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The Origins of the *Code Noir* Revisited

Alan Watson*

In a recent article, *The Origins and Authors of the Code Noir*,¹ my friend Vernon Palmer graciously and courteously took me to task for claiming that the law in the *Code Noir* was not made “on the spot” in the Antilles, but in Paris.² He also said of me and of Hans Baade,³ “neither author *appears* to have investigated the actual circumstances of the Code’s redaction.”⁴ I can speak only for myself, and I confess with shame that Professor Palmer is quite correct. I did not investigate the actual circumstances of the redaction of the *Code Noir*. And I should have. I made an assumption based on the drafting of the Code in Paris, and its dating from Paris, January, 1685.

My position was: “The French solution to the problem of slave law for the colonies was extensive royal legislation emanating from France, in which Roman law principles predominated.”⁵ Professor Palmer’s conclusion is very different:

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1. Vernon V. Palmer, *The Origins and Authors of the Code Noir*, 56 LA. L. REV. 363 (1995).

2. See *id.* at 365 (citing ALAN WATSON, *SLAVE LAW IN THE AMERICAS* 85 (1989)).

3. Hans W. Baade, *The Law of Slavery in Spanish Louisiana, 1769-1803*, in *LOUISIANA’S LEGAL HERITAGE* 43, 53 (Edward F. Haas ed., 1983).

4. Palmer, *supra* note 1, at 366.

5. ALAN WATSON, *SLAVE LAW IN THE AMERICAS* 85 (1989) [hereinafter WATSON, *SLAVE LAW*].

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.⁶

In general, moreover, Professor Palmer appears to believe that when Roman law and the *Code Noir* do have similar rules, such a circumstance is not necessarily the result of borrowing.⁷

Having admitted my failing, I now want to claim that my position is nonetheless closer to historical accuracy than is Professor Palmer's conclusion. My position was flawed; Professor Palmer's conclusion is deeply misleading. The issue is far more important than just the authorship and origins of the *Code Noir*. It involves the questions of experience for law making, the role of borrowing, and of our approach to a foreign system.

The crux of Professor Palmer's argument is his understanding of the *Avant-Projet* of 1683, which was prepared in the Antilles at St. Christophe,⁸ and which he helpfully reproduces,⁹ and it is convenient to start from there.¹⁰

As Professor Palmer says, the *Avant-Projet* consists of fifty-two articles arranged in seven titles.¹¹ Title I is "De la Religion" (On Religion).¹² As Professor Palmer states, all of the eleven provisions of Title I, save one, became the foundation of the *Code Noir*, articles 1-14 (though he would have been more accurate if he had stated articles 2-14).¹³ These provisions and articles in general provide that slaves can have no religion other than Roman Catholicism; that masters must train newly arrived slaves in that religion and have slaves baptized, married, and buried within the Church; and that there is to be no slave

6. Palmer, *supra* note 1, at 390.

7. *See id.* at 366-67.

8. *See id.* at 378-80.

9. *See id.* at 391-407 app.

10. It must be pointed out that somehow, in Professor Palmer's article, the Louisiana Law Review confused the pages of the *Avant-Projet*. The pages of the Review should be in the following order: 392, 393, 394, 395, 397, 396, 402, 398, 399, 400, 401, 406, 404, 403, 405, 407. *See id.*

11. *See id.* at 379.

12. AVANT-PROJET Title I (1683).

13. *See* CODE NOIR arts. 2-14 (1685); Palmer, *supra* note 1, at 381.

labor on Sunday.¹⁴ Professor Palmer correctly observes that these rules “all had church and local antecedents without Roman connotations,”¹⁵ but he fails to see the significance of this observation, namely, that there was just no Roman law on these issues. How could Roman law be influential in matters on which there was no Roman law?

There are two reasons for this lack of Roman law. The first is that to a remarkable degree, Roman private law kept out of the private dealings of Roman citizens.¹⁶ Thus, during most of its history there were no necessary forms for a marriage,¹⁷ no compulsory forms for divorce,¹⁸ no necessary grounds for divorce (though in Justinian’s time there were penalties for unwarranted divorce).¹⁹ Again, Roman law—with one exception for a short time under Diocletian and again under Justinian—did not interfere with the terms of a contract freely entered into without fraud.²⁰ The limited exception was the so-called *laesio enormis*: a sale of land at which the price fixed was less than half the true value could be set aside.²¹ Roman slave law was no different: the law did not interfere with the owner in his behavior toward his slaves, again with limited exceptions. In general, any owner could free any slave without hindrance from the state,²² without cause stated. The state did not regulate the owner’s education of slaves, work hours of slaves, or their clothing or feeding. There is simply no law on the subject. Even the *peculium*, the fund allotted to a slave to be used as if it were his own (within the owner’s discretion), had legal meaning only when outsiders were involved. If outside interests were not affected, the slave’s owner could augment or diminish it as much as he wished without interference of law.²³

14. See CODE NOIR arts. 2-14; AVANT-PROJET Title I.

15. Palmer, *supra* note 1, at 381.

16. This is so to such an extent that in my book entitled THE SPIRIT OF ROMAN LAW, I even have a chapter entitled “Law Keeps Out.” ALAN WATSON, THE SPIRIT OF ROMAN LAW 172-79 (1995) [hereinafter WATSON, ROMAN LAW].

17. See, e.g., J.A.C. THOMAS, TEXTBOOK OF ROMAN LAW 423f (1976).

18. See, e.g., *id.* at 425f.

19. See, e.g., *id.* at 426f.

20. See WATSON, ROMAN LAW, *supra* note 16, at 172-73.

21. See CODE JUST. 4.44.2; *id.* 4.44.4; WATSON, ROMAN LAW, *supra* note 16, at 176-79.

22. See, e.g., ALAN WATSON, ROMAN SLAVE LAW 23-24 (1987) [hereinafter WATSON, SLAVE LAW].

23. See generally *id.* at 90-101 (discussing slaves’ contracts and the *peculium*).

Professor Palmer points out²⁴ that in this area “the Spirit of French Law” was very different from “the Spirit of Roman Law.” France, he writes, took the view that in this context “Law must regulate.”²⁵ I agree with him. But in the context of legal borrowing and dependency on a foreign system, “the Spirit of the Law” cannot be borrowed. What are borrowed are legal rules and institutions where they exist.

