

‘PROPERTY IN HUMANS’: UNFREE LABOR IN THE EARLY FRENCH ATLANTIC

by

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(Under the Direction of Jennifer Palmer)

ABSTRACT

This Master’s thesis uses the legal classification of slaves as a specific form of private property in the French Code Noir of 1685 as an analytical lens to examine the multiple intersections of race, gender, conceptions of property, and struggles over authority between the French metropole and its Caribbean colonies between c. 1660 and c. 1770. Through this examination, this thesis shows how these hierarchies of power shaped slavery through a complex process which included racist conceptions but did not emerge or form solely from them. Instead, early modern French ideas of property, tensions between colonial slave owners and the metropole, the gendered hierarchy which shaped early modern French society, and racist notions which developed alongside the rise of plantation slavery, all intersected in multiple ways that shaped French slavery into one form of unfree labor in the French Atlantic during a period when race itself was a flexible concept.

INDEX WORDS: Master’s thesis, French Code Noir of 1685, Race, Gender, Property, Hierarchies of power, Slavery, Caribbean, French Atlantic

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B.A, Clarion University of Pennsylvania, 2016

A Thesis Submitted to the Graduate Faculty of The University of Georgia in Partial Fulfillment
of the Requirements for the Degree

MASTER OF ARTS

ATHENS, GEORGIA

2018

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DEDICATION

This thesis is dedicated to my husband, Andrew.

ACKNOWLEDGEMENTS

I would like to thank Dr. Jennifer Palmer for all of her guidance and advice throughout this process. The hours spent discussing the concepts contained within this thesis were vital to the development of my argument. Without her steadfast support and constructive criticism, I would not have the honor of completing a graduate degree. Without her guidance, I would not have been provided with the opportunities which led me to the sources used to write this thesis. Over the past two years, she has pushed me to become a better writer and student of history and encouraged me every step of the way. In addition to Dr. Palmer, I would also like to thank my other committee members, Dr. Reinaldo Román and Dr. Patricia Richards, for their support and advice which was also invaluable.

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INTRODUCTION

Marie, a twelve-year old slave girl from Saint Domingue during the mid-eighteenth century, held an estimated value of 1,300 livres and not much else about her is known.¹ Her mother was not listed with her nor was Marie's place of birth. However, Marie was listed in the inventory after her sister, Catherine, who was at that time seventeen years old. For Catherine, the information included about her was her age, her estimated monetary value, and her familial relationship with her sister. The only other information about her life was that she was herself 'creole'. Likely then, Marie was also born in Saint Domingue since she was the younger sister. The sisters themselves were not sold to Europeans from African ports and did not experience the Middle Passage as did most of the African slaves, and therefore the majority of the enslaved population, in Saint Domingue. The fact that not much information was included about these slaves is typical of notary records, yet the choice to include their relationship is certainly out of the ordinary. While laws regulating slavery prohibited the sale (at least in principle if not in practice) of enslaved mothers and their children under the age of fourteen, there were no legal proscriptions that would prompt the inclusion of sibling relationships.² As the mother was not designated for the two sisters, it is possible that she either was not living at the time of this notary record or that Catherine and Marie had been sold to another plantation prior to the recording of this inventory. Catherine herself would

¹ December 3rd, 1766, Archives Nationales d'Outre-Mer (hereafter ANOM) NOT SDOM 1154.

² While the article only states that "prepubescent" children could not be sold separately from their married enslaved parents, that the French typically counted enslaved persons under the age of fifteen as children explains why historians who have written about this prescription write that children under the age of fourteen were not to be separated. Article 47, *Le Code Noir ou Edit du Roy de 1685*, (A Paris, au Palais, 1735). Digitized by the John Carter Brown Library, 2010.

have been considered an adult during this time period as she was over the age of fifteen, while Marie would still have been regarded as an enslaved child.³ Most notary and census records seemingly recorded adult slaves separately from children, they also typically separated them by gender.⁴ It is even more interesting, then, that Marie was recorded directly after Catherine and specifically designated as her sister. While it is not known, it is possible that these sisters were mulattos, that they were mixed race children of their mother's (likely) white owner, as concubinage was relatively commonplace in the colony.⁵ The inclusion of a family relationship without the necessity of such by law or even by normalized practice highlights the complex nature of human property itself that existed in the French Caribbean, and suggests an ongoing tension between slaves' status as property, and their evident humanity.

This unusual example of sister slaves inspires intriguing questions about slavery, race, gender, property, and connections between colonial Saint Domingue and France. At first glance, the categorization of slaves as movable private property by the metropole and the distance between Saint Domingue and France suggests that how slaves were categorized in common legal documents such as colonial notary records would be straightforward and generally unconnected with French legal precedents or property conceptions. Further, the cut and dried way in which such documents divided people of color into seemingly self-evident categories suggests uniform treatment of all slaves.. Yet this inclusion of a familial connection between two slaves, and more

³ David Geggus, "Sex Ratio, Age and Ethnicity in the Atlantic Slave Trade: Data from French Shipping and Plantation Records", *The Journal of African History* 30, no. 1 (1989), 26.

⁴ See for example, my discussion of particular notary and census later in this thesis such as, ANOM NOT SDOM 1154, December 3rd, 1766; ANOM NOT SDOM 1356, June 3rd, 1726; and ANOM G 1 498.

⁵ "White men and women lived irregularly, with concubinage as common as marriage... It was customary for white men to cohabit outside marriage, both with white women and also with black or colored women." Trevor Burnard & John D. Garrigus, *Plantation Machine: Atlantic Capitalism in French Saint-Domingue and British Jamaica*. (Philadelphia, Pennsylvania: University of Pennsylvania Press, 2016), 68-9.

importantly what is *not* included about them, prompts investigation into these assumptions. Were slaves treated as other property? Were they treated relatively similarly in practice over the course of the colonial period, particularly in Saint Domingue? Did gender affect the treatment of slaves, free people of color, or whites in the colonies, and if so in what ways? How did race intersect with conceptions of property and gender to shape slavery into something inherently different from other types of property in the French Atlantic? Further, how did tensions over authority between the colonies and the metropole in this period affect slavery and racial categories? All of these vying issues and conceptions affected both the legal and social development and treatment of slaves in the French Caribbean colonies, particularly Saint Domingue between its settlement and the mid-eighteenth century for various reasons which will be examined in this thesis.

What this thesis argues is that rather than race having been the primary reason for the emergence and development of African slave labor on plantations in the French Caribbean colonies, the classification of humans as property and the contradictions which arose from such an effort are more important considerations in which, race played instead a secondary role. The contradictions were a result of intersecting, complex issues which connected early modern France intimately with its Caribbean colonies and with issues of labor. The gendered hierarchy which existed within France and transferred to the colony. So did social prejudices from France, conceptions of property and property owners' rights, tensions between colonial and metropolitan authority (mostly over property). These, alongside racist conceptions which arose with the presence of African enslaved labor and the rise of the 'plantation complex' with its emerging economic importance in the early eighteenth century, transformed slavery from one form of unfree labor within a period of fluid racist conceptions that was formed on the backbone of preexisting ideas of property and authority, into a labor system which was founded on solidified

understandings of binary racial differences by the end of the 1700s.⁶

Race has been central to the study of colonial French Caribbean history, whether the focus of analysis has been on slaves, free people of color, or whites in the colonies. Historians of the French Caribbean have accepted that race was a fluid, flexible concept prior to the decade or so after the end of the Seven Years' War.⁷ During the last quarter of the eighteenth century, racial divisions and conceptions hardened and were more strictly legislated through laws.⁸ Historians, such as John Garrigus, have sought to explore why and exactly when this shift occurred and its changes over time until its eventual solidification at the end of the 1700s.⁹ One historian in particular, Melanie Lamotte, has examined how French colonists expressed more of a "colour prejudice" in the 1600s than a notion of white and black along later accepted racialized lines.¹⁰

⁶ For definition and discussion of the idea of the "plantation complex" see Burnard & Garrigus, *Plantation Machine*, 1-2.

⁷ "These events" (the Macandal poisoning crisis and the antimilitia revolt of 1769) "were sufficiently traumatic for white colonists to abandon their previous social definition of race in favor of racism that prefigured the explicitly biological racism of nineteenth-century imperialism. 'Whiteness' became more important: 'passing' from black to white became more difficult as the state required more documentation from people of mixed ancestry and as new laws restricted their wealth and demeaned their social status. Both Jamaica and Saint Domingue transformed themselves from places that had a degree of fluidity in their social hierarchies to societies with an almost caste-like racial rigidity. This subjugation of people of color lingered in history for a long time, influencing colonial attitudes to race" Burnard & Garrigus, *Plantation Machine*, 18; and, "Before midcentury, in both colonies the policing of boundaries between whites and free colored was done very loosely, if at all..." Burnard & Garrigus, *Plantation Machine*, 69.

