.
notions of Roman slave law favoring the well-being and the ultimate freedom of slaves: *peculium*, self-purchase and judicial protection.\(^9\)

At this moment, it is not my purpose to pursue the argument about qualitative differences between Spanish and French slavery, but rather to note the similarity between the positions of Professors Watson and Baade. Both are manumission-centered in their appraisal of the Code's provenance. Both have concluded that Roman law was the main source of the *Code Noir*, and to the extent that French or Spanish law seems on the whole more "humane" or less dehumanizing than English slave law, they share the view that this qualitative difference results from the reception and application of Roman ideas, not from genuine French or Spanish reactions to local conditions in their colonies. Yet neither author *appears* to have investigated the actual circumstances of the Code's redaction.\(^10\)

This paper employs a different approach. In searching for the sources of the *Code Noir*, I shall discuss the authors, their instructions, their preliminary memoranda, the sources which they used and cited, and finally a comparison of these sources with the final product. What emerges from this analysis is an *unfamiliar Code Noir*, one which requires reappraisal and perhaps a different place in history. The *Code Noir*, this research unveils, is a code drafted in the Antilles by the highest officials in the islands, the Governor-General and the Intendant. These officials followed royal instructions which called for them to examine and incorporate previous ordinances and judgments rendered by the three Sovereign Councils in the islands (Martinique, Guadeloupe and St. Christophe),\(^11\) to seek out the advice and sentiments of members of these governing Councils, as well as to incorporate their own views about the proper regulation of slavery.\(^12\) The instructions *did not* authorize recourse to Roman rules, and there was not one allusion to a Roman rule, text or term in any of these documents. The Code emerges in this paper as law undergirded by firsthand experience and local contemporary sources. The grounding of the code

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10. I hasten to note that I am only basing this statement upon appearances and the type of research evidenced in their works.
11. The Sovereign Councils (Conseils Souverains) were the dominant governing institutions in the French colonies. Their powers were roughly equivalent to those possessed by the provincial *parlements* of France. Their unusual mix of legislative and judicial powers is discussed *infra* notes 24-26 and accompanying text.
12. The King's instructions in this regard show a willingness to incorporate into the *Code Noir* the views of local slaveowners and administrative officials and this, more so than a biased selection of Roman rules, generally explains why the *Code Noir* often reflects planter interests. If the Code had been drafted in Paris based purely on Roman references, or imagined planter preferences, and without this local consultation, its provisions might have been more protective of slaves, but such provisions are notoriously difficult to interpret in terms of motivation. *See infra* notes 42, 108-109 and accompanying text.
is fifty years of France's own experience with slavery in the New World, not its reliance on the ancient law of Rome. The consequences of this discovery cause the Rome-based thesis and its spiraling corollaries to fall to the ground. Why French slave law could seem milder than English law (if indeed it was) seems to have nothing to do with the different traditions of civil law and common law. Ancient tradition was not the French guide, and therefore, was not the reason for the alleged qualitative differences. Moreover, why one type of rule instead of another attracted the French drafter had nothing to do with the legal culture and training of the redactors. Out-of-touch romanists sequestered in Paris did not author the Code. The authors were on-the-scene administrators, non-lawyers, who were surely not conditioned to think in Roman-law terms and categories.

In writing this paper I was able to secure from the colonial archives at Aix-en-Provence certain manuscripts and memoranda of the authors of the Code Noir. I propose to review (in chronological order) four documents which reveal the aims, sources and interior process of the drafting. For convenience, I will refer to these documents as The Instructions, The Rough Notes, The Preliminary Report, and the Avant-Projet. These documents tell the essential story of the origins and authors of the Code.

II. The Instructions

The first document is the King's Mémoire to his Intendant, dated April 30, 1681. This Mémoire is a statement of reasons or motifs why a slavery code is desired, and it contains a set of instructions for the preparation of an "ordonnance" in the Antilles. The King entrusted the task to Jean-Baptiste Patoulet and the Comte de Blénac, his two top officials in the Antilles.

The relevant terms of the Mémoire may be freely translated as follows:

[S]ince His Majesty observes in [Patoulet's] dispatches and in those of de Blénac, certain articles dealing with the Blacks, and that there is no ordinance or custom [ordonnance ou coutume] in the Kingdom which speaks of slaves, He wishes that he [Patoulet] examine with care all the orders and regulations which have been decreed by the sovereign councils on this subject, that he, in coordination with de Blénac, the principals on the councils, and other inhabitants of the islands, examine all which is relevant to this subject, that he draw up precise memorandums on the subject in order that His Majesty may lay down the prohibitions, injunctions and everything touching the conservation policing and judging of these people, so as to create an ordinance [ordonnance] whereby this jurisprudence can be established on the basis of the authority of His Majesty. And since this subject is new and unknown in the Kingdom, all the more ought he apply himself to

13. These documents are referenced in the Archives d'Outre-Mer under Col F3/90. A photocopy of the avant-projet is set forth in the appendix to this paper.
penetrate it. He [Patoulet] will observe by His Majesty’s letter to de Blénac the sequence which he must observe which will consist in always beginning by the subject of Religion and thereafter will come provisions dealing with arms, justice, finance and commerce.

To understand the importance of these instructions one must first look to the persons appointed as draftsmen, then to Colbert’s role and influence upon the instructions and the project, and finally to the light which the instructions shed upon the debate about the origins of the Code Noir.

What little we know about the redactors’ lives and careers shows that they were hardly cut in the august mold of Tribonian and Portalis. History has, with some justice, largely forgotten them. The Comte de Blénac (1622-1696) (né Charles de Courbon) was Governor-General of the French islands from 1678 until his death.14 His co-redactor, Patoulet, served as Intendant of the French islands for the years 1679-1682. Both owed their careers to the Marine and to the patronage of Colbert, who as Louis XIV’s Intendant and Contrôleur Général incarnated the role of first minister of state.

De Blénac first served with distinction in the army before entering the Marine in 1669 or 1670.15 He was a ship commander in the war against Holland and continued a career at sea until May, 1677 when he was nominated Governor and Lieutenant-General of the Antilles.16 Patoulet had been, prior to his appointment as Intendant, controleur de marine at Rochefort and commissaire de marine at Brest.17 He was the first Intendant to be given jurisdiction over all the French islands. His official rank was second only to de Blénac, but superior to that of the individual Governors of the islands. By virtue of their commands, both he and de Blénac were in a favorable position to understand the administrative and governmental problems of slavery. Patoulet’s portfolios over police and justice brought him in daily contact with the public-order measures related to slaves, with judging trials and administering punishments and, in his role as presiding officer over the Sovereign Councils, with deliberations regarding necessary slave regulations. De Blénac’s overall role in the execution of laws and in the affairs of the Sovereign Councils would have made him almost equally informed on slave matters.18

14. With the exception of the year 1690-91.
15. De Blénac’s entry into the service of the Marine occurred at just about the time when the administration of the islands, formerly attached to the ministry of Foreign Affairs, passed to the ministry of the Marine.
17. In his later career, he was Intendant in Flanders. Patoulet died in 1695.
18. There is historical evidence that de Blénac himself owned slaves. In 1679 he sent two young slaves to his family in France and on another occasion he mentioned in a letter to Colbert that he had sold off four blacks. Baudrit, supra note 16, at 14, 46-47.
Both would have known the leading citizens and planters and would have been familiar with their views about the treatment of slaves.

To understand de Blénac's and Patoulet's collaborative role more clearly, it is important to note the sources of slave law within the French colonial system. Slave law essentially emanated from four sources: edicts and ordonnances issued by the King, decrees of the Governor-General and Intendant of all the islands, local regulations (arrêts) issued by the Sovereign Councils within their insular competence (Martinique, Guadeloupe, St. Christophe), and customs and usages which arose on particular islands. The King's edicts or ordonnances about slavery were obviously of general application and took precedence over local regulations and customs. As the Instructions to the drafters acknowledge, there was no royal legislation about slavery prior to 1681. The Code Noir was the first and most conspicuous example of this type of legislation.

The three other sources of slave law were purely local, and produced a body of law which preexisted the Code. Legislatively speaking, the Governor-General and the Intendant together shared competence over slave matters with the Sovereign Councils. The two executive officers jointly possessed an island-wide police power which in addition to control over ports, coasts, roads, and public gatherings, included responsibility for slave crimes, revolts, and marronage or running away. Thus, a considerable number of slave regulations took the form of joint decrees issued solely in the name of "Messieurs les Général & Intendant." Nevertheless, the primary sphere of jurisdiction over slaves fell to the Sovereign Councils. The drafters' Instructions assumed, with good reason, that the arrêts of these Councils contained the bulk of the pertinent regulations, and these regulations derived from powers ancillary to the Council's judicial authority.

The Conseils of Martinique, Guadeloupe and St. Christophe (and St. Dominique after 1685) were primarily regarded as courts of law for deciding cases brought before them. By 1679 they were composed of six judges or conseillers who were generally military men (officiers d'épée) or other leading citizens. Some council members were large slaveowners, such as Roy, the doyen of the Martinique Council, who reportedly owned several sugar plantations and a vast quantity of slaves. It is logical to assume that council members owned at least a few slaves since one of the privileges which the King granted to each conseiller was an exemption from the capitation tax on twelve slaves. They were not, however, legally trained judges. To the contrary, most had no education of any kind. Nevertheless, these Conseils possessed roughly the

19. Beginning with Patoulet's appointment in 1679, this police power was shared.
20. See, e.g., Ordonnance of June 7, 1734 sur le taxe des nègres justiciés; Ordonnance of October 4, 1749 concernant les nègres empoisonneurs.
21. Before 1679 the number had been ten.
23. Thus, we are told that the Conseil at Petit-Goave (St. Domingue) included at various times
same powers and prerogatives as the parlements of France during the ancien régime, meaning that the Conseils were endowed with far more than judicial attributes. Like the Parlements, the Conseils also possessed important legislative functions, including the prerogative of refusing or delaying registration of the King’s ordinances, the right of remonstrance, and the power to make arrêts de règlement. The Conseils established wide-ranging slave regulations in the period before the Code Noir was promulgated, as well as in the period afterwards by the use of this last power. In this capacity, the conseillers could make regulations having force of law for the island in question upon all points not settled by prior law, edict or ordonnance, provided the subject matter fell within their judicial competence and their regulatory intervention in that area was not forbidden by law. Since, as we have seen, slavery was an area previously unregulated by the King and only occasionally regulated by the joint decrees of the Governor-General and the Intendant, these Councils had a relatively free hand in enacting the earliest laws on the subject.