The second reason for the lack of Roman law is that despite the Roman empire having become Christian centuries before, Christianity had invaded Roman private law only to a tiny extent. The clearest proof is that after the *proemium*, Justinian’s *Institutes*, the textbook for first-year law students which was enacted as statute in 533, contains not one single reference to Christianity, Jesus, God the Father, the Virgin Mary, the holy apostles, or the fathers of the Church. This, despite the fascination with theological dispute that so occupied sixth-century Byzantium. Because of the lack of input from Christianity, Roman slaves could not marry even in the time of Justinian. Hence, legal issues involving slave husband, wife, and family in the Antilles could have no Roman forebears. Christianity had no obvious impact on Roman slave law. From the absence of Roman-law influence on articles 2-14 of the *Code Noir* no inference whatever can be drawn against the general influence of Roman law.²⁶

The first provision of the *Code Noir* sought to banish Jews from the islands.²⁷ *Pace* Professor Palmer, I have never suggested “that the French monarch was rotely reiterating old Roman strictures, dating from the era of Constantine, which forbade Jews to own Christian slaves.”²⁸ In the page of my article referred to,²⁹ there is no reference to exiling Jews, to France, or to the French Antilles.³⁰ Nor do I recognize my position in the statement: “Watson argues that Louis XIV’s slave code rotely followed in the Roman traces, but with one

24. See Letter from Vernon Valentine Palmer to Alan Watson (Nov. 26, 1996) (on file with author).

25. *Id.*

26. The slight impact of Christianity on Roman Law even in the time of Justinian is one example of the obvious, but often underestimated, phenomenon that law is so conservative that it often fails to change when society changes. See generally ALAN WATSON, *SOCIETY AND LEGAL CHANGE* (1977) (discussing this phenomenon).

27. See CODE NOIR art. 1 (1685); Palmer, *supra* note 1, at 381.

28. Palmer, *supra* note 1, at 381.

29. See *id.* at n.64 (citing WATSON, *SLAVE LAW*, *supra* note 5, at 34).

30. WATSON, *SLAVE LAW*, *supra* note 5, at 34.

difference.”³¹ There were many differences from Roman slave law. What I did say in this context was: “It is of interest, though, that, since by article I of the edict of March 1685 there could be no Jewish colonists, there was no need for a provision, corresponding to Roman and Spanish law, forbidding Jews to have Christian slaves.”³² I cannot accept as accurate Professor Palmer’s statement: “Here then is another example of an extravagant claim of Roman-law influence made in disregard of the Code’s immediate history.”³³ I made no such claim.

Title II of the *Avant-Projet*, “De la nourriture, vestement, et Conservation des Esclaves” (On the food, clothing, and Preservation of Slaves),³⁴ is reflected in articles 22-27 of the *Code Noir* of 1685.³⁵ Roman law had no provisions on subjects such as supplying alcohol to slaves, minimum food and clothing rations, and giving slaves time off to farm in lieu of providing rations, so there could be no Roman-law influence. Here as elsewhere, and as already noted, the Roman principle was “Law keeps out.”³⁶

Professor Palmer is quite correct that article 27 of the *Code Noir*, to the effect that masters should look after their sick or infirm slaves or pay six *sols* per day to the hospital,³⁷ is a different solution from that of the Emperor Claudius,³⁸ who directed that abandoned sick slaves became free.³⁹

Title III, “De La Police” (On Police),⁴⁰ deals with security measures and is to a great extent accepted in articles 15-21 of the *Code Noir*.⁴¹ *Avant-Projet* Title III, 1, which states that slaves cannot sell in the market without having a letter of permission,⁴² is the *Code Noir*’s article 19;⁴³ *Avant-Projet* Title III, 3, which provides that such goods may be seized by any citizen,⁴⁴ is the Code’s article 21;⁴⁵ and *Avant-*

31. Palmer, *supra* note 1, at 382, n.65.

32. WATSON, SLAVE LAW, *supra* note 5, at 90.

33. Palmer, *supra* note 1, at 382-83.

34. AVANT-PROJET Title II (1683).

35. CODE NOIR arts. 22-27 (1685).

36. For the principle, “Law keeps out,” in Roman law see generally WATSON, ROMAN LAW, *supra* note 16, at 172-79.

37. CODE NOIR art. 27.

38. See Suetonius, THE LIVES OF THE TWELVE CAESARS 288-89 (Philemon Holland trans., 1965) (*Claudius*).

39. See Palmer, *supra* note 1, at 383.

40. See AVANT-PROJET Title III (1683).

41. CODE NOIR arts. 15-21.

42. AVANT-PROJET Title III, 1.

43. CODE NOIR art. 19.

44. AVANT-PROJET Title III, 3.

45. See CODE NOIR art. 21.

Projet Title III, 2, stating that officials are to be placed in the markets to enforce these provisions,⁴⁶ is the Code's article 20.⁴⁷ Similarly *Avant-Projet* Title III, 4 and 5, prohibiting slaves from assembling⁴⁸ and making owners who tolerate such behavior pay damages,⁴⁹ became the Code's articles 16 and 17.⁵⁰

There is no trace of Roman-law influence in these provisions or articles but again the significance is not what Professor Palmer would have us believe. The Romans must have had some regulations on such matters but, quite simply, neither we nor the draftsmen of the *Code Noir* have any knowledge of what these were.

This is not another instance of "Law keeps out," but is an example of how partial is our knowledge of Roman law. A legal system presents different faces to various groups: to the elite making the law, to the sophisticated living the law, to the poor suffering under the law, and to the outsider looking in. As I wrote in a different context:

For Roman law we all have to be outsiders looking in; there are no surviving Romans living the system. But the face presented to the outsiders is essentially that painted by the lawmaking elite, and especially by the jurists. The legal sources that survive reflect accurately their concerns but give little feel for how the law impacted on the population as a whole or even on the upper echelons. Thus, for example, to remain with slave law for a moment, whereas many laws survive from English-speaking America regulating the number or proportion of white free males on each plantation, only one nonlegal text proves that similar rules also existed in the Roman world.⁵¹ The jurists were not interested in policing matters. Likewise, there is virtually no information in the legal sources on the building regulations that must have existed in each city⁵² or (apart from the important clauses in the aedilitian Edict on the sale of slaves and beasts) on the regulation of the street markets.⁵³

The Roman jurists were very much from the upper classes, and at an early date they had been given the power to act as interpreters of

46. AVANT-PROJET Title III, 2.

47. See CODE NOIR art. 20.

48. AVANT-PROJET Title III, 4.

49. See *id.* Title III, 5.

50. See CODE NOIR arts. 16-17.

51. See SUETONIUS, THE LIVES OF THE TWELVE CAESARS, *supra* note 38, at 31-32 (*Julius Caesar*).

52. See O.F. ROBINSON, ANCIENT ROME: CITY PLANNING AND ADMINISTRATION 33-34 (1992).

53. WATSON, ROMAN LAW, *supra* note 16, at 33-34.

private law. Their concern was the prestige that accrued from skill in interpretation of this private law. Other matters of law were beneath their notice. Market regulation is one good example. In the whole of the Digest, only two texts mention the market:⁵⁴ one tells us that the meat trade is supervised by the prefecture;⁵⁵ the other that even a person who conducts business in the market will be considered as hiding (from creditors) if he lurks around pillars or stalls.⁵⁶ Once again, no general conclusion about the influence of Roman law can be drawn from its absence from Title III of the *Avant-Projet* and the corresponding articles of the *Code Noir*.