⁸ Ibid, 107; and Jennifer Palmer, *Intimate Bonds: Family and Slavery in the French Atlantic*. (Philadelphia, Pennsylvania: University of Pennsylvania Press, 2016); John Garrigus, "Redrawing the Color Line: Gender and the Social Construction of Race in Pre-Revolutionary Haiti" *Journal of Caribbean History* 30. No. 1&2 (1996); John Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue*. (Basingstoke: Palgrave Macmillan, 2011); and Jennifer Palmer, "What's in a Name? Mixed-Race Families and Resistance to Racial Codification in Eighteenth-Century France", *French Historical Studies* 33. No. 3. (2010).

⁹ A few historians more recently have analyzed racist conceptions and the permeable boundaries between white and black that existed in the Caribbean colonies in the 1600s and early 1700s, such as, Melanie Lamotte, "Colour Prejudice in the Early Modern French Atlantic World" *The Atlantic World*, D'Maris Coffman, Adrian Leonard and William O'Reilly eds., (Routledge 2014), pp. 151-171. For discussions of the fluidity and solidification of race in the French Caribbean colonies and the French Atlantic, see above.

¹⁰ "Thus, the concept of 'colour prejudice' – defined as the hostility, dislike and antagonism causing an unfavourable and a discriminatory treatment of people who have a different skin tone, physical appearance and cultural heritage – can do justice to this historical context. The category of 'ethnicity' is here used to refer to particular cultural heritages and physical features, 'racial' or not." Lamotte, "Colour Prejudice"; and, "Between 1635 and the 1660s, white people, the indigenous populations and the people of African descent formed a moderately flexible social

Historians have debated exactly when and why these shifts occurred. These analyzes of racial development examine multiple aspects such as slavery, interactions between people of color and whites, and laws in France and the colonies, in order to trace the emergence of racialized legal codes, language, political policies, and more. In spite of these differences in approach, historians generally agree that racist conceptions of white and black, and their connections to slavery, began hardening after the Seven Years War, and that by the outbreak of the Haitian Revolution, they had solidified and were no longer as flexible for wealthy free persons of color to navigate.¹¹

However, what these analyzes unconsciously accept is that the development of race in both the colonies and the metropole was the only, or at the least most important, contributor to the formation and practice of slavery and to the formation of legal codes on and social perceptions of people of color in the Caribbean colonies and in France. Historians have seemingly accepted that slavery developed as it did due primarily to racist conceptions held by French colonists and the metropolitan authority. However, this thesis contends that the French explored various forms of unfree labor in the Caribbean colonies prior to last quarter of the eighteenth century, and that the solidification of racial slavery in connection to plantations, particularly in Saint Domingue, was not inevitable or uniform. French notions of property predated colonial slavery, thus when French

hierarchy. During the first decades of settlement, the social order was not defined along a clear colour line, to a large extent because not all unfree people were black. Numerous *engagés* (indentured servants) worked in conditions that were very similar to those of slaves. DuTertre reported, regarding the *engagés*, that 'the settlers often force them to work with the slaves, and this afflicts these poor people more than all the excessive maltreatments that they have to endure'. In August 1669, Du Lion even considered the indentured system to be 'a form of slavery'.... By the end of the seventeenth century a social hierarchy more clearly defined along a colour line and yet slightly flexible had taken form." Lamotte, "Colour Prejudice".

¹¹ Several of these analyses focus only on the French Caribbean, or a specific colony, others focus on the connections between France and the colonies, and still others examine racial development strictly within France itself. For scholarship on race in France itself see, Sue Peabody, *There Are No Slaves in France: The Political Culture of Race and Slavery in the Ancien Régime*. (Oxford, UK: Oxford University Press, 2002); Palmer, *Intimate Bonds*; and see also, John Garrigus, "Blue and Brown: Contraband Indigo and the Rise of a Free Colored Planter Class in French Saint Domingue", *The Americas* 50, no. 2 (1993).

colonists began buying slaves, property practices in regard to another form of unfree labor, serfs, and immovable and movable goods, transferred across the ocean. Within France itself, the social order was preserved by a gendered hierarchy as France was divided by nobles and non-nobles, with titles passed down through blood.¹² This gendered hierarchy was itself also transferred to the colonies. The Atlantic Slave Trade itself also predated settlement of the French colonies, and the French Slave Trade emerged and was organized in the decades after African slaves were already working under French colonists. Therefore, the nature of the Trade itself influenced the formation of the French concepts of slavery.

By considering gender, property, authority, and the law as categories that predated and shaped racist colonial conceptions, this thesis extrapolates how racialized slavery emerged and was treated in both practice and the law in colonial Saint Domingue during the last decades of the seventeenth century and the first half of the eighteenth. This diverts from the traditional historiography as thus far, most scholarship has centered around the second half of the eighteenth century for Saint Domingue. Further, scholarship on the French Caribbean generally does not analyze race as a primary focus but instead it is often a secondary analysis within a larger work.¹³ This thesis thus analyzes these intersections to show contradictions between slaves' legal status as a specific form of property and their treatment in practice. This distinction is important for several reasons. One, slavery emerged in the French Caribbean colonies before it was sanctioned by the king and thus prior to its legislation by France. Therefore, it developed within each colony as best

¹² For an in-depth discussion on Early Modern French property notions and laws, refer to Rafe Blaufarb, *The Great Demarcation: The French Revolution and the Invention of Modern Property*. Oxford University Press, 2016.

¹³ Lamotte, "Colour Prejudice"; Gabriel Debien, *Les esclaves aux Antilles françaises, XVIIe siècles*. (Martinique Society of History, 1974); and Bernard Moitt, *Women and Slavery in the French Antilles, 1635-1848*. (Indiana: Indiana University Press, 2001), 10.

served slaveowners there. Once it was codified by the metropole, tensions emerged over colonists “right to property in humans”.¹⁴ The uniform classification of slaves as a specific type of property by the metropole was meant to exert royal authority, create stability with the practice of a specific labor system, further the economic benefit of the emerging plantations, and to place slavery within an existing conception of property ideas. Several factors likely affected slaves’ codification from France as movable property over immovable. Furthermore, during the seventeenth century the colonies were not yet majority slave societies and the “plantation complex” had not yet fully developed in most of the Caribbean colonies by 1685 when the *Code Noir* was published. Some colonists however had been treating slaves as immovable property when it best suited them economically, which was one cause for tensions between metropolitan and colonial authority to arise. The classification of slaves as movable or immovable also mattered for purposes of inheritance and for debt collection which were two very intrinsic issues for slave owners, particularly plantation owners in the Caribbean colonies.

This thesis examines the emergence of racialized categories in the French Caribbean colonies in the late seventeenth and early eighteenth century. Within census records, the social categories of indigenous as well as African slaves, indigenous as well as French indentured servants, free whites, and free persons of color, including both free Africans, free mulattos, and free indigenous peoples, emerged as the classification and treatment of these groups, especially African slaves and free people of color, were being codified and treated in practice by colonists. Differences arose between the colonies’ laws before contradictions arose from the metropole’s laws on slavery starting with the *Code Noir* in 1685. After the acceptance of the *Code* by colonial

¹⁴ Malick Ghachem, *The Old Regime and the Haitian Revolution*, (Cambridge University Press, 2012), 51.

authorities, contradictions arose between the legal classification and proscribed treatment of slaves and their treatment in practice by colonists and public officials, specifically notaries.

Secondly, within this argument is the implication that *within* the legal system the line between *slave*, that is being any type of private property, and a more complex category of unfree labor, itself a flexible category, has not yet been explored by historians. Recent historiography of the French Caribbean has shown that the binary between free and slave status was blurred and historians have distinguished that the racial binary was permeable over a person's lifetime.¹⁵ The laws on slavery capture how these two dichotomies were themselves complex. The flexibility of practices regarding slaves and free people of color, and the distinctions between the status of free and unfree and between black and white in the French Caribbean, were themselves partly due to the difficulty inherent in classifying *humans* as property when the very humanity of the enslaved itself challenged their strict treatment as property. As well, separating slaves into one specific category, *meubles*, alone caused contradictions and tensions within the law and thus within society for practical purposes.