The Intendant served as first president on each of the Councils. Thus, as executive officer and chief judge in the islands, he had a preponderant voice in shaping the laws of slavery. Since it was the Intendant’s responsibility to draft and sign the arrêts on slavery issued in the Conseil’s name, he was a logical choice to become an author of the Code Noir. Yet if by office these officials were well-qualified to be redactors, their strained relationship with one another nearly disqualified them. Colbert well knew that Comte de Blénac and Patoulet were bitter rivals and that he was entrusting the task of writing a slave code to estranged collaborators. Well before receiving this assignment, they had waged what de Blénac’s biographer calls a “declared war” over the questions of power, authority, and protocol. They had constantly complained in letters to Colbert of each other’s conduct, and on more than one occasion Colbert had been forced to arbitrate or issue reprimands. One of Colbert’s letters reproached de Blénac for meddling in the sphere of the Intendant’s police power and for interfering with the Conseil Souverain by suspending execution of its arrêts. Colbert had told de Blénac, “[i]n a word I want you to let the Sovereign Councils act freely in all areas of police and justice.”

In the same letter Colbert even established a jail keeper, a filibusterer, the operator of a gambling house and gens de métier. Reportedly the president of the Conseil in 1692, M. Boisseu, could neither read nor write. Pierre de Vaissière, Saint-Domingue: la société et la vie créole sous l’ancien régime, 1629-1789, 83-87 (1909).

24. See Banbuck, supra note 22, discussing the Conseil’s evolution in Martinique.

25. Thus, the Custom of Paris and other ordonnances on civil procedure and commerce had no force of law in Martinique until they were formally enrolled by the Conseil Souverain of that island on November 5, 1681. The Code Noir was similarly not deemed locally in force until formally registered in each Conseil. Banbuck, supra note 22, Chapter IX.

26. For examples of arrêts de règlements, see the arrêts of 3 June 1680 and 12 January 1682 of the Sovereign Council of St. Christophe, which are discussed infra in the text accompanying note 44. See also examples infra note 61.


28. Id. at 50.
the order of precedence for their ceremonial processions so that they might avoid petty disputes over protocol.29

This history of personal tensions, as well as Colbert’s role as referee between the protagonists, probably explain why the King’s Instructions to Patoulet advise him that in the event of any disagreement on any subject, including the Code Noir, he should defer entirely to the wishes of the Governor-General, his superior.30 These tensions played no small part in Patoulet’s subsequent personal downfall and explain why he was not allowed to finish the process of drafting the Code Noir. In 1682, de Blévacq happily informed Colbert about the Intendant’s misappropriations in office and this quickly led to his replacement.31 In all these matters, Colbert’s role was paramount. He was the ruling spirit behind the scenes. He was very likely the actual author of the royal Instructions set forth above.32

Colbert’s presence behind the slave code’s Instructions can be felt in a number of ways. His interest in developing a comprehensive slave ordinance was a natural extension of his mercantilist ideas.33 The “sugar islands” of the Antilles had become the most-prized overseas possession held by any European power, but extracting the maximum profit from them demanded an efficient administration of slave labor through clear, uniform laws. The choice of redactors and the terms of their Instructions followed the classic pattern which Colbert had established in his other great law reform projects.34 First, as in the previous projects which Colbert directed, the King once again selected a small team outside of the official world of courts, men with practical experience rather than legal training.35 The King thus passed over his chief legal officials and institutions, the Chancellor and the courts, in favor of career marine officials who possessed a wealth of practical experience, yet almost no formal education.36

29. Id.
30. De Blévacq had poor working relations not only with Patoulet but with the Governor of the islands and other officials as well. He was prone to outbursts of temper and early in his career was imprisoned at Rochefort for insulting an official of the Marine. Towards everyone except perhaps Colbert, he was known to be intemperate and somewhat intimidating. Nevertheless, de Blévacq’s long tenure as Governor-General may be explained by his military successes, his efficiency as an administrator, and his sycophantic relationship with Colbert. He was the father of eleven children who, it is said, had only two inclinations: all the sons went into the Marine and all the daughters went straight into the convent. Id. at 11.
31. See infra note 52.
32. A search through his collected letters and memoranda, however, failed to locate this document. See Jean-Baptiste Colbert, Lettres, instructions et mémoires de Colbert (Pierre Clément ed., 1869).
33. On Colbert’s mercantilism, see Andrew Trout, Jean-Baptiste Colbert 84-88 (1978).
34. He is credited with five great ordonnances: Civil Procedure (1667); Waters and Forests (1669); Criminal Procedure (1670); Commerce (1673); and the Marine (1681).
36. De Blévacq and Patoulet’s lack of literary gifts made them somewhat ironic choices to author a code. De Blévacq’s letters reveal an author almost illiterate in grammar and spelling (his biographer
Second, the Instructions follow the familiar two-step procedure of Colbertian reform: an on-the-scene investigation of the relevant facts and consultation with those knowledgeable in the field, followed by a period of study, reflection and redaction. Thus, the selection process reveals much about the practical nature of the enterprise and virtually demolishes the view that lawyers in Paris whose knowledge of slavery law was purely antiquarian drafted the Code. Third, in contrast to the style of pre-Colbertian ordinances which simply compiled articles one after another in disconnected fashion, the Instructions required the systematic division of the subject into titles arranged in a certain sequence. The Instructions sought comprehensiveness of treatment (“examine all which is relevant to this subject”) and clear logical arrangement (“beginning by the subject of Religion and thereafter provisions dealing with arms, justice, finance and commerce”). Colbert’s great ordonnances were the predecessors of the codes enacted under Napoleon, and his Instructions envisaged an edict that would possess the technical characteristics one would expect to find in a modern code.

The Instructions also show that Roman law was not a primary source for the future slave code. Instructions calling for the study of local ordinances and regulations and for coordination with officials and citizens in the islands are simply not compatible with the notion that Roman law was the natural starting point. The Instructions refer to slave law as “new and unknown in the kingdom” and exhort Patoulet to “penetrate” it fully. They do not ask to accomplish this by considering what the Romans laid down. They are the opposite of a call to study ancient sources or to make comparisons with other European nations. They portray the King as wishing to use his authority to convert “this jurisprudence” found in the Antilles into a comprehensive ordinance. It would have made little sense to expect non-lawyers living in the Antilles (where books on Roman law must have been nearly unavailable) to conduct research so far beyond their means and abilities. However, they could have been expected (and were in fact instructed) to turn to local law, usages and advice in fulfilling their mission. In addition, the sequence of subjects to be treated had no relation to Roman ordering or to Roman categories. In short, the claim that Roman Law was the “inevitable model” for the Code Noir cannot rest upon the Instructions that the King gave to his draftsmen.

calls his system of spelling “fantaisiste”). Patoulet’s hieroglyphic hand made him almost impossible to read. Neither could have carried out the task without secretarial assistance.

37. The method of drafting the ordonnance on Waters and Forests illustrates Colbert’s empirical outlook:

Since the forests were in danger, Colbert ordered an inquiry. His investigators went into the provinces to interview inhabitants, gather evidence of maladministration, and inspect the woodlands. They punished local officials for laxity and examined old regulations and proposed new ones. These recommendations were studied in preparation for the most comprehensive series of forest reforms hitherto known.

Trout, supra note 33, at 149.
Instructions, of course, are one thing and execution in accordance with them is another. The redactors could have surreptitiously introduced Roman law rules at some later stage of their work. A review of the later documents, however, shows this was not the case. Let us now consider the fruits of the collaboration between Patoulet and de Blénac.

III. THE DRAFTERS’ ROUGH NOTES

On December 3, 1681, de Blénac and Patoulet compiled what is essentially a set of notes comparing their views and seeking consensus on specific problems and topics relating to slavery. Two vertical columns divide each page. The right-hand column reads, “Advice of M. de Blénac on several issues in the Isles of America” and the left-hand column carries the heading “Response of Sieur Patoulet.” De Blénac took the initiative in the drafting, organizing his thoughts into nine articles. Article one deals with convening sessions of the Sovereign Councils, article two with matters of taxation, article three with the problem of the diminishing number of Europeans in the islands, article four with criminal and civil trials, procedures and punishments of slaves, article five with questions arising out of racial mixing (status of offspring, marriage, customs in Martinique and Guadeloupe, etc.), article six with the desirability of introducing feudal fiefs in the islands, article seven with establishing an inspectorate to monitor the treatment of slaves on each island, and article eight with police control (passes, runaways, etc.). Article nine contains a miscellany. De Blénac wrote these sections of the memorandum and then sent the papers on to Patoulet for his response or comments. Patoulet completed his “Response” three days later, and returned the entire document to de Blénac who then added a postscript stating that he would appear the following Monday at Patoulet’s office to work further on the drafting.

De Blénac’s procedure in this memorandum was to pose a general problem at the beginning of each paragraph within an article and then to list possible solutions by shorthand annotation. Patoulet’s responses either approved, disapproved, or supplemented these solutions. These agreements and disagreements formed the basis of their subsequent working session.