Title IV of the *Avant-Projet*, “Des crimes, peines et chastiments” (On crimes, penalties, and punishments),⁵⁷ is the basis of articles 32-43 of the *Code Noir*.⁵⁸ Because it is the largest title, I will deal with the rules in the order of the articles of the Code.

Article 32 of the *Code Noir* states that slaves could be sued in a criminal action with no need to make the owner a party unless he was an accomplice.⁵⁹ This corresponds to Roman law,⁶⁰ though I am not suggesting a borrowing. Still, it is noteworthy that this article of the *Code Noir* has no forerunner in the *Avant-Projet*.

Article 33, following with variations *Avant-Projet* Title IV, 4, declares that a slave who struck his owner or his owner’s wife, mistress, or children and drew blood will be punished by death.⁶¹ There is no parallel in Roman law: this is precisely where Roman law does not come between owner and slave. “Law keeps out.” The nature of any punishment is the business of the owner.

Articles 34, 35, and 36, which generally follow *Avant-Projet* Title IV, 4, 5, and 6, punish severely injuries to free persons and particular types of theft.⁶² Roman law could be roughly similar, but I see no need to postulate borrowing.

Article 37, in line with *Avant-Projet* Title IV, 7, compels owners to make good the wrong caused by their slaves’ theft or other injury

54. See *id.* at 49-50.

55. See DIG. 12.1.11.1 (Ulpian, Duties of Prefect of the City).

56. See DIG. 4.42.7.13 (Ulpian, Edict 59).

57. AVANT-PROJET Title IV (1683).

58. CODE NOIR arts. 32-43 (1685).

59. See *id.* art. 32.

60. This appears from texts of Justinian’s *Digest*, such as DIG. 3.48.2 pr. (Papinian, *Adulteries* 1) and 2.48.7.4 (Ulpian, Duties of Proconsul 7).

61. See CODE NOIR art. 33; AVANT-PROJET Title IV, 4.

62. See CODE NOIR arts. 34-36; AVANT-PROJET Title IV, 4-6.

unless they prefer to abandon the slave to the injured person.⁶³ For Professor Palmer this rule is clearly indigenous⁶⁴ and is not a borrowing from Roman noxal surrender as suggested by Professor Jaubert,⁶⁵ and by myself.⁶⁶ Professor Palmer claims that Roman law held no "intellectual monopoly on such a simple conception as abandonment of an offending object in lieu of damages,"⁶⁷ and he claims that the concept existed at English law in the shape of deodand.⁶⁸ Alas, this is not so. English deodand has little in common with Roman noxal surrender or the rule in the *Code Noir*. English deodand did not apply when the injurer was a slave, son, or other subordinate person, but only when the injury was caused by a thing or a personal chattel. It did not apply in theft or minor personal injuries, but only when a person was killed. The owner did not have the choice of surrendering the chattel if he preferred not to pay; the chattel had to be surrendered. Not only that, it was not surrendered to the victim but was forfeited to the king.⁶⁹

Article 38 declares that a runaway slave who remains in flight for a month will have his ears cut off and will be branded with a *fleur du lis* on one shoulder.⁷⁰ For a second such offense he will be hamstrung, and marked with a *fleur du lis* on the other shoulder.⁷¹ For a third offense he will be put to death.⁷² This article derives from *Avant-Projet* Title IV, 8.⁷³ There is no parallel in Roman law. It, therefore, could not have been borrowed. The issue of runaways under Roman

63. See CODE NOIR arts. 37; AVANT-PROJET Title IV, 7.

64. See Palmer, *supra* note 1, at 376-77.

65. See Pierre Jaubert, *Le Code Noir et le droit romain*, in HISTOIRE DU DROIT SOCIAL: MÉLANGES EN HOMMAGE À JEAN IMBERT 321, 328 (1989). More generally, Professor Palmer claims that Professor Jaubert "made many imaginative connections between Roman law and the *Code Noir*." Palmer, *supra* note 1, at 376. My position and that of Professor Jaubert are not the same, so my purpose here is not to defend him. It is unfortunate that for Roman-law impact on the *Code Noir* Professor Jaubert relies at times on the *Institutes* of Gaius of around 161 A.D. Not only was the Roman law that was relevant for the *Code Noir* not that of Gaius but of Justinian of 529 and 534, but Gaius' *Institutes* had been lost and were not rediscovered until the nineteenth century.

66. See WATSON, SLAVE LAW, *supra* note 5, at 86.

67. Palmer, *supra* note 1, at 377.

68. See *id.*

69. See 1 WILLIAM BLACKSTONE, COMMENTARIES OF THE LAWS OF ENGLAND 290-92 (Clarendon Press 1765).

70. See CODE NOIR art. 38 (1685).

71. See *id.*

72. See *id.*

73. AVANT-PROJET Title IV, 8 (1683).

law was between the slave and his owner—another example of “Law keeps out.”

Article 39 gives an action against free persons who gave shelter in their houses to runaway slaves,⁷⁴ and it has some correspondence with *Avant-Projet* Title IV, 15.⁷⁵ The *Avant-Projet*, however, gives the action against any inhabitant.⁷⁶ The action is somewhat similar to the Roman *actio de servo corrupto*, but that need not have been influential.

Article 40, which gives recompense to an owner whose slave is executed,⁷⁷ has no parallel in Roman law, but is related to *Avant-Projet* Title IV, 11.⁷⁸

Article 41 provides that actions against slaves will not be at the cost of their owners,⁷⁹ and it has a counterpart in *Avant-Projet* Title IV, 10.⁸⁰

Article 43 permits masters to punish but not to torture or mutilate their slaves,⁸¹ and it partly derives from *Avant-Projet* Title IV, 1.⁸² Roman law was similar.⁸³

Title V of the *Avant-Projet*, “Des Temoinages, des donations, Successions et actions des Esclaves” (Witnessing, gifts, Successions and actions of Slaves),⁸⁴ is, as Professor Palmer says, “short and skeletal.”⁸⁵ The three provisions disqualified slaves as witnesses in civil and criminal cases;⁸⁶ denied them testamentary, contractual, and donative capacity to dispose of, acquire, or receive property;⁸⁷ and made them incapable of being sued in civil proceedings.⁸⁸ Professor Palmer correctly tells us that Paris enlarged these incapacities in several ways.⁸⁹ I offer the following translation of the *Code Noir*’s articles on slaves’ acquisitions and contracts:

74. See CODE NOIR art. 39.

75. See AVANT-PROJET Title IV, 15.

76. See *id.*

77. See CODE NOIR art. 40.

78. See AVANT-PROJET Title IV, 11.

79. See CODE NOIR art. 41.

80. See AVANT-PROJET Title IV, 10.

81. See CODE NOIR art. 43.

82. See AVANT-PROJET Title IV, 1.

83. See CODE THEOD. 9.12.1; *id.* 9.12.2; J. INST. 1.8.1.

84. See AVANT-PROJET Title V.

85. Palmer, *supra* note 1, at 385.

86. See AVANT-PROJET Title V, 1.

87. See *id.* Title V, 2.

88. See *id.* Title V, 3.

89. See Palmer, *supra* note 1, at 385.

28. We declare that slaves can have nothing that is not their master's, and everything that comes to them through work, or by the liberality of other persons, or otherwise by whatsoever title, is acquired in full ownership by their owner, without the children of the slaves, their father and mother, and all others whether free or slaves, being able to claim anything by succession, disposition *inter vivos* or *mortis causa*:⁹⁰ such dispositions were declared null, together with all promises and obligations that they will have made, as being made by persons incapable of disposing and contracting as if in control.⁹¹

29. Nonetheless, we wish owners to be bound by that which the slaves have done by their order and command, together with whatever they have managed and traded in their shop, and for the particular type of business of which their masters put them in charge: they will be liable only up to the amount that has turned to the profit of their owners; the *peculium* of the said slaves that their owners preferentially deducted what is due to them, unless the *peculium* consists in whole or in part in merchandise of which the slaves have permission to deal with separately, on which the owners only come in for contribution 'au sol la livre' with the other creditors.⁹²

Professor Palmer concedes that the references to the *peculium* and other instances of the owner's liability make plausible the notion of Roman borrowing.⁹³ Indeed, the borrowing is incontestable. Article 29 of the *Code Noir* reproduces the Roman so-called *actiones adjecticiae qualitatis* in the following order: The *actio quod iussu* for contracts made with the owner's order; the *actio institoria* where the slave was put in charge of a business; and the *actio de peculio et de in rem verso*, for contracts made with the *peculium* and for other transactions, up to the amount of the *peculium* or to the extent that the owner benefited. The conclusion of the article relates to the *vocatio in tributum*, a call for bringing into contribution, in which the owner was to divide the *peculium* among the creditors. The edict that gave the *actio tributoria* against an owner who fraudulently kept part of the *peculium* back spoke not of *peculium*, but of *merx perculiaris*,⁹⁴ wares

90. *Inter vivos* and *mortis causa* are in French in the Code but there is no obvious English equivalent.

91. CODE NOIR art. 28 (1685).

92. *Id.* art. 29.

93. See Palmer, *supra* note 1, at 386.

94. See, e.g., OTTO LENEL, DAS EDICTUM PERPETUUM, 271 (3d ed., 1927). For the interpretation of *merx perculiaris*, see also DIG. 4.14.1.pr. (Ulpian, Edict 29).

forming the *peculium*, and this specific notion appears in article 29 of the *Code Noir*.⁹⁵

Professor Palmer, conceding the Roman origins via the Parisian draftsmen of the rules, says it is important to explain why.⁹⁶ I agree. His explanation is that the rules “had no source in local legislation, nor did previous memoranda or the *avant-projet* discuss them.”⁹⁷ But this is no true explanation, for it merely prompts the questions: why was there no local legislation, and why did memoranda and the *Avant-Projet* not discuss such rules? It is not sufficient to claim “that the *avant-projet* had already settled the essential policy regarding incapacity of slaves.”⁹⁸

We have come to what I believe is the crux of the whole issue of the impact of Roman law on the *Code Noir*. In the earlier titles of the *Avant-Projet* there are few traces of Roman law. But then, there could not be. For Title I,⁹⁹ dealing with religion, there could be little use made of Roman law partly because Christianity had made so few inroads into the law, and partly because, as a result of the “Law keeps out” approach, such issues between owner and slave were mainly ignored by the law. For Title II,¹⁰⁰ on sustenance and clothing of slaves, there was no Roman law because of the same principle of “Law keeps out.” For Title III,¹⁰¹ on policing, there could be no recourse to Roman law because the relevant Roman law was unknown. Policing and other administrative matters were of no interest to the Roman jurists. But for Title V, and so far we have looked only at slaves’ contracts,¹⁰² there was Roman law, it was known, and it does figure predominately in article 29 of the *Code Noir*. Yet it is absent from the *Avant-Projet* and earlier local discussions. Roman law where it existed and was known was inserted in large measure by the Parisian draftsmen who were remote from local conditions in the Antilles.

Why is Roman law absent here from the *Avant-Projet* and earlier local legislation? I suggest there are two possibilities. The less

95. See CODE NOIR art. 29. For the *actiones adjecticiae qualitatis*, see generally WATSON, SLAVE LAW, *supra* note 22, at 91-99. While article 29 of the *Code Noir* is rather garbled, that does not affect the main issue.

96. See Palmer, *supra* note 1, at 386.

97. *Id.*

98. *Id.*

99. See *supra* notes 12-33 and accompanying text.

100. See *supra* notes 34-39 and accompanying text.

101. See *supra* notes 40-56 and accompanying text.

102. See *supra* notes 57-98 and accompanying text.

plausible is that when relevant Roman law existed and was known it was simply assumed in the Antilles to apply, unless the contrary appeared from legislation. This was very much the position in the colonies of the Dutch West India Company, hence the emphasis in the local *placaaten* on policing and bureaucratic control.¹⁰³ This possibility I think is unlikely because, beginning with the *Mémoire* of Louis XIV to his Intendant, dated 30 April, 1681, the royal instructions were, in effect, to create a slave code.¹⁰⁴ The other possibility is that there was really no law on this matter in the Antilles, and that it was created in Paris on the basis of Roman law.

It remains to add that article 28 of the *Code Noir*, which follows *Avant-Projet* Title V, 2, is fully in line with Roman law.¹⁰⁵ Likewise article 30, which disqualified slaves from holding offices that had a public function, from being agent for another than the owner, and from being witnesses in civil or criminal proceedings,¹⁰⁶ is closely similar to Roman law.¹⁰⁷

For *Avant-Projet* Title VI, "Des Saisies des Esclaves et de leur qualité Mobiliaire" (On Seizure of Slaves and their quality as Moveables),¹⁰⁸ Roman law could not be relevant. Provisions 1, 2, and 3 of Title VI, which are followed by article 48 of the *Code Noir*, prohibited slaves between fourteen and sixteen years of age who were working in sugar or other factories from being seized for debt, and provided that a seized factory be sold apart from its slaves.¹⁰⁹ In Roman law there was no seizure for debt. Provision 4 of Title VI, followed by article 44 of the *Code Noir*, declared slaves to be movable property.¹¹⁰ Roman law, unlike French law, did not draw a distinction between movables or immovables, though of course in the nature of things some legal rules could apply only to land.