Further complicating this picture is the difference between the treatment of slaves in Saint Domingue and the exact wording or inherent meaning in the legal codes on slaves. Within the *Code* who could be property and who could not be was not specified.¹⁶ Further, it is ambiguous

¹⁵ See, Garrigus, "Redrawing the Color Line"; John Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue*. (Basingstoke: Palgrave Macmillan, 2011); Fick, *The Making of Haiti*; Ghachem, *The Old Regime and the Haitian Revolution*; Burnard and Garrigus, *Plantation Machine*; Palmer, *Intimate Bonds*; Jennifer Palmer, "What's in a Name? Mixed-Race Families and Resistance to Racial Codification in Eighteenth-Century France", *French Historical Studies* 33. No. 3. (2010); and Garrigus, "Blue and Brown".

¹⁶ Brett Rushforth, *Bonds of Alliance: Indigenous and Atlantic Slavery in New France*. (Chapel Hill, North Carolina: University of North Carolina Press, 2012), 123.

what position in society slaves held in terms of being subjects or not to the King of France.¹⁷ Slave owners could legally leave their legitimate or illegitimate mixed race children inheritances which sometimes included human property, even if these children themselves had at one point been the property of their father. Further, although the *Code* classified slaves as movable property, notary records often treated them separately from other movable property, yet they also treated separately from immovable property. Instead, notary records, the very records where these property distinctions were theoretically most important, treated slaves as something entirely different from other property.

By focusing on the flexibility of property as a category, this thesis analyzes how slavery developed in the colonies as such for reasons which analyzes of only race (or race and one other intersection) fail to capture. By looking behind strictly racial categories, this thesis examines the relationship between labor and property in Saint Domingue which has the advantage of allowing us to think more fluidly about race itself and its development over time. Centering the classification of slaves as a specific form of private property shifts shift historiographic debates about precisely when and why racial categories emerged and hardened in Saint Domingue out of the spotlight, bringing the focus instead to a spectrum of unfree labor in the French Atlantic and how labor and property shaped systems of slavery. The complicated notions of race, the similarities and differences in treatment with indentured servants, and the presence of serfs in France additionally suggest that the codification of African slaves as movable property was inherently more complex than can simply be attributed to resulting from race alone.

¹⁷ An article in the *Code Noir* legislated that freed slaves were to be given the same rights as free-born French subjects, but it does not clarify the position of people of color in the colonies while they were enslaved. Article fifty-nine, “The ‘Code Noir’ (1685)”, trans. John Garrigus.

GENERAL HISTORY OF THE FRENCH CARIBBEAN

During the first few decades of settlement, the French Caribbean colonies were places of social, legal, and cultural exchanges. The presence of the Spanish, Dutch, and English slave traders, and these nations' presence on the same or nearby islands with the French, allowed for the acceptance of African slavery right from the start despite the accepted practice of 'free soil' within France itself. However, as slavery was not an accepted concept within the French empire in the first decade of settlement, and because of its development ad hoc with the emergence of colonial settlement and passage of laws sans metropolitan authority, the practice of slavery itself was not a foregone conclusion. Rather, the emergence and eventually success of plantations in the colonies, the gradual eclipse of white labor with enslaved labor by people of color, and the continued codification of slaves as a specific type of property, were partially but significantly responsible for the solidification of slavery as racially based and the at first varying but then rigid racial categories that emerged.

The French Caribbean colonies were settled throughout the seventeenth century. The islands of Saint Christophe, Martinique, and Guadeloupe were each settled by the French starting in the 1620's and developed rather slowly until after the mid-century.¹⁸ The French began to settle on Cayenne and other islands near Martinique and Guadeloupe in the 1640's, while the area that would become the colony of Saint Domingue was first occupied by *filibustiers* or

¹⁸ Phillip Boucher, *France and the American Tropics to 1700: Tropics of Discontent?* (Maryland: The John Hopkins University Press, 2008), 154.

“buccaneers” prior to the 1660’s.¹⁹ After that time settlement was encouraged there to strengthen the French position in the Caribbean against the English, Dutch, and Spanish. The western third of the island of Hispaniola was not formally ceded to the French until the 1690’s, however plantations and port towns had already been established there by the time the *Code Noir* was published in 1685.²⁰

Within the colony of Saint Domingue in the late seventeenth century there was already an established community of pirates, *engagés* (indentured servants), and two groups of free white settlers known as *petit blancs* and *grand blancs*.²¹ By the turn of the century, the *filibustiers* would essentially be gone. Over the course of this first century of French settlement, many of the settlers that came to be known as *petit blancs* were descendants of the former *engagés*.²² Due to the distance between Saint Domingue and France, between Saint Domingue and the coast of West and West Central Africa, and between Saint Domingue and the Windward Isles, the colony of Saint Domingue developed in relative isolation.²³ In addition, Saint Domingue by the end of the seventeenth century lacked the presence of an indigenous population as in the rest of the Antilles. Thus, Saint Domingue did not have the opportunity for indentured or enslaved labor in the form of indigenous peoples, but instead had access to only two options, French or African labor sources.

Prior to the turn of the century, the French Caribbean colonies contained a relatively

¹⁹ Fick, *The Making of Haiti*, 15; “By 1649, significant numbers of colonists inhabited Saint-Christophe, Guadeloupe, and Martinique. The economic and demographic vitality of the following decade led to expansion to other islands such as Saint-Croix, Saint-Martin, Saint-Barthelemy, Marie-Galante, Grenada, and Sainte-Lucie.” Boucher, *Tropics of Discontent?*, 87.

²⁰ Ibid, 16 & 240.

²¹ See, Fick, *The Making of Haiti*, 15-18, for definitions and explanations of these terms.

²² Fick, *Making of Haiti*, 15.

²³ Boucher, *Tropics of Discontent?*, 16.

small number of plantations and held a relatively low population of both French and Africans when compared to certain English holdings.²⁴ During the first decades of settlement in the French Caribbean, the islands produced first tobacco and then increasingly moved toward sugar and the production of other crops such as indigo and, after 1730, coffee and cotton.²⁵ All of these crops, especially sugar, were very labor intensive and required a relatively large cheap labor pool in order to work them and produce profit. The Dutch were the main supplier of slaves for the French colonies prior to the consolidation of royal power under Louis XIV and Colbert in the last four decades of the seventeenth century.²⁶ For French slave traders after the turn of the century, the main ports of call in the Caribbean were first Le Cap and then Port-au-Prince in Saint Domingue, followed by the colony Martinique. Guadeloupe and especially Guyane, and the

²⁴ Ibid, 2; For Saint Christophe, by “the early 1630s, some five hundred settlers and fifty-two African slaves (forty men and twelve women) were engaged in tobacco production.” The French “first started to settle on Martinique, Dominica and Guadeloupe in 1635 (partly because tobacco was exhausting the soil on Saint-Christophe)”. The first French settlement of the island of Guadeloupe was about 500 men and that most of those were engages or indentured servants with a number of priests present as well. Boucher, *Tropics of Discontent?*, 70-2; “French migration across the Atlantic in the early modern era was comparatively small. Global estimates suggest a figure of 60,000 to 100,000 leaving for the Americas in the years 1650-1760, as compared to 746,000 British subjects, 678,000 Spaniards, and even 523,000 from thinly populated Portugal. France at the time had the largest population by far of any European state, some eighteen to twenty million. Only the Dutch, with some 20,000 migrants, trailed France among the big five imperial powers. It should be noted that more than half of the French migrants probably either died during the experience or returned home.” Boucher, *Tropics of Discontent?*, 10; and, In 1685 in Saint Domingue there were “11,000 whites and about 22,000 slaves” in a census cited by Phillip Boucher. According to Boucher, in 1700 in Saint Domingue there were “4,560 whites and 9,082 slaves”. Boucher, *Tropics of Discontent?*, 240.