These notes allow glimpses into the formative stage of the redaction. They also illuminate aspects of the personalities of the authors and the sources at their disposition. The notes first reveal that the authors took quite seriously the obligation to collaborate with the three Sovereign Councils. De Blénac outlined a procedure in article one, whereby the Councils of all the islands were to meet every two months and to remain in continuous session where matters required

38. Was this bifurcated format due to the usual shortages of paper or could it be a manifestation of their stormy relationship? Perhaps the latter, for de Blénac inserts an icy prefatory line just before the first article: “The King orders him by his letter of April 30 to confer with Sieur Patoulet in order to write in collaboration.”
the authors apparently interpreted their instructions as permitting some parts of the slave code to arise out of the deliberations of these assemblies. This was a sensible interpretation. Since the Intendant served as first president of these Councils with responsibility to take the votes, draw up and sign and promulgate the regulations, and since the Governor-General had full rights of audience and was expected to attend, these sessions would have been the most convenient means by which the authors might comply with their duty to seek consensus and collaboration. Yet this shows that they built the Code not merely out of previously established laws and customs, but from on-going legislative activity during the redaction period itself. Thus, to Patoulet and de Blénac “collaboration” did not exclude the passage of new legislation by the local representative institutions which they led. This was the antithesis of an “artificial” process of discovering rules by the light of Roman sources in faraway Paris.

Second, the notes give hints as to the personalities and motives of the codifiers. De Blénac appears the more humanitarian and racially tolerant of the two. He called for inspectors to be placed on each island to monitor the treatment of slaves, and he wanted to outlaw the use of cruel punishments like “la brimballe” and “le hamac.” Patoulet, however, did not find these practices “too rude” to be employed. Patoulet believed in strict separation of the races. He was scandalized by concubinage between Europeans and Africans, whereas de Blénac considered miscegenation a normal, even inevitable, phenomenon in the colonial context.

Though the drafters may have had somewhat differing outlooks, we should guard against the tendency to confuse their motives with our own views. Judging by these notes, some allegedly “protective” rules may have had a completely different motive than to protect slaves. For example, de Blénac and Patoulet reached the conclusion that the law should require owners to provide their slaves with minimum food and clothing allotments, and this rule passed into the Code Noir. They did not originally discuss this measure as a matter of decency or humanity toward slaves (as might be supposed), but as a means of halting the diminishing white population in the islands. The drafters’ notes argued that when slaves were not properly fed, they had a tendency to run away

39. Their respective roles within the Sovereign Council were described by Colbert’s letter (1682) reproduced by Baudrit, supra note 16, at 50-51.
40. This simultaneous activity was shown when they included in their first report to the King (May 1682) new regulations passed only four months earlier by the Council of St. Christophe. Patoulet expressly noted that “The Sovereign Councils of Martinique and of Guadeloupe rendered different arrêts and regulations on the same subject [as that of the St. Christophe arrêt] but since they all tend in the same direction and they have no other intentions than the two set forth above, Patoulet did not esteem it necessary to have them transcribed.”
41. “Foreigners,” he wrote in Article 5 of the notes, “did not establish themselves abroad except by this means.” He also reported, without alarm, that the majority of the French officers at St. Christophe have married mulatresses. He thought the mulattoes will “ally themselves” with the whites and adopt their morals and religion.
42. Code Noir art. 22 (1685).
in search of food and steal from the petit blancs, causing these whites to sell their lands and leave the islands. Readers of the Code may search for higher motives behind the rations provision, but the Mémoire provides evidence that cold-eyed efficiency primed every other consideration.

Finally, the drafters’ notes contain important references to the existence of customs and usages about slavery which had already taken root in the Caribbean islands. These practices were a vital part of the dynamic by which indigenous slave law developed. De Blézac tells us, for example, that there was a usage on the isle of Martinique regarding the manumission of mulattoes: the men are freed automatically when they become twenty years old, the women when they reach fifteen years. The father of a mulatto child was obliged to pay a fine to the Church as a penalty, and if he claimed the child for himself from the owner of the mother he had to pay the owner a similar sum. On Guadeloupe and St. Christophe, however, de Blézac outlines the development of other laws and customs. De Blézac takes all of these rules and practices into account in stating his position to Patoulet. As mentioned earlier, the presence of these diverse legal elements and sources shows that the picture of French slave law drawn by Professor Watson is quite misleading. Professor Watson assumed that France would have turned inevitably to Roman sources because there was a legal vacuum existing with respect to local law and custom. This took no account, however, of the speed and diversity with which law and custom incubated on small isolated islands separated by great distances. None of this development could have been visible from Paris, nor would it have depended upon Rome.

IV. THE PRELIMINARY REPORT

The work of Patoulet and de Blézac reached an intermediate stage in 1682. As seen above, by then the Governor-General and the Intendant had conferred and compared views. They had also gathered together pertinent arrêts of the three Councils and sounded out those Councils on other proposed provisions for the code. At this point they prepared a preliminary report, a ten-page Mémoire to the King, dated May 20, 1682. It covers only four of the eventual seven subject areas of the Code Noir and omits entirely the subjects of religion, the civil status of slaves, and emancipation. Only Patoulet signed it, but a marginal note affirms de Blézac’s collaboration in stating, “[t]his Mémoire has been communicated to Monsieur de Blézac who has found nothing to change.” The preamble then paraphrases the King’s original instructions.43

43. Elsa Goveia is one of the few commentators who notes that, “before the Code Noir was instituted, the French colonies already possessed a fairly comprehensive series of slave laws and . . . the Code Noir really may be regarded as an extended codification of these laws.” Elsa V. Goveia, The West Indian Slave Laws of the Eighteenth Century, in Foner & Genovese, supra note 1, at 128.

44. The preamble reads, “Mémoire to the King regarding the conservation, police, judgment and punishment of the slaves of his subjects in America, which Patoulet gives to his Majesty after having taken the advice of the Sovereign Councils and to which he has conformed his own.”
The Mémoire affords two new perspectives on the drafting process. First, it presents many rules in their earliest formulation, thus establishing a baseline for tracing the integration of the provisions into the Code Noir. Second, and more importantly, the Mémoire discloses sources and origins and, thereby, permits us to test the validity of the Roman-law thesis.

The sources are of two kinds. The first are the arrêts of the Sovereign Councils, which are quoted at length and cited by date in the body of the text. The second are the "sentiments" or the advice (avis) of the three Councils which are presumably mingled with Patoulet’s and de Blénac’s own advice. Rules resting upon sentiments and "avis" are always signaled by a notation in the margin in Patoulet’s own hand.

The title "La Police" illustrates his extensive use of the arrêts. In the Mémoire, Patoulet transcribed at length two arrêts of the Council of St. Christophe and requested simply that the King confirm the rules in these regulations so that they could be assimilated into the Code Noir. He set forth an arrêt of June 3, 1680, which contained a variety of police measures, including the interdiction of all slave assemblies by night or day (weddings included), the placing of two inspectors at the market to halt traffic in stolen commodities, the authorization for whites to fire upon illegal assemblies and to apprehend slaves, the necessity of a letter of permission to be carried by any slave away from his master’s home, and the authorization to fire upon and kill "sans scrupul" any slave not carrying such a letter, etc. He also transcribed for the King an arrêt of January 12, 1682, enacted only four months earlier, that dealt with the same police questions. Patoulet noted that since all the Sovereign Councils had passed similar measures, the arrêts from St. Christophe could serve as prototypes and it was unnecessary to include the others in the Report.

These regulations were later received into the Code Noir and, therefore, the King did confirm them as Patoulet requested. In some cases the Code took them over bodily, including their turn of phrase. In many other instances, the arrêts simply furnished the substance of later provisions. For instance, the proposition that no mutilation or torture of slaves would be allowed except by the authority of justice was accepted as a restraint upon private owner violence and became Article 42 of the Code. Similarly, the rule that if a slave has stolen goods or caused injury, the master must pay the damage, "unless he would prefer to abandon the slave to the injured person," ("s’il n’estime mieux abandonner l’esclave") was similarly based upon the arrêts. Incidentally, this rule of alternative liability, which later became Article 37 of the Code, affords another interesting example of the dangers of freely associating Roman legal rules. The distinguished French scholar Pierre Jaubert, who has made many imaginative connections between Roman law and the Code Noir (about forty by his count),

45. See, e.g., the near verbatim incorporation of these regulations in Code Noir arts. 16, 19, 20 (1685).
points to this provision as an allusion to noxal surrender. Neither the Mémorie, the later Avant-Projet, nor the Code Noir, however, used Roman terminology. To this writer, the source of the provision is plainly indigenous and it would be strange history to maintain that the Romans held an intellectual monopoly on such a simple conception as abandonment of an offending object in lieu of damages. This concept existed at English law (the deodand and the bane) and can be found in many primitive systems which had no connection to Rome.