Avant-Projet Title VII, "De la liberté accordée aux Esclaves" (of freedom granted to Slaves),¹¹¹ is of particular importance. Provision 1 of Title VII reads:

103. See WATSON, *SLAVE LAW*, *supra* note 5, at 102-14.

104. See Palmer, *supra* note 1, at 367.

105. Cf. WATSON, *SLAVE LAW*, *supra* note 22, at 90-114 (discussing slaves' contracts and masters' acquisitions through slaves).

106. See CODE NOIR art. 30 (1685).

107. In restricted circumstances, slaves could be witnesses in both civil and criminal proceedings. See WATSON, *SLAVE LAW*, *supra* note 22, at 84-86.

108. See AVANT-PROJET Title VI (1683).

109. CODE NOIR art. 48; AVANT-PROJET Title VI, 1-3.

110. CODE NOIR art. 44; AVANT-PROJET Title VI, 4.

111. AVANT-PROJET Title VII.

Owners may grant freedom to their slaves by testaments or other acts *inter vivos*, which will render them capable of receiving the legacies or gifts which will be made to them by the said owners in the same acts in accordance with which they are held to be free; and they will enjoy the privileges of the other inhabitants without being obliged to take out letters of naturalization although they were born in foreign countries.¹¹²

As Professor Palmer observes, this provision on manumission is remarkably liberal.¹¹³ He also claims: "This provision captured the essence of manumission without Roman overtones in its language."¹¹⁴ And he adds: "It would be presumptuous to argue that the very concept of manumission has to be exclusively Roman or that they would not have thought of it except by reference to Roman law."¹¹⁵ Now, no one would, I believe, claim that the concept of manumission was exclusively Roman. But this issue is different. *Avant-Projet* Title VII, 1 is remarkably Roman. First, it permits owners to free slaves, both by testament and *inter vivos*.¹¹⁶ Second, no ground for manumission seems to be needed or stated.¹¹⁷ Third, no intervention by the state is needed.¹¹⁸ Fourth, slaves may be given legacies or gifts.¹¹⁹ Last, and above all, the simple act of the owner, without any intervention of the state, not only makes the slaves free but also a citizen.¹²⁰ This combination of factors is straight Roman law from the time of Justinian.¹²¹ To the best of my knowledge, it is found in no system where the law was not derived from Rome.

But there is much more to the issue of the influence of Roman law on Antillean manumission. The Parisian draftsmen of the *Code Noir* clarified the provision of the *Avant-Projet*, making even more evident the impact of Roman law. Article 55 of the Code specified that owners aged twenty may manumit without giving reasons!¹²² This is precisely the Roman rule of Justinian's *Institutes*.¹²³ Article 56 of the *Code Noir* declared that the slaves who were made universal legatees by their owners, or named executors of the will, or tutor to

112. *Id.* Title VII, 1 (author's translation).

113. *See* Palmer, *supra* note 1, at 387.

114. *Id.*

115. *Id.* at 387-88.

116. *See* AVANT-PROJET Title VII, 1.

117. *See id.*; WATSON, SLAVE LAW, *supra* note 22, at 23-24.

118. *See* AVANT-PROJET Title VII, 1.

119. *See id.*

120. *See id.*

121. *See* WATSON, SLAVE LAW, *supra* note 22, at 23-24.

122. *See* CODE NOIR art. 55 (1685).

123. *See* J. INST. 1.6.4.

their owners' children were freed.¹²⁴ This tacit manumission, not to be found in the *Avant-Projet*, is that of Roman law.¹²⁵

In addition, article 58 of the *Code Noir* commanded freed persons to show a singular respect to their former owners, to those owners' widows, and to their children.¹²⁶ This singular respect, *obsequium*, owed by freedmen to their patrons, was very much part of Roman law, meriting a whole title in Justinian's *Digest*.¹²⁷

Thus, the very particular Roman rules on manumission in *Avant-Projet* Title VII, 1 were given even greater Roman particularity in the *Code Noir*. *Pace* Palmer, the rules cannot be regarded as deriving from Caribbean experience with Roman touch-ups.¹²⁸ It is emphatically also not the case that "the substantive and formal conditions that the *Avant-Projet* and the *Code Noir* imposed on owners were decidedly more liberal and less strict toward manumission than comparable Roman rules."¹²⁹ Once again, when there were Roman rules and they were known, they formed the basis of the law in the *Code Noir*.

Finally, we should notice what is surprisingly absent from the *Code Noir*, namely the concept that slaves are intrinsically inferior because of their race. Certainly, slaves have a lowly position because they are slaves, but not obviously from the substance of the *Code Noir* because they are black Africans or of African descent. Yet Antillean slavery was racist. In Rome, slavery and slave law were not based on race. So great was the influence of Roman law that, although Antillean slavery was racist, the substance of its slave law does not appear to be so.

Professor Palmer points out to me in correspondence¹³⁰ that the very title, *Code Noir* (Black Code), rather than *code de l'esclavage* (Slavery Code), is racist; that the Déclaration du Roy of January 1685, which introduces the Code, more than once uses the term "nègres"

124. CODE NOIR art. 56.

125. See CODE JUST. 6.27.5.1, 6.27.5.1a, 6.27.5.1b. This is true, except that there were no testamentary executors at Rome.

126. CODE NOIR art. 58.

127. DIG. 15.37.

128. But see Palmer, *supra* note 1, at 388 (stating that "an initial policy of free manumission came from the Caribbean, and the Roman flourishes are a secondary dimension, refining that policy").

129. *Id.* at 388-89. Professor Palmer refers to Jaubert, *supra* note 65, at 328, but Professor Jaubert is mistaken.

130. See Letter from Vernon Palmer to Alan Watson, *supra* note 24.

where slaves are meant.¹³¹ He is right. Antillean slavery was unabashedly racist. All the more significant is it then that the substance of the law does not allow this to appear clearly.