²⁵ “Whereas Martinique and, to a lesser extent, Guadeloupe did move in the direction of a predominately plantation regime starting in the 1660s, large parts of these islands and the smaller islands subsisted on the production of tobacco and foodstuffs, small-scale farming, ranching, woodcutting, trading with Island Caribs (a factor usually overlooked), and the coastal trade (*cabotage*).” Boucher, *Tropics of Discontent?*, 16; “In the seventeenth-century, tobacco and indigo were the chief alternatives to sugar; in the eighteenth, cotton and especially coffee supplemented sugar production.” Boucher, *Tropics of Discontent?*, 3; and, “Coffee, introduced from Martinique in the 1730s, came to rival sugar by the 1760s as a Dominican export. It could be grown in the interior mountains, which were useless for sugar, and it required a far smaller investment in labor, animals and machinery.” Burnard & Garrigus, *Plantation Machine*, 14. For a discussion on indigo plantations in Saint Domingue, see David Geggus, “Indigo and Slavery in Saint Domingue”, chapter in *Slavery Without Sugar: Diversity in Caribbean Economy and Society Since the 17th Century*. ed. Verene A. Shepherd. (Gainesville, Florida: The University Press of Florida, 2002), 23.

²⁶ The French Caribbean colonies turned even more to the Dutch in the 1640’s and 1650’s as Queen Anne ruled as regent since Louis was only five years of age when his father died. Thus, Caribbean governors turned to the Dutch for slaves, credit, and to buy their cash crops. Boucher, *Tropics of Discontent?*, 82. See also pages 154-5.

smaller islands as well, received lower numbers and different ratios of African slaves than did the main ports of Saint Domingue.²⁷ These differences in slave demographics mattered in terms of the development of labor systems in different regions. They also affected gender relations as male slaves were assigned specialized and skilled tasks while female slaves more often worked as unskilled field laborers. In the southern region of Saint Domingue, then, where more children and female slaves were present, indigo and other crops and products, rather than sugar, were more often the main sources of wealth.

Historian Phillip Boucher makes the argument that prior to the 1650s, the French Caribbean colonies were societies with slaves and that from the period from the 1660s to the 1690s, they were a “mixed slave and free society”. He described this as a society in which “slave labor is crucial but not to the extent of excluding free labor”.²⁸ White indentured labor, as well as the labor of *petit blancs* and of *gens de couleur*, was also part of colonial society throughout the eighteenth century. Yet the transition to a plantation system was rapid: After the 1690s, especially after 1730, these colonies, Martinique, Guadeloupe, Saint Christophe and mainly Saint Domingue, were comprised of slave societies. This was partly because prior to the 1690s, slaves did not greatly outnumber Europeans on these islands, which he argues led to a more “relaxed” state between masters and their slaves than what would exist toward the end of the eighteenth century. Part of the explanation for this statement was that there were no mentions of poisoning

²⁷ “St. Domingue was by a huge margin the major recipient of captives carried in French vessels, even though it largely ceased to import slaves after slavery was abolished there in 1793. At different times the world’s leading exporter of indigo, sugar, and coffee, St. Domingue accounted for more than three quarters of French expeditions to French colonies and for at least 80 percent of the slaves they sold there. By 1715, it had overtaken Martinique as France’s prime market for slaves.” David Geggus, “The French Slave Trade: An Overview”, *The William and Mary Quarterly* 58, No. 1 (2001): 125-6.

²⁸ Boucher, *Tropics of Discontent?*, 158-9.

by slaves against whites prior to the eighteenth century, not even in the 1685 *Code Noir*.²⁹

In terms of the demography of the colonies, around the mid-seventeenth century, it is possible that African slaves had reached a demographic parity with the French settlers on the three oldest islands. By the start of the eighteenth century, African slaves had begun to outnumber white settlers on the larger islands where the number of plantations were gradually increasing.³⁰ During the eighteenth century as well, the colony of Saint Domingue became the leading exporter of sugar in the colonies in addition to the major recipient of slaves.³¹ At the same time, the demography of Saint Domingue shifted so that by the outbreak of the French Revolution the majority of the population were black slaves, followed by a much smaller population of *gens de couleur*, or free people of color, with the smallest percentage of the

²⁹ Ibid, 160. In his book, Boucher discusses why “criminals, vagabonds, and the unemployed” were not enslaved and sent to work for life in the “labor-starved Caribbean”. This was because they were hard to control (from France) and because of the horror of contemporaries at the thought of enslaving “fellow Christians”. This notion makes sense as slavery was partly justified because it was to Christianize the African slaves, at least according to one tradition. As well, France was understood to hold the Free Soil Principle, and slavery was illegal there, at least until 1718. Boucher went on to note that one problem with indentured servants was the limit of their contract but that it was expensive to import West Africans in the seventeenth century and the slave trade itself was unreliable in that period, so would have made some sense but thus, did not happen. Boucher, *Tropics of Discontent?*, 152-3; However, Boucher also noted that: “One current scholar arrives at a figure of 13,000 French and 16,000 African slaves in the islands by 1660 by splitting the difference between the lowest and highest estimates of the chroniclers. As there were probably not many more than 3,000 colonists each at Martinique and Guadeloupe in the early 1660s, 13,000 may be on the high side. Thus Saint-Christophe was the most populous island at this time... In any case, if the 1642 estimate of 7,000 inhabitants of all races is at all accurate, then the population had increased significantly by 1660... Though a large number of engages left France in this era, their mortality rates were most likely high, and many survivors returned to France at the contract’s conclusion. Contemporary missionary accounts attribute high mortality rates to the brutal workload greedy masters placed on indentured servants.” Though the high mortality rates were also due to malaria as well, which was most prevalent in the colonies of Martinique and Guadeloupe. Boucher, *Tropics of Discontent?*, 88-89.

³⁰ Boucher, *Tropics of Discontent?*, 11, 230, & 240.

³¹ “The number of sugar works at Guadeloupe grew from one in 1644 to 113 in 1669... Until the mid 1680s, Guadeloupe and its dependencies, far larger than Saint-Christophe, moved at about the same very gradual pace toward planter predominance. In 1685, slaves outnumbered whites there by 5,257 to 3,670. In 1700, just 6,855 lived alongside 4,466 free people, indicating a stagnant pace of development... Martinique had 111 sugar mills by 1671, and many farmers who planted sugarcane to sell to mill owners... At Saint-Christophe there were 121 mills in 1671... According to a 1683 census, Martinique had 122 sugar works and Saint-Christophe had 90. Guadeloupe had 89, as well as 12 indigo works, the most on any island.” Ibid, 230.

population having been whites.³²

African slaves were first imported into Saint Domingue during the second half of the seventeenth century in ever increasing numbers.³³ Due to high death rates and low birth rates over the entire colonial period of Saint Domingue, African slaves, mostly male, continued to be imported right up to the Haitian Revolution.³⁴ These African born slaves were mainly used as laborers on the sugar, indigo, and coffee plantations, but were also used as domestic labor and skilled labor in the port cities and elsewhere in the colony, especially after 1730. Female slaves were more likely to be used as domestic labor, creoles more so than African-born slaves.³⁵

³² According to historian Jennifer Palmer, in 1788, Saint Domingue's population consisted of 21,808 free people of color, 27,717 whites, and 405,500 slaves which themselves represented ninety percent of the colony's population. She stated that prior to that point, at the end of the seventeenth century, "Moreau put the population of the western province at 14,000 whites, two-thirds of whom were men; 12,000 free people of color, about 56 percent men, and 168,000 slaves, with men comprising slightly more than half." She also stated that: "While the white population had only doubled since the 1730's, the free colored and enslaved populations had nearly tripled." Jennifer Palmer, *Intimate Bonds*, 11 & 27.

³³ See my footnotes 29 & 34; See also David Geggus, "Sex Ratio, Age and Ethnicity in the Atlantic Slave Trade: Data from French Shipping and Plantation Records", *The Journal of African History* 30, no. 1 (1989), 23-44; "Females were always a minority of the slave population of Saint Domingue. From the late seventeenth century, when buccaneering and ranching gave way to agriculture, to the abolition of slavery in the midst of the Haitian Revolution, the colonial censuses generally show six to eight male slaves for every five females." Historian David Geggus goes onto to write that in the first decades of the eighteenth century, the colony achieved a gender balance, but with the incorporation of more sugar plantations, more African male slaves were imported, but that among "creoles", there were more women during the eighteenth century than men due to "lower mortality rates" among women. David Geggus, "Slave and Free Colored Women in Saint Domingue," in *More Than Chattel: Black Women and Slavery in the Americas*, ed. David Barry Gaspar & Darlene Clark Hine (Indiana: Indiana University Press, 1996), 259-260. The reasons for lower mortality rates among women and higher birth rates for "creole" women is discussed at more length on pages 267-8.

³⁴ For a discussion of why male African slaves were imported in higher numbers than were female African slaves, refer to Geggus' article, "Sex Ratio".

³⁵ Geggus, "Slave and Free Colored Women in Saint Domingue", 259-263.