As already indicated, the Intendant also proposed regulations bearing the notation “avis” or “sentiments” of the sovereign councils. Here the lineage of rules seems to have been more informal, perhaps a local usage in one of the islands or an original idea proposed by the drafters which had received approval by the council members. Patoulet listed about a dozen articles in the text with various inscriptions in the margin stating, for example, “[t]hese advice (avis) are in conformity with that of the Sovereign Councils,” and “[a]ll these articles [here he placed brackets around eight articles in text] are drawn from the sentiments of the three Sovereign Councils which also gave them and which were followed by Patoulet’s advice.” Some of these rules provided that all property acquired by slaves belongs to their owners; slaves should be judged by the ordinary judges according to the same process as free persons; they should not be mutilated or tortured except by authority of law, etc. Without exception every rule based upon these avis later passed into the Code Noir. One interesting idea or usage of this kind was a scheme of mutual insurance, whereby owners whose slaves the justice system condemned to death would be reimbursed for their market value. Patoulet noted that reimbursement was essential to the detection of crime because experience showed that masters would otherwise carefully hide the crimes of their slaves out of fear of losing them to capital punishment. This unique system, which was funded by a slaveowner tax levied upon the head of each slave, also passed into the Code Noir. Another proposition emanating from the “avis” of the Council is that a child born of a slave mother shall be a slave (“toute personne née de mère Esclave sera esclave”). This is the direct source for the Code Noir’s rule that the child follows the condition of its mother, not that of its father. Pierre Jaubert’s speculation that this principle of descent

46. Pierre Jaubert, Le code noir et le droit romain, in Histoire du droit social—mélanges en hommage à Jean Imbert 321, 328 (1989); see also Watson, supra note 3, at 86.
47. 2 Sir Frederick Pollock & Frederic W. Maitland, The History of English Law 472-74 (1968). To indicate how tenuous this practice of free association becomes, Jaubert also claims that Article 31 (which allows a master to sue for damages against one who injures his slave) is an “incontestable” reference to the Lex Aquilia. Jaubert, supra note 46, at 326. By this logic, however, we could easily conclude that the common law derived the action of trespass from the Lex Aquilia.
48. Code Noir art. 40 (1685). The 1683 avant-projet proposed a modified funding formula (i.e., an imposition would be placed on the sale of the next one hundred slaves). The Code Noir returned to the formula proposed in Patoulet’s Mémorie.
49. Consequently, in marriage between slaves the children belong to the owner of the mother, not that of the father, where the husband and wife have different owners. Code Noir art. 12 (1685).
has a Roman provenance can be based only upon similarity and coincidence. Since there are only two rules of descent available and the rule based upon paternity is impracticable, it is no wonder that the French, working independently of the Romans, would choose the practical rule.

Concluding discussion of the Mémoire of 1682, let me return to its bearing upon the debate over origins and authors. More clearly than any other document, the Mémoire reveals that the actual sources the codifiers used were twofold—the arrêts and the avis gathered together by Patoulet and de Blénac. Within the notion of avis and sentiments may be understood usage, custom and consensus as to what constituted traditional and proper slave regulation. While the Mémoire did not cover every subject of the future Code Noir, it demonstrates that the redactors followed their Instructions and did not bookishly resort to Roman law sources. This brings us to the avant-projet of 1683, the last and most important document that they produced.

V. THE AVANT-PROJET

The events of 1682-1683 were crucial to the preparation of the Code Noir. In July 1682, the King abruptly replaced Patoulet as Intendant barely three months after he had submitted the Preliminary Report discussed in the previous section, apparently because Colbert discovered through de Blénac that he had been operating an illegal importation scheme. It may be that all work on the Code ceased in the three month interim until Patoulet’s successor, Michel Bégon, arrived in the islands in September or October, 1682.

Bégon’s letters of appointment instruct him to collaborate with the Governor-General to bring the slave ordinance to completion. One suspects that the work must have been near completion at the time of his appointment, for in February 1683, barely four months after his arrival in Martinique, Bégon and de Blénac

And if the mother was a free woman of color, the child is born free though the father was a slave.

Text:

50. Jaubert, supra note 46, at 323 (citing G. Inst. 82, “ex libera et servo liber nascitur”).

51. A rule of paternal descent (the child follows the father’s condition) would have called for unverifiable proofs of paternity, whereas proof of maternity was easily established. Additionally, female slaves were not as numerous as male slaves in the Caribbean, and childbearing was regarded as one of the chief economic benefits of the woman’s owner.

52. The incident is recounted by Baudrit, supra note 16, at 141. According to de Blénac, “he (Patoulet) had brought in watches, clocks, mirrors, barrels of beef, etc.” all of which violated rules prohibiting royal officials from engaging in commerce. It is interesting that Versailles would discover in 1694 that de Blénac too was engaged in illegal trade, id. at 141-42, but it is not clear whether any sanction was applied.

53. Michel Bégon (1638-1710), a cultivated civil servant better known as a collector of engravings than a redactor of laws, became the third author of the Code Noir. He had entered the service of the Marine under Colbert in 1677 and would remain Intendant of the French Isles for two years. He left in 1684 to become Intendant des Galères and subsequently became Intendant of Marseilles (1685-1688) then Intendant of Rochefort (1689-1710).
submitted a carefully written avant-projet to the King. The avant-projet consisted of fifty-two articles arranged in seven titles.  

The preamble recited that its authors had taken advice from the three Sovereign Councils and other leading citizens, and declared that the Mémoire was to serve as a projet for an ordinance on slavery ("pour servir de projet d'une ordonnance"). We know, of course, that the final version of the Code Noir took shape thereafter in Paris, and it is also clear that some transformation of the avant-projet was made in Paris. The number of articles, to penetrate no further, increased from fifty-two to sixty. The question arises, therefore, to what extent did Bégon and de Blénac's avant-projet actually serve as the model for the finished Code? Did this projet written in the Antilles become the core of the future Code or was it perhaps cast aside by the Paris drafters in favor of a return to Roman sources? These questions require me not only to discuss the avant-projet itself, however summarily, but also to measure its role and influence upon the promulgated Code Noir.

To answer these questions with article by article comparisons would, I fear, exhaust the patience of the reader and unreasonably expand the scope of this paper. Nevertheless, the results of such a comparison may be shortly stated. About ninety to ninety-five percent of the substance of the avant-projet passed directly into the Code Noir, much of it being assimilated in verbatim form. It appears that the projet carried with it a presumption of substantive validity. Unfortunately, I do not have the actual instructions given to Paris revisers, nor in fact is their identity known, but it may be deduced from the nature of their interventions that they were essentially instructed not to change substance and policy, but only to improve whenever possible the clarity, cohesiveness and effectiveness of the rules. Accordingly, there are a number of stylistic changes. A few articles were transferred or reassigned from one title to another title where they were thought to be better placed or might have greater effect. Paris also did not hesitate to rearrange the sequencing of provisions within titles, and ultimately it suppressed the title headings themselves and instituted continuous numbering. Nonetheless, the inner structure of the original seven titles remained

54. The titles of the avant-projet were as follows:
- Religion (eleven articles)
- Nourishment and clothing (six articles)
- Police (six articles)
- Crimes and Punishments (sixteen articles)
- Witnesses, Donations, Successions and Actions (three articles)
- Legal Seizures, Slaves as Movable Property (six articles)
- Grant of Liberty (four articles).

55. They were perhaps appointed by Colbert before his death in September, 1683.

56. An example of one of these changes was that the projet treated racial concubinage between a married master and his slave as a criminal offense. Avant Projet Title IV, 12-13 (1683). Paris transferred this rule to the articles on religious matters, Code Noir art. 9 (1685), as if to subscribe to the view that adultery with slaves was not so much a public order question as a serious religious dereliction.
distinct even after they were transposed and rearranged into the continuous numbering scheme.57

As mentioned earlier, these changes were only stylistic. A more significant type of revision were those which modified rules in the *avant-projet* that produced an ambiguous result or stated no sanction at all in case of violation. Such changes accomplished a major goal of Colbertian codification, which was to use limpid language requiring no interpretation by judges and to obtain clear results from every rule.58

Yet while the revisers in Paris sometimes altered enforcement procedures, rarely did they change the substance of an original prohibition or imperative rule.59 As previously indicated, the revision did not attempt substantive reform of Caribbean policies. As to the question of Roman law influences upon the revision process, the influence was almost non-existent. There are, in this writer's opinion, perhaps only two instances—那些 dealing with the slave's *peculium* and the modalities of his manumission—where Paris seems to have

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57. The following table shows the correlation between the original titles and the *Code Noir* numbering:

<table>
<thead>
<tr>
<th>Avant-Projet (1683)</th>
<th>Code Noir (1685)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Corresponding Articles</td>
</tr>
<tr>
<td>Religion</td>
<td>Arts. 1-14</td>
</tr>
<tr>
<td>Nourishment</td>
<td>Arts. 15-21</td>
</tr>
<tr>
<td>Police</td>
<td>Arts. 22-27</td>
</tr>
<tr>
<td>Crimes and Punishment</td>
<td>Arts. 28-31</td>
</tr>
<tr>
<td>Status &amp; Incapacity</td>
<td>Arts. 32-43</td>
</tr>
<tr>
<td>Seizures &amp; Slaves as Movables</td>
<td>Arts. 44-54</td>
</tr>
<tr>
<td>Emancipation</td>
<td>Arts. 55-59</td>
</tr>
</tbody>
</table>

58. See Boulet-Sautel, supra note 35, at 123. The redesign of a police provision, Avant Projet Title III, 1 (1682), intended to reduce crime and to suppress traffic in stolen goods may serve as an illustration. The provision forbade slaves to sell goods at public market unless they carried a letter of permission from the slave's owner specifying what goods could be sold in his name. The provision did not indicate, however, what would happen if stolen goods were bought from a slave without such a letter. To remedy this defect, Paris created in *Code Noir* art. 19 (1685) a buyer-beware sanction: the true owner of stolen goods could revendicate them from the purchaser without paying restitution of the purchase price, and the purchaser was also subjected to a fine. See also Avant Projet Title III, 4 (1683), as revised by *Code Noir* art. 26 (1685). In this instance, instead of imposing fines upon owners who failed to furnish slaves with rations and clothing, as the provision in the *avant-projet* proposed, Paris placed enforcement in the hands of the Procureur-Général, granting slaves standing to lodge complaints directly and calling such deprivations "barbarous and inhumane." As Peytraud noted, the remedy was purely illusory and there were no prosecutions. Lucien Peytraud, *L'Esclavage aux antilles francaises avant 1789*, at 23 (1897). The reference to inhumanity, the sole instance in the *Code Noir*, was window-dressing invented in Paris which disguised the underlying practical reason for the provision. See supra note 42 and accompanying text. See also *Code Noir* art. 47 (1685) (A special penalty for breaking up slave families through separate sales was added to the *projet* provision).

59. One instance was the crime of striking the master. Originally a slight blow of any kind was a capital offense. Avant Projet Title IV, 4 (1683). The revision provided that death was warranted only where the blow was to the head or at least caused contusion or blood to flow. *Code Noir* art. 33 (1685).
made unambiguous use of or allusion to Roman law rules.60 The modest scope of this Roman contribution will be discussed below.