In conclusion, I have confessed my grievous sin in not researching the antecedents in the Antilles for the *Code Noir*. Professor Palmer has performed a great service to all students of slavery in the Americas by bringing forward and emphasizing these antecedents. Yet, when all is said and done, I stand by my main thesis: that when relevant Roman law existed and was known, it was the main basis for slave law in the *Code Noir*. In this regard the input of the remote Parisian draftsmen was significant. Professor Palmer, I believe, greatly exaggerates when he says: "This story of origins and authors, however, shows not only that the experience was their own, but that the *Code Noir* embodies it."¹³²

For the importance and the nature of legal borrowing, it would not be too significant if, in any event, police regulations were made locally. But it is truly revealing that the law of one society on basic issues such as slaves' rights to make contracts and the extent of their owners' liability for these, and owners' freedom to grant manumission and even citizenship to their slaves, can be borrowed by a vastly different society. The role of the black-African slave in the Antilles was not that of the slave banker, business entrepreneur, ship master, or medical doctor of Roman law.

Professor Palmer correctly states¹³³ that I categorically claimed that "Roman law was thus the inevitable model for the French law on slavery."¹³⁴ So it was, I believe, just as it was in Spanish, Portuguese, and Dutch-American Law.¹³⁵

Professor Palmer suggests that it is not without importance that those who find indebtedness to Rome in the *Code Noir* are usually specialists in Roman law.¹³⁶ I would end on a rather different note. It would be invidious to name names—and I am not thinking of Professor Palmer—but many scholars of comparative law and comparative legal history habitually downplay the role of Roman law in subsequent legal development. If one accepted, as I do, its enormous scale, then one would have to come to grips with Roman

131. *See id.*

132. Palmer, *supra* note 1, at 390.

133. *See id.* at 364.

134. WATSON, SLAVE LAW, *supra* note 5, at 85.

135. *See id. passim.*

136. *See* Palmer, *supra* note 1, at 364.

law, a laborious task. Much better just to deny its importance.¹³⁷ The wider significance of this Article, beyond the Antilles and the *Code Noir*, lies in this claim of the great impact of Roman slave law even in the Spanish, Portuguese, and Dutch-America societies that were based on very different, even racist, principles.¹³⁸

137. See generally ALAN WATSON, *JOSEPH STORY AND THE COMITY OF ERRORS* 96-99 (1995) (discussing the reluctance of scholars to come to grips with doctrinal legal history, especially when a foreign source is involved).

138. See WATSON, *SLAVE LAW*, *supra* note 5, *passim*.

APPENDIX

*Mémoire pour le King sur la religion
la police, la nourriture et autres matières —
concernant les esclaves des Isles Françoises
de l'Amérique, concerté avec Monsieur le
Comte de Denon, après avoir pris les avis
des officiers des trois conseils souverains, et
des principaux habitants de toutes lesdites
Isles pour servir de projet d'une ordonnance
que lesdits habitants supplient sa majesté
de leur accorder sur cette matière,*



De la Religion

I
que les esclaves ne pourront faire profession
d'aucune autre religion que de la catholique apostolique
et romaine, à peine de punition exemplaire contre
les maîtres,

2.
que lors qu'il arrivera dans les Isles des Negres qui
ne seront pas baptisés, les habitants qui les achèteront
seront obligés d'en avertir par écrit les pasteurs
ou missionnaires qui auront soin de leur quartier
afin qu'ils puissent travailler à les instruire,

3.
Si lesdits esclaves tombent malades avant qu'ils
soient baptisés leurs patrons seront tenus d'avertir
lesdits pasteurs ou missionnaires de leur maladie

à fin qu'ils pourroient à leur V. Dignissime, etc pour
 ceux qui seront déjà baptisés, seront parcelllement
 tenus lors qu'ils seront atteints de quelque maladie
 dangereuse d'en faire avertir lesd' prêtres ou
 missionnaires afin qu'ils leur administrent les
 sacrements de l'Eglise apene de dix livres l'annu
 d'annu au profit de l'hospital contre les maistres
 qui auront manqué d'exécuter le contenu en cet
 article et au précédent ou contre les commandeurs
 qui en auront été chargés de leur part et ne
 l'auront pas exécuté

4.
 Que les patrons seront tenus de faire baptiser
 les enfans de leurs esclaves dans la huitaine au
 plus tard du jour de leur naissance, et ne souffriront
 aucuns concubinages entre lesd' Esclaves qu'ils
 seront tenus de punir severement lors qu'ils en
 auront connoissance

5.
 que les Maistres pour éviter les desordres de leurd
 Esclaves les porteront au mariage et se rendront
 faciles à leur accorder les permissions qui leurs
 seront demandées par ledits esclaves pour se
 marier lesquels néanmoins ne le pourront faire
 sans le consentement de leurs maistres apene
 de nullité. Comme ausy les maistres ne pourront

5
 que les esclaves aient le consentement
 mutuel des deux parties
 6
 que les maîtres qui auront des negres mariés en
 face d'Eglise ne pourront vendre séparément
 l'homme ou la femme a peine d'être privés de
 celui qu'ils auront gardé au profit du maître de
 celui qu'ils auront vendu sans qu'il soit permis
 de faire aucunes conventions au contraire, sinon
 lors que le mari ou la femme auront été
 bannis ou chassés par autorité de justice
 7
 que les patrons seront tenus de faire enterrer
 en terre sainte dans les cimetières destinés a cet
 effet tous leurs esclaves baptisés, et a l'égard de
 ceux qui mourront sans avoir reçu le baptême
 seront enterrés la nuit dans quelque champ
 voisin du lieu où ils seront morts,
 8
 que les habitants qui font profession de la religion
 prétendue réformée et les juifs seront tenus de
 souffrir a leurs esclaves le libre exercice de la
 religion Catholique apostolique et romaine et
 d'exécuter ponctuellement tous les articles du
 présent règlement sous peine d'être sévèrement
 châtiés

que tous les maîtres de quelque religion qu'ils soient ne pourront faire travailler leurs Esclaves à la terre ni à la manufacture des Sucre les jours de Fêtes et dimanches depuis leur lever jusqu'à l'autre minuit.

10.

que les commandeurs qui seront proposés à la conduite des negres ne pourront faire profession d'autre religion que de la catholique apostolique et romaine.

11.

que le marché des negres ne se pourra tenir les jours de Fêtes et dimanches pendant la messe de paroisse a peine de confiscation de toutes les denrées et marchandises qui se trouveront au marché dans le temps de la messe,

De La nourriture, Vestement, et Conservation des Esclaves,

1.

Que les maîtres seront tenus de faire fournir par chacune semaine à leurs esclaves âgés de dix ans et au dessus pour leur nourriture, deux pots et demij mesure de pain de farine de maïs ou trois Cassaves pesant chacune deux livres et demie au moins, ou choses équivalentes.