UNFREE FORMS OF LABOR IN THE FRENCH ATLANTIC

This seemingly inevitable transition to slave labor was by no means uncontested. During the last quarter of the seventeenth century, some French colonial officials expressed concerns over the use of African slave labor in place of French indentured servants. For one thing, they feared that slaves would revolt, that they would be corrupted by the Spanish if they ran away and were returned, and that they were more expensive than indentured servants.³⁶ There was even at least one plea for the metropole to send white French criminals to the colonies as *slaves* rather than as indentured servants in the late 1600s.³⁷ At this point in the colonies' history then, slavery and blackness were not yet equivalent. And although historians have shown that race was flexible during this period, the link between slavery and blackness has thus far been accepted. This plea by colonists for a lifelong labor source in the form of French subjects was refused. Instead, the metropolitan authority ultimately passed laws which reduced the length of service for indentured servants and that set quotas for the immigration of *engagés* into the colonies into the eighteenth

³⁶ Boucher, *Tropics of Discontent?*, 156, & 270-2; and Ghachem, *The Old Regime and the Haitian Revolution*, 44 & 57-8.

³⁷ Ibid, 151-6; "...Colbert absolutely rejected Governor-general Jean-Charles de Baas's plea that the Paris poorhouses provide coerced labor. Louis and Colbert thus promoted the growth of slave-grown sugar and the continuing migration of poor whites to maintain the racial balance deemed necessary for colonial self-protection." Boucher, *Tropics of Discontent?*, 269; and, "In response to those concerns, the monarchy issued an ordinance on September 30, 1686, providing that the number of blacks in the colony not exceed the total engage population; any excess in slave imports was to be confiscated (and presumably deported to other Caribbean colonies)." The "Ordonnance du Roi", September 30, 1686, was cited for this. Ghachem continued that: "In 1698, the king issued an order specifying the numbers of engages that ships of various sizes were required to import into the ports of Saint-Domingue. In subsequent years, similar requirements (as well as some incentives) were approved in an effort to maintain a basic level of racial equilibrium in the colony." Ghachem, *The Old Regime and the Haitian Revolution*, 57.

century.³⁸ The shortening of service time was meant to entice more Frenchmen and women into immigrating to the colonies as there was a shortage of available French labor there and a shortage of French women.³⁹ In reality, there was a shortage of women in the colonies full-stop.⁴⁰ However, due to the harsh treatment of servants and the staggeringly high death rate in the colonies, the number of indentured servants did not increase, and eventually the practice died out in the eighteenth century, replaced with African slave labor, especially in Saint Domingue.⁴¹ The shortening of indentured servant contracts also would have ironically been an impetus for increasing the importation of slave labor into the colonies even though the quotas were meant to slow or prevent the increase in the population of both enslaved Africans in the colonies and the population of free people of color.⁴² The threat of a majority population of unfree peoples was one

³⁸ Ibid; Lamotte's article, "Colour Prejudice"; "As notary records are far from complete, and none exist in some other ports of embarkation, one scholar estimates that between 30,000 and 40,000 indentured servants left for the islands in the seventeenth and eighteenth centuries. At least half that number crossed the Atlantic from the 1620s to the 1660s." Boucher, *Tropics of Discontent?*, 146. See also my footnote 26.

³⁹ "Indentured servants, the dominant European element before 1664, diminished gradually in importance thereafter; especially on those Windward Islands moving toward the wealthier man's crop –indigo, cotton, and sugar. The picture is clear at Martinique, where the number of white bondsmen declined dramatically in relation to the African slave population... The character of the indentured servant system changed gradually from the 1650s on. Previously, masters had often known and recruited their servants in France... The majority of recruits after 1660 were unskilled servants who migrated to Saint-Domingue... The more settled Windward Islands attracted mainly skilled male servants, because slaves increasingly did unskilled labor... The cost of these servants and their reputed arrogance eventually pushed planters to train slaves in skilled occupations... The 1670s saw a drastic decline in the number of engages in the islands..." Boucher, *Tropics of Discontent?*, 269-70.

⁴⁰ Frequent immigration to the Caribbean colonies from French men and women was needed as death rates were very high and the population was not self-sustaining. Indeed, for French immigrants to the colonies, those between the ages of twenty and forty years represented most of the population with white men outnumbering white women, though African slaves (and their descendants) outnumbered whites on the islands (at least after the first few decades). John Garrigus notes that the inhabitants of the colonies "were profoundly shaped by the experience of death." Burnard & Garrigus, *Plantation Machine*, 9; The incentive was for traders to purchase one adult female for every two adult male slaves, however this was typically not followed with the average falling more between 60-70% male. Each region that supplied slaves to the Transatlantic trade supplied varying percentages of male and female slaves however. Geggus, "Sex Ratio", 23-27; and, Moitt, *Women and Slavery in the French Antilles*, 10; See also my footnote 38.

⁴¹ See my footnote 29.

⁴² "He" (Colbert) "promoted policies supporting reproduction of existing colonists... To implement these notions, beyond what has already been discussed, Colbert reduced the term of indentured servants in half, to eighteen months. Shorter terms might tempt more of them to stay and thus maintain a 'reasonable' balance of European and

which was recognized early on during colonization and would be fully realized during the Haitian Revolution.⁴³ Indeed, during the last third of the seventeenth century, there were several small uprisings in the Antilles of enslaved Africans which worried colonists.⁴⁴

Slavery itself both differed from indentured servitude and serfdom and shared characteristics with them. On one hand, slaves and serfs were both legally classified as property while indentured servants were not.⁴⁵ On another, slaves were never white French subjects whereas serfs were. Slaves in the Caribbean colonies were both indigenous captives and Africans, while indentured servants there were either white French immigrants or indigenous peoples.⁴⁶ Slavery differed from indentured servitude in that the former was potentially lifelong and the latter temporary. Yet, both could be sold and slaves could be, and were, manumitted by their masters.⁴⁷ Serfs in France could not be sold separately from the land to which they were attached, but they

African populations, as well as supply men for colonial militias.” Boucher, *Tropics of Discontent?*, 190; See also my footnotes 29 & 34.

⁴³ Ghachem, *The Old Regime and the Haitian Revolution*, 44 & 57-8.

⁴⁴ In 1691 there was a slave uprising and during and after this decade, slave numbers began to rise in Saint Domingue. Masters became “more ambivalent about these aliens in their midst” as Boucher phrased the phenomenon. Boucher, *Tropics of Discontent?*, 299; Historians Trevor Burnard & John Garrigus note that Jean Fouchard stated within his own work, that there were more than seventeen slave “conspiracies and violent attacks by maroon bands” in Saint Domingue prior to 1757. They go onto to state that there was not a major slave revolt in Saint Domingue before the Seven Years’ War however, and so the Macandal poisoning crisis in the late 1750’s was the “greatest threat either colony had ever faced from rebellious slaves”. Indeed, “authorities ascribed over six thousand deaths to Macandal’s poisons.” Although, they contend in their book that it was more likely the deaths in these years were actually due to food shortage and spoiled food rather than to slave poisonings. Burnard & Garrigus, *Plantation Machine*, 102.

⁴⁵ “Colonial law, including the Code Noir, classified slaves as meubles: unlike serfs, they were ‘moveable’ property untethered to any particular estate and could be divided among heirs.” Palmer, *Intimate Bonds*, 46; and Article 44 of the *Ordonnance of 1685* (or the *Code Noir*) which codified slaves as *meubles*. Trans. John Garrigus, *Le Code Noir ou recueil des reglements rendus jusqu’a present*, (Paris: Prault, 1767) [1980 reprd. by the Societe, d’Histoire de la Guadeloupe].

⁴⁶ ANOM G 1 498.

⁴⁷ “At first glance, the indentured servant system resembled apprenticeship in France. However, a deeper analysis demonstrates at least two profound differences. First, the Caribbean master had the right to sell a contract to another master or to exchange servants. Some contemporary observers likened the system to slavery, if of a temporary character. Second, the Caribbean master had no obligation to teach a skill to the servant; indeed, the basic work of tobacco production required few skills.” Boucher, *Tropics of Discontent?*, 146.

could be inherited and they could be sold as part of an estate.⁴⁸ Like Caribbean slaves, their unfree form of labor was generally lifelong, not temporary. While slavery developed into the majority method of labor after the domination of the plantation system in Saint Domingue, it was not the only form of unfree labor which existed prior to that point, and it was not inevitable that it would come to dominate. The presence of other forms of unfree labor highlight that slavery was a more complex process that emerged from intersections between race, property, and authority, rather than just from racialist notions.