With these general observations in view, let me now address in a more systematic way the relationship between the avant-projet and the final version of the Code.

A. Title One

All eleven provisions, save one, in the avant-projet's title on Religion became the foundation of Code Noir articles 1-14. The close correspondence between the two sets of articles is due to direct quotes and borrowed phraseology. These rules in their ensemble—the Roman Catholic church is the sole church, slaves must become Roman Catholics and must be baptized, married and buried within the Church, no slave labor on Sunday ("from midnight to midnight") etc.—all had church and local antecedents without Roman connotations.61

The opening article of the Code, calling upon French officials to chase the Jews out of the French isles, deserves special mention, for it has no counterpart in the avant-projet. The avant-projet was written in 1683, prior to the King's definitive decision (September 1683) to banish Jews from the islands and prior to the revocation of the Edict of Nantes (1685). It was not foreseen that the King would alter his position on the Jewish question.62

Why the King placed this anti-Semitic provision in the Code Noir has been a source of astonishment to some and a source of speculation to others. The nineteenth-century Louisiana historian Charles Gayarré could find no reason to include a ban on Jews within a code ostensibly regulating slavery.63 However, Bertram Korn and Alan Watson in modern times seem to suggest that the French monarch was rotely reiterating old Roman strictures, dating from the era of Constantine, which forbade Jews to own Christian slaves.64 Korn suggests that

60. See infra notes 98-99, 106-111 and accompanying text.
61. The avant-projet's rules on baptism of slaves, Sunday rest, and marriage are undoubtedly church regulations, but they had been the subject of local laws in the islands since the 1650's. See arrêt in Martinique of 7 October 1652 (slaves cannot be worked on Sundays and holidays) and 19 June 1665 §§ 3, 6 (masters prohibited from preventing blacks and engagés from going to mass on Sundays and holidays; masters must baptize slaves and have them married in church).
62. Rather the avant-projet apparently envisaged that Jews would own slaves in the islands. It, therefore, simply ordered Jews as well as Protestants to permit their slaves freely to exercise the Roman Catholic religion and to observe all the religious duties applicable to slaves. See Avant Projet Title I, 8 (1683).
63. "By what concatenation of causes or of ideas these provisions concerning the supremacy of the Roman Catholic religion and the expulsion of the Jews came to be inserted into the Black Code, it is difficult to imagine." Charles Gayarré, History of Louisiana, Vol. I, 362-63 (1879).
64. Bertram Korn, The Early Jews in New Orleans 4 (1969); Alan Watson, Slave Law in the Americas 34 (1989). For Constantine's decree in 339 A.D., see C.1.10.1. For Justinian's decree on the subject, see C.1.10.2; 1.3.54 (56) 8 (3).
the "double-edged" denial of the right of Jews to settle, as well as the right to indoctrinate slaves in any faith other than Roman Catholic, would therefore serve to guarantee the proper catholicization of the slaves.\textsuperscript{65}

The rules repressing Jews, however, are no part of a vestigial Roman-law legacy within the Code Noir. They represent, rather, the resolution of a long-smoldering controversy surrounding their slaves, their commercial activities, and their freedom of conscience in the Antilles. Jewish immigration to the French isles had begun in the early seventeenth century, but it had always provoked controversy and ambivalence. By an order of the Council of February 4, 1658, Jews were forbidden to engage in commerce on the isle of Martinique, yet this order was later rescinded on September 2, 1658.\textsuperscript{66} Colbert instructed Governor-General de Baas in 1671 that Jews must be permitted to enjoy complete liberty of conscience and should be accorded the same privileges as other persons in the islands since they have made "considerable expenditures" to cultivate their lands.\textsuperscript{67} Nevertheless, ten years later Governor-General de Blénac's note in the Mémoire of December 3, 1681, indicated that the policy was far from settled: "To learn if the King wishes to permit the Jews to practice their religion."\textsuperscript{68} On the eve of the avant-projet's completion in 1682, the Jesuits prepared a memorandum summarizing the reasons why both Jews and Huguenots should be excluded from the islands and prevented from holding slaves.\textsuperscript{69} Colbert, who had defended toleration of Jews only insofar as they contributed to the economic life of France, found himself fighting a losing battle in the last decade of his life.\textsuperscript{70} The King's definitive order expelling the Jews came in September 1683, only days after Colbert's death, and well after the avant-projet had been submitted. This order then became the opening salvo of the Code: Jews should be driven out of the islands, while Protestants may remain on condition that they refrain from practicing their religion publicly.\textsuperscript{71} Here then is another example

\begin{flushright}
\textsuperscript{65} Korn, supra note 64, at 4. Watson argues that Louis XIV's slave code rotely followed in the Roman traces, but with one difference. Since the Code Noir said there could be no Jewish colonists, there was no need for a provision corresponding to Roman and Spanish law forbidding Jews to own Christian slaves. Watson, supra note 64, at 90.

\textsuperscript{66} 1 Moreau de St. Méry, Loix et constitutions des colonies francaises de l'amerique sous le vent 83 (1784).

\textsuperscript{67} Arthur Hertzberg, The French Enlightenment and the Jews 24 (1968). According to Hertzberg, in making this statement Colbert was stating his own policy when the growing Christian orthodoxy of Louis XIV was not yet so powerful. Colbert had been informed that the Jews in Martinique and other French-American islands were contributing in an important way to agriculture. \textit{Id.} at 24.

\textsuperscript{68} "Scavoir si le Roy entend que l'on permette les Juifs de professer leur religion."

\textsuperscript{69} "They [the Jews] have in their homes a great number of slaves whom they instruct in Judaism, or at least whom they divert away from Christianity; they prevent them from having instruction, and they destroy all religious faith that the missionaries can inspire." Lucien Peytraud, L'esclavage aux antilles francaises avant 1789, at 174 (1897).

\textsuperscript{70} Hertzberg, supra note 67, at 24.

\textsuperscript{71} These official pronouncements were compromised by their less-than-complete enforcement. Both Jews and Protestants continued to live and to be admitted in the islands long thereafter. A
of an extravagant claim of Roman-law influence made in disregard of the Code's immediate history.

The misconstruction of the Code's origins continues in subsequent titles.

B. Title Two

Paris received the avant-projet's title on sustenance and clothing practically en bloc into the Code.\textsuperscript{72} The two texts prescribed the same minimum food rations and clothing allotments which masters must furnish. Both prohibited dispensing alcoholic beverages (\textit{eau de vie} or \textit{guildive}) as a means of discharging this duty, and both forbade giving slaves a day off to farm foodstuffs on their own in lieu of dispensing rations.\textsuperscript{73} Here one might note that the avant-projet and Code provisions stating that slaves who become infirm by old age or disease cannot be abandoned came from the pen of de Blénac and Patoulet, and not from an edict of the Emperor Claudius, as Jaubert hints.\textsuperscript{74} The desire of slaveowners to abandon slaves when they became unprofitable may have been common to both societies, but their experiences and solutions were different. The Romans granted freedom to the mistreated slave, while French law turned the slave's care over to the hospital and charged the owner for his subsistence.

\textsuperscript{72} See Code Noir arts. 22-27 (1685).

\textsuperscript{73} Peytraud, \textit{supra} note 58, at 219, explains that this injunction was designed to counteract a practice in Guadeloupe and Martinique of giving slaves Saturday off and a plot of land to cultivate ("à la façon du Brésil") in lieu of furnishing food and clothing. The practical problem was that in a sugar monoculture there was too little effort to produce foodstuffs to feed the slaves. However, the experiment of turning over the task of raising foodstuffs to the slaves themselves had been tried and failed. It had only led to increased theft rather than actual farming. This experience was the basis for forbidding the practice, both in the avant-projet, Title II, 3, and in the Code Noir, Arts. 22, 24. The only significant difference between the avant-projet and Code Noir provisions lay in the enforcement. The former stipulated a fine for each violation while the latter placed enforcement of these alimentary duties in the hands of the Procureur-General and vainly expected powerless illiterates to petition him with their grievances.

\textsuperscript{74} Jaubert, \textit{supra} note 46, at 324, argues that this provision originated in an edict declaring that abandoned, old and sick slaves would be given the right of the city.
As we have seen earlier, the security measures which the third title "La Police" contains trace their sources to the local laws of the islands. The main purposes of the provisions were to control the theft of commodities and to prevent slave assemblies and violent revolts. These rules passed directly into the Code Noir with few modifications. Thus, the avant-projet provisions declaring that slaves cannot sell goods at market without carrying a letter of permission,77 that goods in the hands of slaves without such permission may be seized by any citizen78 and that officers are to be placed in the markets to enforce these requirements,79 became Articles 19, 20 and 21 of the Code. Likewise, provisions forbidding slaves to carry large sticks or weapons,80 or to assemble81 and declaring owners who tolerate such assemblies liable for all damages,82 furnished the language for Articles 15, 16 and 17 of the Code.

D. Title Four

"Crimes and Punishments" formed the longest title of the avant-projet. These articles became the basis of Articles 32-43 of the Code Noir. The Paris revisers rearranged and consolidated some provisions and in one case created a new offense.83 In other respects, however, the provisions passed unscathed. These included two underlying assumptions about slave crimes.

The avant-projet assumed that while slaves were incapable of civil acts, they were responsible moral agents for criminal law purposes. They were capable of discerning right from wrong and thus should be judged by the same criminal process which applied to free persons. Nevertheless, the province of crime in a slave code was distinctive and limited. Both the projet and the Code dealt only with crimes unique to the status of slave and slaveowner. Neither dealt with general crimes which anyone might commit such as murder, rape, arson, burglary, etc. Instead, the slave crimes of striking the master,84 insolent or violent behavior toward free persons,85 and running away (marronage)86 were criminal acts which no free person could commit. To these, however, the projet and Code apparently added two offenses that slaves typically committed: the
theft of livestock and the theft of commodities. They did not treat murder or homicide except to specify that it was a crime for a master or overseer to kill a slave. Crimes perpetrated by one slave upon another slave, moreover, were not dealt with at all, perhaps because the society considered injuries to slaves as damage to private property and thus the subject of private punishment and/or compensation and, therefore, not a concern of the state.