12
 1. Les maîtres seront tenus de leur fournir de
 nourriture ou autres choses de proportion et aux
 enfants depuis qu'ils sont nés, jusques à l'âge
 de six ans la moitié des viures cy dessus,
 2. qu'il ne sera jamais donné d'aide vie de cane ou
 guildine pour tenir lieu de cette subsistance,
 3. que la liberté ne sera jamais donnée auxdits—
 esclaves de travailler pour leur compte particulier
 le samedi ou quelque autre jour de la semaine
 pour décharger le maître de leur subsistance
 et nourriture
 4. Que les maîtres seront tenus de fournir à—
 chaque esclave par chacun an deux habits—
 de toile ou quatre aulnes de toile au gré des—
 maîtres,
 5. que ceux qui contreviendront à ce qui est ordonné
 par les quatre articles cy dessus, seront condamnés
 en cent sols tournois d'amende pour chaque
 teste de negre auquel ils auront manqué de
 fournir la nourriture et le vestement
 6. que tout esclave qui demeurera infirme par
 vieillesse, maladie incurable ou autrement—
 sera nourri et traité comme les autres sans—

pourvoir être abandonné par son maître, lequel
en ce cas sera condamné à le mettre à
l'hospice auquel il paiera six sols par jour
pour sa subsistance.

De La Police

I
que défenses seront faites aux Esclaves d'apporter
aucunes sortes de denrées pour vendre au marché
ordinaire et dans les maisons des particuliers
qu'ils aient un billet ou marques connues de leurs
maîtres contenant la permission expresse
de vendre ce qu'ils auront déclaré, et que défenses
seront faites aux habitants d'acheter desdits
Esclaves aucunes denrées sans la permission de
leurs maîtres après de six liures tournois
d'amande, à l'exception néanmoins des fruits, des
legumes, du Bois à brûler, de l'herbe pour la
nourriture des bestiaux et des manufactures.
Desdits negres qu'ils pourront vendre sans permission
expresse de leur Maître,

2.
qui sera proposé deux personnes dans chaque
marché pour examiner les denrées et autres
marchandises qui y seront apportées par lesdits
esclaves sans permission de leur maître.

qu'ils emmènent sur le champ en l'absence de l'hospita-
lier, sous peine de nullité de l'acte.

3.
Il sera permis à tout habitant de se saisir
de toutes les choses dont ils trouveront lesdits
esclaves chargés lors qu'ils n'auront point de
visite de leur maître à la charge d'en voyer à
l'hospitaux ce qu'ils prendront auxdits Nègres s'ils
en sont voisins ou au maître du Nègre /

4.
que des forces seront faites auxd. esclaves de
faire aucunes assemblées de jour ou de nuit sous
prétexte de noces ou autrement, soit chez leur
maître ou ailleurs, et encore moins dans les
grands chemins, ruelles, ou lieux écartés, ou y
font des combats de défi, lesquelles assemblées
passeront pour cabales et qu'il sera permis à
tous lesdits habitants d'arrêter les contrevenants
et de les conduire en prison pour être seulement
chastiez, et en cas de fuite ou de résistance
de tuer dessus, permettant néanmoins auxdits
esclaves de sejourner chez leurs maîtres avec
des musettes, tambours, ou violons, lors que leur
maître leur en accordent la permission pour
les nègres de leur maison seulement sans qu'ils
en puissent souffrir d'autres.

que les maîtres qui seront convaincus d'avoir
permis, souffert ou toléré telles assemblées
composées d'autres esclaves que de ceux qui leur
appartiennent seront condamnés à repaier en
leur propre et privée nom. tout le dommage qui
aura été fait à leurs voisins à l'occasion
des assemblées, soit par le marronnage d'es-
claves ou autrement en dix escus d'amende
pour la première fois et au double pour la seconde
dont ils seront tenus de charger leurs
commandeurs,

6
que défenses seront faites auxdits esclaves
pour quelque cause que ce puisse être, même avec
la permission de leur maître de vendre des canons
de sucre apens du fouet contre lesdits esclaves
et de dix livres tournois d'amende tant contre
les maîtres qui leur auront permis ledit commerce
que contre ceux qui les achèteront.

Des Crimes, peines et Chastiments.
Il ne sera fait aux esclaves aucune mutilation
de membres sans autorité de justice apens de
confiscation de l'esclave au profit de l'hospital.

2
Défenses seront faites à leurs maîtres de leur

Donner la sentence, et de son arbitrage par des —
 tourments Extraordinaires et —
 douloureux pareille peine de Condamnation.

3.
 Pourront seulement les maîtres, lors qu'ils croiront
 que leursdits Esclaves l'auront mérité, les faire
 enchaîner, les mettre à la boie, et les faire —
 battre de verges, lianes, ou cordes,

4.
 que tout esclave qui frappera son maître ou
 maîtresse sera pendu et que celui qui frappera
 une personne libre sera pour la première fois —
 battu de verges et marqué d'une fleur de lys —
 au visage, et en cas de récidive puni d'une —
 peine plus rigoureuse et même de mort selon l'origine —
 du cas à l'arbitrage du juge,

5.
 que tout esclave qui volera chevaux, cavallés —
 mules, mules, vaches, ou bœufs sera puni
 d'une peine afflictive et même de mort selon la atrocité
 du crime à l'arbitrage du juge,

6.
 L'esclave qui volera moutons, chèvres, cochons —
 volailles, cannes à sucre, pois, mil, maïs, ou
 autres légumes sera battu de verges par l'exécuteur
 et marqué d'une fleur de lys au visage /

7.
 que lors que les esclaves auront volé ou fait

Domage à d'autres qu'à leur maître, le maître sera tenu de réparer le dommage au d'abord donner l'esclave à celui auquel le vol ou dommage aura été fait.

8,

Que l'esclave qui sera fugitif pendant un mois et qui sera dénoncé à justice par son maître, aura les oreilles coupées et sera marqué d'une fleur de lys au visage; et si il récidive un autre fois aura le jarret coupé et deux fleurs de lys sur les épaules, et la troisième fois sera puni de mort,

9

Lesdits esclaves seront jugés en matière criminelle par les juges ordinaires et par appel au conseil souverain avec les formalités qui observent contre les personnes libres.