⁴⁸ Palmer, *Intimate Bonds*, 46.

COLONIAL VERSES METROPOLITAN AUTHORITY

Another issue which arose over the first decades of settlement of the French Caribbean islands was the treatment of slaves by their masters and the extent of slave holders' power and authority. This issue also held in regard to white indentured servants as well, as the crown claimed the authority to regulate treatment of laborers and of property in the colonies. Laws regulating slavery, the treatment of indentured servants and other aspects of colonial life, mainly developed within the colonies themselves over the course of the seventeenth century prior to 1685. Many of the held practices and customs were incorporated into the *memoire* which were then incorporated into the *Code Noir*.⁴⁹ This led to differences in the treatment of slaves between the colonies themselves as the population grew and more plantations developed. Other issues which arose from the tension between colonial and metropolitan authority in regard to the legislation of slaves was that since France did not have laws on slavery, the concept of slavery itself was a debated practice throughout the colonial period, but especially in the sixteenth and seventeenth centuries.

Historian Malick Ghachem poses an interesting question: "The primary question posed by the drafting of the new code", the 1685 *Code Noir*, "was whether slaves were to be considered 'subjects' of the Crown or merely domestic enemies".⁵⁰ The *Code Noir* makes it clear that once slaves received their freedom, they were considered subjects of the king, the same as if they had

⁴⁹ "Master-slave relations developed ad hoc, with precedents becoming customs and customs acquiring the force of law over time. Some customs became colonial laws in early decades, and many found their way into the famous *Code noir*." Boucher, *Tropics of Discontent?*, 285.

⁵⁰ Ghachem, *The Old Regime and the Haitian Revolution*, 44.

originally been born free.⁵¹ Yet, what their specific status under the king was when they were still enslaved is less clear unless their status as their owner's property is the answer. In reference to the king's laws regarding the continued importation of *engagés* into the colony to maintain a racial balance, Ghachem stated that:

“Such measures were quite clearly the product of racism and racial anxieties, but they seem also to have implicated the colonists' sense of national belonging. Cussy's suggestion in his 1685 report that an ‘excess’ of black slaves over white servants posed a security threat to the colony, that is, may have reflected a conviction that Saint-Domingue should be or become *French* society. If that hypothesis is correct, then the colony's identity as an offshoot of the kingdom, and its concerns about the dangers posed by introducing a population of ‘domestic enemies’ in the midst of the white settlers, were related to one another”⁵²

This reference to slaves as “domestic enemies” comes from prior French writing such as, Jean Bodin, Montesquieu, and then later, the governor-general of Saint Domingue, Pierre-Paul Tarin Cussy.

In his work *Les Six Livres de la Republique* (1576), which contains four chapters known as *On Sovereignty*, Jean Bodin conceptualized slavery as a threat to the social stability of the “Commonwealth”. This was partly connected to the issue over who had the right, the King (the sovereign) or the colonists (the property's owners), to legislate the specific form of private property in humans, i.e., slaves. It also had to do with the treatment of humans under the institution of slavery, and the result of what masters became when they had this sort of power over other humans. In his work, Bodin reluctantly accepted slavery in the colonies as long as the system was regulated by the metropole. He did not accept slavery *within France* itself at all. Bodin wrote that slavery could

⁵¹ Article fifty-nine, “The ‘Code Noir’ (1685)”, trans. John Garrigus.

⁵² Ghachem, *The Old Regime and the Haitian Revolution*, 44 & 57-8.

not be accepted within France at that point as it had not existed there for centuries.⁵³ He warned of the threat of its return there however if slavery were accepted and left unregulated in the colonies. Bodin may have feared this was due to the “presence of a small number of African and other slaves on French metropolitan territory in the late sixteenth century”.⁵⁴ Indeed, colonial officials and even metropolitan officials may have drawn on Bodin in interpreting slaves as “domestic enemies” and used this conceptualization as a justification for further regulation of slaves.

Pierre-Paul Tarin de Cussy, governor of Saint Domingue, included in a 1685 report to Colbert’s successor and son, Jean-Baptiste Colbert de Seignelay, his anxiety over the increased presence of African slaves on the island and the decreasing number and importance of *engagés* there. His anxiety over the increasing number of slaves on the island revolved around his fear of their numbers overwhelming the white population with an armed revolt. He referenced *marronage* and the presence of the Spanish on the eastern side of the island of Hispaniola as inciting the

⁵³ Sue Peabody, “Race, Slavery and the Law in Early Modern France”, *The Historian* 56. no. 3 (1994); and, Sue Peabody, “The French Free Soil Principle in the Atlantic World”, *Studia Africana* (2010): 19.

⁵⁴ “At least a few such cases are recorded. Sue Peabody cites the example of a Norman slave merchant who arrived in Bordeaux in 1571 with a cargo of slaves. When he eventually tried to sell the slaves, the merchant was arrested and the slaves freed by virtue of a declaration of the Parlement of Guyenne that slavery was intolerable in France, the ‘mother of liberty.’” This itself is interesting as, it was not until the 1620s that the presence of African slaves in the French Caribbean colonies was noted, and it was not until the 1630s that the king, Louis XIII legitimized the presence of those slaves in the colonies. It seems then that slaves were already recognized as such (property) within the metropole before they were recognized as having been present in the Caribbean colonies. Reference to Sue Peabody’s book, *There are no Slaves in France*, 12 & 29 found in Ghachem’s, *The Old Regime and the Haitian Revolution*, 54; Jean Bodin, *The Six Bookes of a Commonwealth: A Facsimile reprint of the English translation of 1606 Corrected and supplemented in light of a new comparison with the French and Latin texts*, trans. Richard Knolles trans., ed. Kenneth Douglas McRae (Cambridge, MA: Harvard University Press, 1962), 45, and Jean Bodin, *On Sovereignty: Four Chapters from “The Six Bookes of the Commonwealth,”* ed. and trans. Julian Franklin (Cambridge, UK: Cambridge University Press, 1992), 23, both referenced in Ghachem, *The Old Regime and the Haitian Revolution*, 47-55; “In 1638, Louis XIII legitimized the enslavement of Africans for island use.” Boucher, *Tropics of Discontent?*, 77. Gabriel Debien’s book, *Les esclaves aux Antilles françaises*, is cited by Boucher for this. Debien wrote that slaves were to be baptized and mentions that engagés were also to be baptized and both instructed in the Catholic religion. Indeed, the requirement for the baptism of slaves was included in 1685 *Code Noir*. Debien, *Les esclaves aux Antilles françaises*, 252; and Guillaume Aubert noted as well that, “The enslavement and deportation of Africans to the French islands had reportedly been allowed by Louis XIII only after some of his advisers persuaded him that taking such a course would be the only way to convert Africans to Catholicism.” Aubert, “The Blood of France”, 460.

rebellious nature of the slaves. He also expressed concern over the issue of concubinage between female slaves and white masters.⁵⁵ In his report he wrote that: “Nous avons dans les esclaves des ennemis domestiques”, echoing Bodin’s earlier sentiment and Montesquieu’s later one.⁵⁶ These concerns over the practice of slavery itself are important to note, as the traditional historiography has seemingly accepted that the categorization of slavery, of slaves as life-long movable property, was assigned for mainly racist reasons, yet economic motives come to the fore both in the discussions of political theorists and by analyzing the customs from Martinique and Guadeloupe that motivated the creation of the *Code*. Within France, which held the tradition of free soil, at least some intellectuals did not support the practice of slavery; even if it could potentially be tolerated in the colonies with sovereign control, it still posed a threat to France. The acquiescence of the metropole to include articles in the *Code* which originated from practical treatment of slaves in the older colonies and the provision that slaves could not be seized for payment of a debt support the interpretation that economic motivations led to early legal tolerance of colonial slavery. At the same time, Early Modern French understandings of property and the expansion of metropolitan control in the seventeenth century led to the assertion that slavery in the colonies should be regulated by France.

Montesquieu, in much the same way that Bodin had, echoed the ideas that enslaving humans was both morally wrong and that slaves posed a threat to society. In his work, *De l'esprit*

⁵⁵ “White men and women lived irregularly, with concubinage as common as marriage... It was customary for white men to cohabit outside marriage, both with white women and also with black or colored women.” Burnard & Garrigus, *Plantation Machine*, 68-9.