The second underlying assumption was that slaves might receive both private and public punishment for their offenses. The slave served two masters and was subject to a kind of double jeopardy for the same acts. The main distinction was that private punishment could encompass whippings with cords or branches, but could not include death, physical mutilation or the use of torture. Public punishments by authority of law, however, were designed for maximum deterrence and in certain cases expressly called for physical mutilation, such as the cutting off of ears or the severing of hamstrings. In cases of capital punishment, the Code adopted the mutual insurance scheme proposed in the avant-projet. Its premise was not that capital punishment of a slave constituted a “taking of private property for a public purpose, but rather that an uncompensated owner would hide crime rather than lose his slave.

E. Title Five

The avant-projet's treatment of civil incapacity was short and skeletal and the revisers supplemented it. The original articles fully disqualified slaves as testimonial witnesses in civil and criminal proceedings, denied them all testamentary, contractual and donative capacity to dispose of, acquire or to receive property, and rendered slaves incapable of being sued or pursued in civil proceedings. These three articles achieved the capitis deminutio of slaves as witnesses, litigants, and authors of juridical acts, without elaborating the consequences. Paris enlarged these incapacities in several ways. Article 28 denied slaves the capacity to acquire any patrimonial rights, conceiving them

87. Avant Projet Title IV, 5 (1683); Code Noir art. 35 (1685).
88. Avant Projet Title IV, 6 (1683); Code Noir art. 36 (1685).
89. Avant Projet Title IV, 6 (1683); Code Noir art. 43 (1685).
90. Avant Projet Title IV, 1-3 (1683); Code Noir art. 42 (1685).
91. See Code Noir art. 38 (1685). See also Code Noir art. 35 (1685) which allowed for unspecified "peines inflictives."
92. Avant Projet Title III, 11 (1683); Code Noir art. 40 (1685). See supra note 48 and accompanying text.
93. This crime-detection rationale is expressly stated in the avant-projet, but it was edited out of the Code Noir.
94. Avant Projet Title V, 1 (1683).
95. Avant Projet Title V, 2 (1683).
96. Avant Projet Title V, 3 (1683).
97. "We declare slaves can own nothing which is not their master's...." Code Noir art. 28 (1685). While not in the avant-projet, this rule comes from the Preliminary Report and rests upon
as mere instruments of acquisition for their masters and declaring all their promises and obligations to be null. It also took away public functions, and those of agent, arbitrator or expert. In a most interesting intervention, the revision provided that the master was civilly obligated for the commercial acts of his slave executed pursuant to his command or (assuming there was no command) if those acts turned to his profit. If there was no profit to the master, the peculium of the slave might be invaded to satisfy creditors. 98

Romanist scholars have pointed to these references to the slave's peculium and to the master's commercial liability based upon command or profit as evidence of a Roman borrowing. 99 In this case, their view is plausible and it is important to explain why. The rules appear to be more than parallel to Roman law. They had no source in local legislation, nor did previous memoranda or the avant-projet discuss them. It is evident that Paris supplied the reference to peculium and other Romanesque features of the provision. Nevertheless, it may be observed that the avant-projet had already settled the essential policy regarding incapacity of slaves. The additions were modest borrowings, not new statements of policy.

F. Title Six

The sixth title of the avant-projet, "Of the Seizure of Slaves and Their Status as Movables," became the underpinnings of Articles 44-54 of the Code Noir. Taking its lead from the projet, the Code Noir declared that slaves were to be classified as movable property, 100 that husbands, wives and small children could not be seized and sold separately, 101 and that slaves laboring on plantations could not be seized and sold for debts (other than for the debts of their own purchase) unless the land itself were seized (saisie réelle). 102

These rules originated in the French isles. There had been considerable controversy over the status of slaves as movable or immovable property, and the arrêts of the Councils had fluctuated back and forth in a confused effort to adjudicate the question. 103 Any attempt to treat slaves one way in one context had caused inconvenience in another. 104 In a long note set forth in the margin

\*\*\* of the Councils. See supra note 47 and accompanying text.
98. Code Noir art. 29 (1685).
99. Watson, supra note 3, at 89 (citing similarities to the actiones adiecticiae qualitatis, actio quod iussu, actis insitatoria, and actio de peculio et in rem verso).
100. Avant Projet Title VI, 4 (1683); Code Noir art. 44 (1685).
101. Avant Projet Title I, 6 (1683); Code Noir art. 47 (1685).
102. Avant Projet Title V, 1-2 (1683); Code Noir art. 48 (1685).
103. For details, see Peytraud, supra note 58, at 247 ff. As early as 1658 Guadeloupe's Council ruled that slaves were immovables by destination.
104. The vacillation of these local bodies was in reality the search for a way to satisfy different goals. On the one hand was the desire to bind the labor force to the land and, in the event of seizure by creditors, to prevent the breakup of plantations and slave families. This argued for treating slaves as part and parcel of the immovable property. On the other hand was the desire that this form of
of the avant-projet, Bégon alluded to this confusion, explaining that decisions of
the three sovereign councils had recently changed the jurisprudence by treating
slaves as immovables. This, he said, had given rise to "an infinity of ridiculous
questions," viz. whether slaves en terre féodale were to be treated as fiefs, or
whether droit d'ainesse, retrait lignager and mortgages applied to slaves. The
Paris redactors used this marginal note as the keynote for drafting a wholly new
provision. This provision carefully spelled out clear answers to the
"ridiculous questions" which Bégon said had arisen in the islands. There was no
reflexive resort to Roman tradition, even though the distinction between
movables and immovables was originally Roman.

G. Title Seven

We come to the final title of the avant-projet on the liberation of slaves. I
have already mentioned the tendency of certain writers to be manumission
centered, an emphasis that has tinged their views about the origins of the Code
Noir. In view of the importance attached to it, let me examine manumission as
a closing subject.

The final title of the avant-projet contains a key provision on the manumis-
sion of slaves. Freely translated, it says the following:

Masters can bestow liberty upon their slaves by will or acts inter vivos,
which shall render them capable of receiving legacies or gifts which are
made to them by the same acts declaring them free—and they will
enjoy the privileges of other inhabitants without being obliged to obtain
letters of naturalization, even though they were born in foreign
lands.°

Here the island officials took a remarkably liberal position on manumission.
An owner could free his slaves by a unilateral act without seeking permission of
the government, without special formalities, for whatever reasons the owner may
have, whether mercenary or kindly. An owner could create a citizen. They
did not exclude the purchase of freedom, although it would be a voluntary
system of freedom purchase.

This provision captured the essence of manumission without Roman
overtones in its language. The provision flows from Caribbean sources through
the pen of Bégon and de Blénac. It would be presumptuous to argue that the

wealth should pass through the community of acquets and gains between husband and wife and be
shared equally by co-heirs within families. This argued for designation as movables. The solution
finally reached by the redactors was to declare slaves to be movables as a general rule and for most
purposes, but to create special rules designed to hold plantations and slave families intact.

105. Code Noir art. 44 (1685).
106. Avant Projet Title VII, 1 (1683).
107. That the owner need not state reasons for the enfranchisement is implicit in the text, but
the point was explicitly added for sake of clarity in the final version. Code Noir art. 55 (1685).
very concept of manumission has to be exclusively Roman or that they would not have thought of it except by reference to Roman law. Manumission (a word they did not employ) simply means liberation. Liberty is a generic concept freely occurring to all peoples at all times. Furthermore, we must not be quick to assume that such a provision would have been Roman-inspired simply because it seems “protective” and liberal toward slaves. The widest freedom of manumission is also completely consistent with the interests of planters since the maximum power of disposition over their slaves, including the power to liberate them, increases the value of their property. Thus, the original instructions to consult the views of the Sovereign Councils and the leading citizens may have easily yielded a property-oriented rule which can be read as “protective” in one sense and yet, in another more basic sense may have only reflected the freedom of property which slaveholders eagerly sought.

As stated earlier, this initial provision in the avant-projet captured the essence of manumission. When the avant-projet was sent to Paris, however, some additions and deletions were made. The remarkable part was that the additions and deletions widened the scope of manumission to make it more unfettered. Paris introduced a lower age cut-off for manumitting owners (twenty years) which was more liberal than the twenty-five-year age that the avant-projet provision had silently presupposed. Paris also drafted a new article to recognize tacit emancipation, as the Romans had done.

The Parisian editors also dropped a provision of the avant-projet by which a manumitted slave would be reenslaved if he committed theft. They introduced another article directing freed slaves to bear a singular respect toward their former masters.

These additions look Roman, but they are only Roman touch-ups to the strong manumission policy quoted earlier. The question becomes then which came first, and which is secondary? This writer’s argument is that an initial policy of free manumission came from the Caribbean, and the Roman flourishes are a secondary dimension, refining that policy. Indeed, the substantive and formal conditions that the avant-projet and the Code Noir imposed on owners

108. It is interesting to observe that when Spain’s Codigo Negro was being prepared and the planter views were consulted by the author of that code, Agustin Ignacio Emparán, he discovered that the untutored planters of Santo Domingo had notions of manumission comparable to those held by the Romans. “One aspect meritng comment is manumission. It is curious to note—if only because the majority of informants had no legal training and had no knowledge of the norms of Roman law on manumission—that the replies that were given coincide in principle and in some cases in their fundamentals with the rules governing the granting of liberty in the period of the Principate in Rome.” Javier Malagón Barceló, Codigo Negro Carolino 1764, p. XLVI, (Ediciones de Taller 1974).