10,

Toutes les procédures qui seront faites en matière criminelle contre les esclaves se feront sans frais, et défenses seront faites aux juges provinciaux du Roy et greffiers de prendre aucune taxe pour raison desd. procès,

11,

Et d'autant que les maîtres font ce qu'ils peuvent pour cacher les crimes de leurs esclaves de peur de les perdre ce qui est cause que la plus grande part des crimes demeurent impunis, lors qu'un

De chaque nation, une quinzaine d'habitans, sera nommée
par deux des principaux habitans de l'île qui --
seront nommés d'office par le juge, et le prix --
de l'ad. estimation sera imposé sur les cent premiers
negres qui seront vendus sur les premiers --
vaisseaux qui arriveront dans l'île ou la punition
aura été faite,

12.
que les esclaves qui seront des enfans aux negres, si
les esclaves seront condamnés en deux mille livres
de sucre d'amarde applicable à l'hospital, et si le
esclave est le maître de l'esclave, il en sera privé
ensemble de l'enfant qui seront confisqués au
profit de l'hospital,

13.
Que l'enfant n'ay demeuré esclave sera esclave
jusques à la mort,

14.
que défenses seront faites aux esclaves de porter
aucunes armes offensives, ni de gros bastons à --
peine du fouet et de confiscation des armes au
profit de celui qui les trouvera saisi, à l'exception --
seulement de ceux qui seront employés à la
chasse par leurs maîtres et qui seront porteurs
de leurs outils,

15.
que pareilles défenses seront faites à tous habitans

De donner aucun ~~retraite~~ aux marçons a peine
 De dix liures bourgeois d'amande au profit du
 maître du nègre marron pour chaque jour de
 Retention, § 6.

Si un maître ou un commandeur tue un esclave
 Il en sera informé par le juge qui punira le
 meurtre selon l'atrocité et les circonstances —
 particulières du crime et si le juge que l'accusé
 soit innocent il pourra le renvoyer absous sans qu'il
 soit besoin d'obtenir des lettres de grace de sa
 Majesté.

Des Temoignages des Donnaux, — Successions et actions des Esclaves

1
 Les esclaves ne pourront être ouï en temoignage
 tant en matiere civile que criminelle sinon
 pour en tirer des Conjectures dont le juge se
 pourra servir pour aider à l'aprouve

2
 Ils ne pourront disposer par Testaments Donnaux —
 ou autres contrats allénatifs des biens meubles —
 immeubles par eux aquis lesquels appartiendront
 a leurs maîtres sans que leurs enfans ou autres
 héritiers y puissent rien pretendre comme aussi
 seront incapables de Recevoir aucune Donnaux

16

~~Les esclaves blancs et noirs ne pourront~~
~~être pourvus en jugement ni tenter de~~
~~leur chef aucune action, sinon sous le nom~~
~~et du consentement de leur maître,~~

Des Saisies des Esclaves et de leur qualité Mobiliaire.

Sa Majesté a Les esclaves travaillant actuellement dans les —
 rendu un arrêt en. Saceries, indigoteries et habitations âgées de quatre
 son conseil le 5^e — ans et au dessus jusqu'à soixante ans ne
 mai 1681 par — pourront être saisis pour dettes sinon pour ex
 lequel elle a ordonné indistinctement que
 les negres ne — que sera due du prix de leur achat
 pourront être —
 saisis sinon pour — 2. Si une Sacerie, indigoterie ou habitation est saisie
 le prix de l'achat réellement elle ne pourra être vendue que
 et les conseillers — Comptablement avec les esclaves de l'âge ex
 Souverains des — trais, les lors qu'ils qu'il y sont établis, dont le prix néanmoins
 ont enregistré cet — sera distribuée séparément suivant l'estimation
 Arrêt y ont — qui en sera faite en regard au prix du total
 ajouté que les — de la vente pour être les deniers provenant du
 negres servent — sans distribues aux créanciers hypothécaires et
 réputés immeubles — Le changement —
 de jurisprudence à ceux provenant des esclaves distribués comme
 fait agiter une — meubles
 3. Si une question —
 de meubles qui se — Les esclaves qui appartiennent aux habitants qui
 pourvoient — ne sont point employés dans leurs habitations
 néanmoins suffisant.

Les esclaves de couleur qui sont dans les habitations qui essou-
 vent que les negres de quatre-vingt ans et au-dessus de soixante ans
 pourront être saisis et vendus en observant
 l'immobilité quel-
 qu'on ont les formalités prescrites par la coutume et par
 l'ordonnance de Sarras pour les saisis -
 negres qui sont mobiliers, dans une terre.
 Les esclaves seront en tous cas réputés meubles.
 Le seigneur hôte et partagé comme tels, si on lui a
 prétendu un droit d'usufruit sur des conventions contraires dans les contrats de
 deux cents negres mariage, qui seront enclavés,
 de la succession - lors qu'un successeur, indigotier, ou habitant sera
 de son pere qui est mort depuis - affermé par bail judiciaire avec les esclaves qui
 les ont - en dépendent. Il sera estimé avant la adjudication
 d'autres ont dit du bail et à la fin du bail le fermier judiciaire
 qui est resté sera tenu de rendre les esclaves qui se trouveront
 signés, qu'il les viuent avec les enfans nés pendant le bail -
 falloir décréter - qui seront estimés de nouveau, et si se trouve
 pour purger - l'hypothèque, qu'il valem moins que le prix porté dans -
 falloir le temps - l'estimation sera obligé de payer le plus et s'il
 prescrit par la - valent davantage l'augmentation du prix lui sera
 coutume pour la - déduite sur le prix de la ferme ou sur celui -
 prescription de - des esclaves. Ce qui s'observera pareillement
 en prescrire la - Dans les baux volontaires que les tuteurs et les
 possession, toutes - Administrateurs du bien des pauvres ou autres
 des nouvelles.

~~seront obligés de payer les impôts sur les biens dont ils~~
~~seront chargés,~~
 6
 Tous usufruitiers qui auront droit de jouir de
 esclaves seront pareillement obligés de les faire
 élever en ces six à la fin dudit usufruit les rendre de pareille
 valeur s'il n'est autrement stipulé dans le titre
 dudit usufruit.

De la liberté accordée aux Esclaves

1
 Les maîtres pourront accorder la liberté à leurs
 Esclaves par testaments ou actes entre vifs. Ce qui
 les rendra capables de recevoir les legs ou dons
 qui leur seront faits par lesd. maîtres dans
 lesd. actes après lesquels ils seront réputés libres
 et jouiront des privilèges des autres habitants
 sans être obligés de prendre des lettres de naturalité
 quoiqu'ils soient nés dans les pays étrangers,

2,
 Les successions desd. Esclaves auxquels la liberté
 aura été accordée appartiendront à leurs enfants
 ou autres héritiers collatéraux libres,

3,
 Les negres libres qui auront donné retraite dans
 leurs maisons aux negres marons seront

condemneront vers le ~~marc~~ en trois cens livres
De sucre pour chaque jour de retention au payen
De laquelle somme ils seront contraints par
Corps, 4 -

que les negres libres qui seront surpris volant
des volailles et legumes seront priues de leur
liberte et adjugez a l'hospital du lieu au le
vol aura este fait,

Fait a S^t Christophe le 13. feurier 1689. /

B. M. R.