⁵⁶ Report of Pierre-Paul Tarin de Cussy, governor, to Jean-Baptiste Colbert de Seignelay, naval minister, 18 October, 1685, Archives Nationales d’outre-mer (ANOM), Correspondance générale Saint-Domingue (CGSD), C/9/A/I, fol. 250, referenced in Ghachem’s, *The Old Regime and The Haitian Revolution*, 56; and Aubert noted that in 1772, “the superior of the Jacobin missionaries based in Saint Domingue” worried that the rising population of mulattos would “soon be more numerous than the whites and could ‘in the course of time attempt to overthrow the colonies, and be the cause of their total ruin.’” Aubert, “‘The Blood of France’”, 466.

des loix (*The Spirit of the Laws*) (1748), Montesquieu wrote that slaves were the “natural enemy of society”. Montesquieu warned that if masters treated their slaves too poorly and the suffering involved in remaining in servitude outweighed the threat of the suffering inherent in revolting, then the threat of an armed resistance by the enslaved against their masters would occur. Therefore, Montesquieu gave the right of legislating slavery to the metropole so that, while a master’s right to punish and control his slaves was reinforced in the law, the law also regulated the extent of punishment so as to protect against the threat of revolt.⁵⁷ Over the course of the late seventeenth and eighteenth centuries, while the letter of the law was not always followed, some masters were found guilty of violating the *Code*, for example in the case of torturing slaves.⁵⁸ In addition to the issue of *marronage*, manumission was also debated as either a boon or a threat to the colonial society for much the same reasons.⁵⁹

Over the course of the 1660s, 1670s and into the 1680s, the king of France asserted greater control over his Caribbean colonies.⁶⁰ This consolidation and assertion of power led to two distinct

⁵⁷ Moitt, *Women and Slavery in the French Antilles*, 102, 104, & 125-6.

⁵⁸ Malick Ghachem, “Prosecuting Torture: The Strategic Ethics of Slavery in Pre-Revolutionary Saint-Domingue (Haiti)”, *Law and History Review* 29, No. 4 (2011). Pp. 985-1029.

⁵⁹ Charles-Louis de Secondat, Baron de Montesquieu, *The Spirit of the Laws*, trans. Anne M. Cohler et al., Cambridge Texts in the History of Political Thought (Cambridge, UK: Cambridge University Press, 1989), 256, reference in Ghachem, *The Old Regime and the Haitian Revolution*, 63-7, & 60 & 70; For more on slave maroons, see, Jean Fouchard, *Les Marrons de la Liberté*. (Paris, France: Paris L’école, 1972); For a discussion on female slaves who ran away, see Bernard Moitt’s book. “Fugitive women, however, had to be concerned about dangers other than punishment. The prospect of being raped, for example, was real and may explain why women, unlike men, left more often in twos, with a brother, or even disguised as men. In some cases, women also changed their identities.” Moitt, *Women and Slavery in the French Antilles*, 137; and, Article 38 of the *Code* regulated that slaves who had run away for the first time for at least one month would have their ears cut-off when returned to their master. Slaves who ran away for the second time for at least one month, would have their hamstrings cut and their shoulder branded with a mark of a *fleur de lys* as punishment. The third time that a slave ran away and was returned, they were to be executed. Article 38, *Le Code Noir ou Edit du Roy de 1685*, (A Paris, au Palais, 1735). Digitized by the John Carter Brown Library, 2010. Although, as with most laws in the French Caribbean, they were not always followed.

⁶⁰ “Beginning with the reign of Louis XIV, the French monarchy began to actively promote the codification of French law, asserting royal supervision over a legal project that had been initiated more than a century earlier by Charles Du Moulin, Guy Coquille, and Louis Le Caron, jurists who had written in a private capacity. In 1667, Louis XIV used a royal ordinance to codify civil procedure throughout the realm. Three years later, he did the same for

consequences in the 1670s. Historian Phillip Boucher noted that in the 1670s, the King reasserted the right of the councils in the Caribbean colonies to administer civil justice.⁶¹ While the councils were already administering such, and passing laws and backing customs that legislated the treatment of slaves and indentured servants, this backing from the King in the 1670s reinforced the ultimate authority of the metropole over the colonial officials and the colonists themselves. Prior to the 1670s, justice in the Caribbean colonies was handled on the island with little governing power from the metropole. After the 1670s, the king attempted to assert more control on the colonies in the legal system by appointing seats on the councils and by retaining the power of the king to hear petitions from colonists. As the councilors chosen were typically wealthy plantation owners, issues over authority and property owners' rights between the colonies and the metropole would continue until the end of the eighteenth century. Also, in the 1670s Jean-Baptiste Patoulet was sent to the colonies as the first royal intendant. King Louis XIV and Colbert "attempted to control his interventions in affairs not in his purview."⁶² At that time, the governor-general of Martinique, (which itself controlled Guadeloupe and Saint Domingue at that time), was the Comte de Blénac. These two men were assigned the task of writing a memoire for the treatment of slaves in the colonies in the early 1680s in order to homogenize practices and laws, as well as exert royal control.

This tension between the right to legislate over slavery, a distinctively human form of private property, in the colonies themselves was one cause for disregard by colonists and colonial officials of certain articles within the *Code*. Prior to the last quarter of the seventeenth

criminal procedure." Matthew Gerber, *Bastards: Politics, Family, and Law in Early Modern France*. (Oxford University Press, 2012), 106.

⁶¹ Boucher, *Tropics of Discontent?*, 202.

⁶² Boucher, *Tropics of Discontent?*, 202.

century, especially around the 1660s, France's direct control over the colonies was minimal.⁶³ After the issuance of the *Code* in 1685 and its acceptance into law by each island over the following two decades, the presence of royal authority over slavery clashed with the authority of colonial slave owners for several reasons. As a fundamental guiding position, the struggle over authority on the treatment of slaves played a significant role in the extent to which slave owners' power extended to administering "justice", or really punishment, over their slaves throughout the colonial period.⁶⁴

Historian Malick Ghachem cites an absentee owner of several sugar plantations, Pierre Victor Malouet, writing in 1788: "planters had been raised as children to believe that 'there could be no mediating power between the master and the slave' short of violating the 'rights of property.'" Even the colonial administrators whose job it was to enforce the Code Noir had been led to accept these 'prejudices'. All men, Malouet concluded, have a 'natural tendency' to abuse their power over others."⁶⁵ Due to the difficulties of controlling their colonies from afar, France had not significantly exerted authority over colonists' and their control over slaves prior to the last quarter of the eighteenth century. The Macandal poisoning crisis in Saint Domingue allowed for the secession of power from the metropole to colonial slave owners. Whereas the 1685 *Code Noir* had prohibited the torture of slaves by their masters, excessive punishment, torture, and even executions increased in number and were accepted as slave owners' right over their property. However, in the last quarter of the eighteenth century, particularly in the 1780s, metropolitan

⁶³ "The Code Noir's prohibitions" were "largely ineffectual" due to the absence of "the enforcement mechanisms that would have been necessary to oversee the distant and essentially autonomous plantations of the Caribbean colonies". Ghachem notes the importance of articles forty-two and forty-three of the *Code* as especially pertaining to this point. Ghachem, *The Old Regime and the Haitian Revolution*, 62.

⁶⁴ See my footnote 69.

⁶⁵ In 1788, Malouet wrote, *Mémoire sur l'esclavage des nègres*, (Neuchâtel, Switzerland: 1788), found in Ghachem, "The Old Regime and the Haitian Revolution", 226.

authority attempted to regain authority over colonists' and regain control over the legislation of slaves. Colonial slave owners strongly opposed these measures but were unable to completely retain their authority.⁶⁶

The consolidation of royal power under the monarchy of King Louis XIV and Colbert, including the issuance of the *Code Noir*, has been accepted by most historians though its actual application in practice has been questioned. However, there are historians, most notably Brett Rushforth, who have argued that the articles within and the design of the *Code* were more likely the acquiescence of the metropole to the demands of colonial plantation slave owners in the Caribbean. He notes how the *Code* demanded that slave owners provide their slaves with a minimum amount of food and clothing, and that slaves were not permitted to gather in groups or accumulate property. His argument contends that the purposes of these prescriptions was to prevent slaves from becoming too independent from their owners, not to enforce metropolitan authority or a more humane form of slavery onto colonists.⁶⁷ Although, he also argues that agency of slaves is made visible by analyzing the *Code* as their struggles for recognition as human beings is evident in the shape of the legal codes on slavery.⁶⁸ An argument which no other historians have thus far engaged with in regard to the *Code Noir* itself.