109. Code Noir art. 56 (1685). Thus, slaves declared universal legatees under their master’s will were deemed free; and any slave who was made executor or tutor to the master’s children was likewise deemed free. The logic of the provision was apparently that for a slave to function as executor or as tutor, he must have full capacity to represent the estate or his ward, and the grant of this office was consistent only with the intent to create a free person.

110. Code Noir art. 58 (1685).
were decidedly more liberal and less strict toward manumission than comparable Roman rules.\textsuperscript{111}

Of course, even this original policy would change in the light of later experience, and in time the Caribbean experience would serve as proxy for Louisiana. This retrenchment in the islands controlled Louisiana’s destiny even before Louisiana had slaves or a slave code. By 1713, the position taken in 1685 was considered so liberal as to threaten the system itself. Too many slaves were being freed and for the wrong reasons.\textsuperscript{112} The royal Ordinance of October 24, 1713, now decreed that slaves could be freed only with the written permission of the Governor-General and the Intendant.\textsuperscript{113} The Ministry soon attached the same requirement to the \textit{Code Noir} for Louisiana,\textsuperscript{114} and raised the age of majority for Louisiana manumitters to twenty-five years. The second code also completely repudiated the liberal policy of the first \textit{Code Noir} with respect to donations to slaves. The new donative ban even extended to ex-slaves and free-born blacks as well. Acts of manumission could no longer contain valid donations to the erstwhile slave.\textsuperscript{115}

The reasons for these changes lie in contemporary reaction and adjustment to demographic insecurity. The number of gens de couleur simply grew too rapidly, suggesting to authorities that the Code was defectively liberal.\textsuperscript{116} The suggestion that the memory of an old tradition in French coutumes connected to releasing serfs may have something to do with the sudden volte face by the crown\textsuperscript{117} is simply disingenuous and trivializes the historical experience of the French.\textsuperscript{118} The truth is that once it was perceived that there were too many enfranchised slaves, a whole series of derogations to the manumission policy of

\begin{itemize}
\item \textsuperscript{111} Jaubert noted this difference between the two laws. \textit{See supra} note 46, at 328-29.
\item \textsuperscript{112} The first reaction was a local decree of the Governor-General and Intendant on 15 August 1711 prohibiting manumission without formal authorization; it came in response to alleged abuses. “Blacks steal and negresses prostitute themselves in order to obtain money to purchase their freedom.” Peytraud, \textit{supra} note 58, at 403.
\item \textsuperscript{113} \textit{Id.}
\item \textsuperscript{114} \textit{Code Noir} art. 50 (1724).
\item \textsuperscript{115} “We declare, however, that all manumitted slaves and all free-born negroes, are incapable of receiving donations, either by testamentary dispositions or by acts \textit{inter vivos} from the whites. Said donations shall be null and void and the objects so donated shall be applied to the benefit of the nearest hospital.” \textit{Code Noir} art. 52 (1724).
\item \textsuperscript{116} According to Peytraud, there were no emancipated blacks in St. Dominigue in 1665, but by 1715, there were already 1500, by 1770, 6,000, by 1789, 28,000. Peytraud \textit{supra} note 58, at 414 (quoting the census of Moreau de St. Mery for St. Dominigue).
\item \textsuperscript{117} Watson, \textit{supra} note 3, at 87.
\item \textsuperscript{118} In a letter written in 1723 on the eve of the Code’s introduction in Louisiana, Governor-General de Feuquières sounded the alarm against France’s manumission policies: “If we do not restrain the hand of those freeing slaves, there will be four times as many freed slaves as there are now, because here there is great familiarity and liberty between masters and negresses who are \textit{bien faites}, which produces a great quantity of mulattoes, and the ordinary reward of their acquiescing in the wishes of the master is a promise of liberty…” Peytraud, \textit{supra} note 58, at 409.
\end{itemize}
the Code were made in the eighteenth century. Rome's laws had little to do with the original policy of the Code and certainly nothing to do with reversing it.

VI. CONCLUSION

In conclusion, I believe that the word experience plays a very important role in the origins and the evolution of France's Code Noir. For fifty years before the Code Noir emerged, French colonists and administrators were developing new laws and customs to regulate slavery, and Colbert's concept of codification largely ensured that they would build upon these antecedents. It is a myth to think that codification succeeded in the Antilles only because the Romans prepared the path. It is a myth to think that all roads lead to Rome or that every parallel is a provenance.

In his book Slave Law in the Americas Professor Watson calls the French approach "artificial" and believes that they based their slave law upon the borrowed experience of the Romans. This story of origins and authors, however, shows not only that the experience was their own, but that the Code Noir embodies it. This account of the Code Noir also has significant consequences for Louisiana. Our Code was both an appendage and a continuation of the Caribbean experience. Where slave law was concerned, Louisiana was more the heir of Martinique and St. Domingue than of Rome.

119. These included placing many new burdens on manumitters and slaves, such as heavy taxation on enfranchisement, the prohibition of freeing a slave who had no profession or means of livelihood, etc. These measures are discussed by Maurice Satineau, Histoire de la Guadeloupe sous l'ancien régime 1635-1789, at 317-23 (1928).
APPENDIX

The Avant-Projet of 1683
Memorandum pour le Roy sur la litige

Ses pour la nourriture et autres matières

Concernant les Ecluses des Isles Françaises et de l'Amérique, concertée avec monsieur le Comte de Vaudenac, après avoir pris les avis des officiers des trois conseils souverains et des principaux habitants de toutes les îles. — Jules pour recevoir de projet d'une ordonnance que lesdits habitants supplient sa majesté de leur accorder sur cette matière.

2. De la Religion

que les Ecluses ne pourront faire profession — d'aucune autre religion que de la catholique apostolique et romaine, a peine de punition exemplaire contre les maîtres.

2. que lors qu'arrivera dans les jules des Negres qui ne seront pas baptisés, les habitants qui les achèteront seront obligés de les aider par écrit les premiers ou missionnaires qui auront soin de leur quitter ainsi qu'ils peuvent travailler à les instruire.

3. Si lesdits Ecluses tombent malades avant qu'ils soient baptisés, leurs maîtres ou missionnaires, pour soin de leur malade.
ainsi que pourront à leur vocation, et pour ceux qui seront déjà baptisés, seront permis, tenu lors que seront atteints de quelque maladie dangereuse que l'eau adoucir les doctres missionnaires ainsi que leur administrer le sacrement de l'église arrière de deux lires l'ours. Demande au profit de l'hospital contre les mains qui auront manqué d'exécuter le contenu de cet article et au précédent ou contre les commandeurs qui en auront été chargé de leur part c. ne lauront pas exécuté.

4.
Que les patrons seront tenus de faire baptiser les enfants de leurs esclaves dans la huitaine au plus tard le jour de leur naissance, et ne souffriront aucun concubinage entre les esclaves qui seront tenus de punir leurement lors qu'ils en auront connaissance.

5.
Que les maîtres pour suivre les désordres de leurs esclaves les porteront au mariage et de rançon fautes à leur accorder les permissions qu'ils seront demandés par lesdits esclaves pour marié leurs nièces et ne le pourront faire sans le consentement de leurs maîtresses. De même comme aussi, les maîtres ne pourront
6. que les maîtres qui auront des nègres mariés en face d'église ne pourront vendre séparément l'homme ou la femme apnée de leur main, ou celui qu'ils auront gardé au profit du maître de celui qu'ils auront vendu sans qu'il soit permis de faire aucune convention au contraire, sinon lors que le mari ou la femme auront été bannis ou châtiés par autorité de justice.

7. que les patrons seront tenus de faire enterrer en terre sainte dans les cimetières destins à cet effet sous leurs esclaves d'abaptises, et à l'égard de ceux qui meurent sans avoir reçu le baptême seront enterrés la nuit dans quelque champ voisin du lieu où ils seront morts.

8. que les habitans qui sont profession de la religion prétendue reformée et les juifs seront tenus de souffrir à leurs esclaves, le libre exercice de la religion catholique apostolique et romaine et défécuter ponctuellement tous les articles du présent règlement s'ils pensent d'être sévèrement châtiés.
que tous les maîtres de quelque religion qu'ils
soient, ne pourront faire travailler leurs Esclaves
da la terre ni à la manufacture des Sucrex leur
jours de fêtes et dimanches depuis le lever de
soleil jusqu'à l'aube suivante.

que les commandeurs qui seront proprès à leur
conduite des nègres ne pourront savoir privser
d'aucune religion que de la catholique apostolique et
romaine.

que le marché des nègres ne se pourra tenir
les jours de fêtes et dimanches pendant la messe
de patrie, a peine de confiscation de toutes les
denrées et marchandises qu'ils trouveront au
marché dans le temps de la messe.

De la nourriture, vêtement, et
Conservation des Esclaves,

Que les maîtres seront tenus de faire fournir
par chacune semaine à leurs esclaves âgé de
deux ans et au dessus pour leur nourriture, deux
gâteaux et demi mesure de pain de farine de seigle,
au bout de Carrasquez de deux livres et demie au moins, ou choses équivalentes.
pouvoir être abandonné par son maître, quel en ce cas sera condamné a l'entre et l'hospital auquel il payera six sols par jour pour sa subsitance.

De La Société

que desences seront faite aux esclaves d'aport aucunes sortes de denrées pour vendre au marché ordinaire et dans les maisons des particuliers qu'il paient un bilet ou marques connues à leur maîtres contenant la permission express de vendre en quels auront déclaré, et que desences seront faits aux habitans yacheter des esclaves aucunes denrées sans la permission de leur maîtres apres de sa livres tournois demande à l'exception aucuninsi des fruits, des legumes, du Bois à bruler, de lherbe pour la nourriture des bêtes et des manufooter.

Desi negres qu'ils pourront vendre sans permis express de leur Maître,

qui sera proposé deux personnes dans chaque marché pour examiner les denrées et autres manufooteries qui y seront apportées par los esclaves sans permission de leur maître.
austre, des lebaude, sal opueses de
prison ou autres choses à proportion et aux
enfants depuis qu'ils sont nés, jusqu'à l'âge
de dix ans la moitié des vues et des,
qu'il ne sera jamais donné d'audience de canne ou
guide l'gens pour tenir lieu de cette subsistance.

3. que la liberté ne sera jamais donnée aux dates—
ès esclaves de travailler pour leur compte particulier
le samedi ou quel que autre jour de la semaine
pour échanger le maître de leur subsistance
et nourriture.

4. que les maîtres feront tous de fournir à—
Chaque esclave par chacun de deux habits—
de toile ou quatre autres de toile augr' des
maîtres.

5. que ceux qui contiendraient d'ce qui est ordonné
par les quatre articles ci-dessus, seront condamnés
en cent sols, tournois l'amende pour chaque
test degré auquel ils auront manqué de
fournir la nourriture et le vêtement.

6. que tout esclave qui demeurerait injurieuse par
jouissance, maladie incurable ou autrement
sera nourri et traité comme les autres sans—
5. que les maîtres qui seront convaincus d'ouvrir permis de voler ou tolérer telle assemblée — compoîte diverses esclaves que de ceux qui en appartiennent seront condamnés à reparoir leur propre et privé nom tous le dommage qu'aura été fait à leurs voisins à l'occasion — et d'assemblées, soit par le marronnage à ces gens ou autrement en dia lese Daman de — pour la première fois et au double pour la seconde sont à servir d'avis de changer leurs — commandements.

6. que des esclaves seront faits auxdits esclaves — pour quelque cause que ce puisse être, même aux — permission de leur maître de vendre des cannes — de sucre apres du sucre — contre l'esclave — et de dix livres tournois Daman de tous contre — les maîtres qui leur auront permis les commandements que contre ceux qui les achèteront —

Des crimes, peines et châtiments.

Il ne sera fait aux esclaves aucune mutilation — desmembres sans autorité de justice apres de — confiscation de l'esclave au profit de l'hôpital —
Donner la foudre et de les « massacrer » par des couronnes Extraordinaires.

Tout parcellaire peine de condamnation.

2. Louront seulement les maîtres, lorsqu'ils craintront que leurs dits éclaves l'auront menée, les fûmen onchainner, les mettre a la boise, et les fouir, batai de verges lianes ou cordes.

4. que tout éclae qui Saperon son maître ou
maîtresse sera pendu et que celui qui Saperon 
odne personne libre sero pour la première fois
battu de verges et marqué d'une fleur de lys
au visage, et en cas de recidive puni de même
plus rigoureusement et mêmes demort selon lorigine
du cas a l'arbitrage du juge,

5. que tout éclae qui volent chevaux, carailles,
mulettes, mules, vouss ou vaches sera puni de même afflietue, et même demort selon lo tcité
du Crime a l'arbitrage du juge,

6. (L'éclae que volent moutons, chevres, Cochons-

bollailles, carnnes a sucre, pois mêl, maizor, ou
autres legumes sera battu de verges par l'euément
et marqué d'une fleur de lys au visage)

7. que lors que les éclales auront volé ou fait
Dommage à d'autres qu'à leur maître, le maître, 
Sera tenu de réparer le dommage, ou débar donner 
L'esclave à celui auquel le vol ou dommage aura 
est fait.

8. 
Que l'esclave qui aura fugit pendant un mois 
et qui sera retrouvé arrière par son maître, aura 
les oreilles coupées et sera marqué d'une flèche 
de lisi au visage, et s'il reviendra un autre mois 
auc lejarret coupé et deux fleurs de lis sur les 
Espaulles et la troisième fois sera puni de 
mort.

9. 
Lesdits esclaves seront jugés en matière Criminelle 
pour les juges ordinaires et par apel au conseil. 
Souserain avec les formalités qui soborvent 
Contre les personnes libres.

10. 
Toutes les procedures qui seront faits en matière 
Criminelle contre les esclaves se seront sans 
suit, et desfions seront faits aux juges provins 
Du Roy et présénts de prendre aucun cas 
pour raison des procés,

11. 
Et d'autant que les maîtres sont ce qui pevrent 
pour causer les Crimes de leurs Esclaves depuis 
de ce pestre ce qui est cause que la plus grand 
part des Crimes demeurent impunis, soit qu'il...
Était l'amour cette quinzaine de Montfort aura estimé par deux de principaux habitants de l'église qui seront nommé vendeur par le juge, et par le de lad'estimation sera imposé sur les cent-premiers nègres qui seront vendus sur les premiers caisses qui arriveront dans l'église où la procession aura été faite,
que les éclabous qui seront des enfants aux nègres, les éclabous seront condamnés en deux mille lires de sure d'assemblée à l'hospital, et le éclabou est le maître de l'éclabou, et en son prêne ensemble de l'enfant qui seront constaques au
profit de l'hospital,
L'œuf l'enfant nay demeuré esclave isna esclave
jusques à l'amont,
que défenses seront faîtes aux esclaves de porter aucunes armes offensives ni de gros bastons à
peine du jouet et de confiscation de armes au
profit de celui qui les trouvera saisi, à l'exception seulement de ceux qui seront envoyés à la
charge par leurs maîtres et qui seront porteurs de leurs vêtements
que pareilles défenses seront faîtes à tous habitans
que servent sur le champ; de fuyre, et de l'hospital sans ferme ni figure de procédé.

3. D'ou il sera permis à tous habitants de le savoir:

De toutes les choses dont ils trouveront lesdits esclaves chargées, lors qu'elles n'auront point de
occult de leur maître, à la charge de muer à
l'hospital et qu'ils prendront audites Negres si on
en voudra ou au maître du negre.

4. que défense seront faite aux esclaves de

Sait aucunes assemblées de jour ou devuït sous
péritoire des corps ou autrement, soit chez leur
maître ou ailleurs, et encore moins dans les
grands chemins, ruelles ou lieux escondus où les
font des combats de deffy, lesquelles assemblées
passeront pour cabales, et qu'il sera permis à
tous cesdits habitants d'arrêter les contestables,
et de les conduire en prison pour être seurement
chastisés, et en cas de résistance,

De tout devis, permettant neanmoins aussi:
esclaves de se rejouir chez leurs maîtres aux
mesures tambours, ou violons, lors que leurs
maîtres leur en accordent la permission pour;

Les negres de leur maison seuls sans qu'ils
y en puissent souffrir davantage.
des telles que ceux que sont dans les habitations, aux enfants que les nègres
sont immuables, de quatre ans et au-dessus, de soixante ans
leurs fonctions pourront être saisies et vendues en observant
immobilité, quel qu'il
ions on— les formalités prescrites par la coutume, et par
ont que des—
ordonnances du Sénat pour les nègres qui sont
mobilisées, A;
redoubt sont répis esclaves sont en tous cas retenus meubles.
Le bien hôtel et partagé comme tel son ion lors qu'il a vari-
précédent un droit
ainsi sur— des conventions Contrées dans les contrats de—
deux sous nègres. mariage qui seront exécutés,
de la succession— lors qu'on aura rédigé. ou habitation. dons
ou mort depuis, affiché par bail judiciaire aux esclaves qui—
ou arrière— un dépendant je lemont estime avant le judicain
inactivités ont— qu'ils estiveront—
au bail, et à la fin du bail le dernier judiciaire
sujet à retrouver sera tenu de rendre les esclaves qu'il trouveront
linager, quels que- vivants, avec les enfants nés pendant le bail—
falloir déterminer— qui seront estimés desmeures, et il retrouvera
l'épistre que qu'il valent mieux que le prix de l'— dans—
faire le temps l'utilisation sera obligé d'opposer le plus ce qui
pression de—
coutume pour la
prescription de—
valent davantage l'augmentation du prix lui-, aux
réduit sur la prise de la forme du sur celui
immobilité pour
pour présidre la
saisies. Ce qui survenu parce que dans les deux volontaires que les traitants et les
administrateurs du bien des gabelle ou autre—

Des saisies des esclaves et de leur qualités mobilières,

J'ai jugé de...
De la liberté accordée aux esclaves.

1. Les maîtres pourront accorder la liberté à leurs esclaves par testaments ou actes établis, de telle manière qu'elles n'auront plus à répondre des lois et être soumises aux maîtres, lesquels les libéreront après lesquels ils seront libres, et jouiront des mêmes droits que les autres habitants sans être obligés de payer les mêmes taxes et de subir les mêmes charges que les autres habitants.

2. Les successions des esclaves serviront de libérateurs à leurs enfants ou à leurs héritiers collatéraux.

3. Les négres libres qui auront donné naissance dans leurs maisons aux négres maures seront
De donner aucune retraite aux marrons à terre.

De deux livres tournois demandé au profit du maître du nègre marron pour chaque jour de détention. 36.

S'il un maître ou un commandeur est en aman, il en sera informé par le juge qui pourra le muer selon l'atrocity et les circonstances, particulières du crime et le juge que l'accuse, soit-nenon il pourra le renvojier abusons sans qu'il doibt passer d'abords des lettres de grâce de son Majesté.

2. Des temoignages des donnans.

Successions et actions des Esclaves.

1. Les esclaves ne pourront être aman en temoignage tant en matière civile que criminelle, sinon pour en teuer des conjectures don le juge se pourra servir pour aider à Saperme.

2. Ils ne pourront disposer par testament donnans ou autres contrats alluinations des biens meubles et immuebles par eux aquis, lorsque appartenan à leurs maitres sans que leurs enfants ou autres hivers y puissent rien pretendre comme aussi — soront incapables de recevoir aucune donnan —
condamnez vers le maître en hui cent livres
De sucre pour chaque jour de rétention au payem
De laquelle somme ils seront contraints par
Corps,

Que les nègres libres qui seront surpris volans
Des volailles et légumes seront privés de leur
Liberté et adjugés à l'hospital du lieu où le
Vol aura est fait-

Fait à St. Christophe le 13. février 1683.

[Signature]