⁶⁶ Burnard & Garrigus, *Plantation Machine*, 120-1; See also Ghachem, "Prosecuting Torture", 985-1029.

⁶⁷ "...That the crown so quickly, and with so little actual pressure, yielded to planters' call to restore 'the way things had been done before the ordinance' underscores the nature of French slave law as a product of local responses to actual colonial conditions. Local practice generated most of the March 1685 ordinance, and the rare contradiction to precedent met with swift resistance by Caribbean elites." Rushforth, *Bonds of Alliance*, 132; Rushforth goes further in his argument, stating that: "The king wished to give the impression that this slave code (dubbed the Code Noir in the eighteenth century) reflected the imposition of his unalterable will. Yet, read carefully, the code provides an ethnographic lens onto the daily operation of French slavery in the late-seventeenth century Caribbean, not because colonists and slaves precisely observed the law, but because the law grew out of a series of power struggles between the enslaved and their would-be masters. These struggles, first registered in local acts designed to solve immediate human problems, expressed masters' and slaves' opposing interpretations of slavery and competing aspirations for life in the colonies. They thus reveal not only the ideals of French masters but also the actions of enslaved Africans and Indians whose daily assertions of their own humanity challenged the fiction of their status as property." Rushforth, *Bonds of Alliance*, 123.

⁶⁸ Rushforth, *Bonds of Alliance*, 123.

‘MISALLIANCES’

Historians have also positioned sexuality and race at the center of the *Code Noir*, interpreting it as an effort to regulate slave concubinage and the presence of mixed-race children.⁶⁹ Yet the continued push for the importation of *engagés* also aimed to promote and regulate marriage.⁷⁰ And the practice of concubinage was common among the nobility in Early Modern France. This suggests that the promotion of marriage was less about race and maintaining white purity than it was about sexuality and containing sexual activity within the bounds of legitimate marriage. As King Louis XIV and Colbert were consolidating power in the metropole and hegemonizing legal codes within France under Parisian laws, as well as reconfiguring legal marriages to be civil rather than regulated strictly by the Church, this exertion of authority into the colonies as well makes sense.⁷¹ Also, operating on an understanding of seventeenth century conceptions of color prejudice rather than biologically binary racial differences, the regulation of slave concubinage would have been more attributed to the issues of illegitimate children rather than that they were strictly about the presence of mixed-race peoples.

The problem that arose from accepting African slavery in the colonies was then the question of what position the mixed-race children that would inevitably arise would hold? Their presence itself would have been an issue just as the presence of slaves themselves was contested

⁶⁹ Moitt, *Women and Slavery in the French Antilles*, 10 & 153.

⁷⁰ Ibid; Aubert, “The Blood of France”, 461 & 474; Lamotte, “Colour Prejudice”.

⁷¹ Gerber, *Bastards*, 24-31.

in the colonial period and created tensions over their position in society. Mixed-race children who were enslaved, following the status of their mother, did not cause as many tensions as those who were born free or who were freed during their lifetime. Within the historiography and this paper thus far, mixed race children and sexual relationships between whites and blacks in the colony of Saint Domingue have been assumed as pertaining to white men and generally enslaved, but sometimes free, women of color. Although there are a few historians who have written on the occurrences of black men and white French women, it was not as prevalent and has not been as studied.⁷²

During the eighteenth century, some free people of color were able, either by inheritance in the early years, or by other means later, to acquire plantations and thus slaves.⁷³ In regard to when a free white male impregnated an enslaved woman who he did not own, the judges on the colonies' councils held a different opinion. Due to variations in the law on the different islands in regard to the consequences of this occurrence, the *Code Noir* covered this as well. The same as if the master were the father and he was already married, the slave female and the child were to be sold without manumission and the offender fined.⁷⁴ Jean-Baptiste Patoulet, who was one of the authors of the *memoire* for the *Code*, wrote his opinion which held that African women seduced these free white men into impregnating them so that they would gain advantages from them.

⁷² Sue Peabody, "Race, Slavery and the Law in Early Modern France", *The Historian* 56. no. 3 (1994).

⁷³ Garrigus, "Blue and Brown", 233-263; and, "In Saint-Domingue specifically, a system of royal land grants made it possible for free coloreds to become peasants, market farmers, and ranchers. A small but significant minority became indigo, cotton and coffee planters... In Saint-Domingue such laws were discussed but never implemented, making it possible for free families of color to eventually accumulate enough land and enslaved workers to establish plantations." Burnard & Garrigus, *Plantation Machine*, 62-3; In the later part of the eighteenth century, Burnard & Garrigus go onto discuss free women of color property owners in Saint Dominguan cities. Indeed, "the census shows that free women of color were far more active within their class than were white women; 42 percent of free colored proprietors were women; only 14 percent of white owners were women." Burnard & Garrigus, *Plantation Machine*, 63; and, "Moreover, in the 1770s the Councils continued to uphold the right of a white colonial testator to leave a large amount of property to his free colored children." Burnard & Garrigus, *Plantation Machine*, 185.

⁷⁴ Article Nine, "The 'Code Noir' (1685)", trans. John Garrigus.

However, the truth of this matter, though unlikely, is hard to discern.⁷⁵

An examination of a particular free, mixed-race family highlights the importance of social status, wealth, and the ability to own property over the importance of racial categories which existed throughout most of the eighteenth century when racial boundaries were fluid. Regardless of whether sexual relationships or marriages between white men and women and of color were supported or derided, their commonplace presence in Saint Domingue resulted in a significant population of free persons of color and of mixed-race children. The issue of whether these children were legitimate or not does not diminish the fact that their very existence complicated property categories and sufficiently disrupted any kind of equation between blackness and slavery or between whiteness and property ownership. This was especially true whenever mixed-race children were free, acknowledged by their white father, and left inheritances of property. In the southern region of Saint Domingue existed many examples of free men of color who were wealthy property owners – their very existence and social

⁷⁵ Taken out of the cited quotation: “Europeans of that era believed women’s sex drives were voracious, and that ‘primitive’ cultures such as those of West Africa were far less sexually constrained; in that context, the intendant’s anxieties are more comprehensible. In any case, shorn of its offensive discourse, the official point of view may not be fair off the mark.” Ibid, 288; Population wise, there were always fewer white women than white men in Saint Domingue. White male colonists thought of black women as both beautiful and sexual deviants, as close to animals and thought of white women as both moral and good mothers, and that they were stupid, cruel and promiscuous – this view on white women having evolved from those who were sent by France to the colonies in mostly the seventeenth century as indentured servants. They were viewed as prostitutes from poor houses though historians now say that that is incorrect. However, in terms of the English colony of Jamaica around the same time period: “White women in Jamaica were not defined by maternity. Few women had children, and even fewer had surviving children.” Burnard & Garrigus, *Plantation Machine*, 70-81; Burnard and Garrigus go onto state: “Yet this sexualized image of free women of color is incorrect, for they occupied a variety of economic niches besides sex work. Surviving leases, receipts, and inventories reveal that free women managed slaves and business interests: they built networks of patronage and affection with whites that did not involve sex, as business clients, neighbors, landlords, tenants, employers, and employees. Because many free women of color never married, especially those in the cities, some were able to escape male control and direct their own business interests. Being a housekeeper or concubine to a male colonial was often just one stage of a woman’s life. Many women used these positions to acquire real estate and slaves, which they then used in their own businesses.” Burnard & Garrigus, *Plantation Machine*, 76-7.

interactions defying binary racial conceptions of enslaved or free status, or of property and property owners as being simply tied to race. One example involves the Raymond family.

A white Frenchman, Pierre Raymond, married a free woman of color in 1726, herself born in Saint Domingue as the daughter of a planter in the southern region of the colony.⁷⁶ Historian John Garrigus writes that she was “legitimately” born, which indicates that her father was married to her mother.⁷⁷ Marie, Raymond’s new wife, brought with her into the marriage a dowry of “at least 6,000 livres,” which was the value of about three adult slaves, while Raymond was not listed as contributing anything financially to the marriage.⁷⁸ What is interesting about this couple was that Marie herself could at least sign her name, although it is uncertain from Garrigus’ account if she was literate, while Raymond could not. In addition to Marie marrying a white Frenchman, her sister did as well. While Raymond was not listed as financially contributing to the marriage, Marie’s sister’s husband was listed as a surgeon and likely did.

By the mid 1740s, Marie and her husband owned a plantation with a number of slaves however, in the following decade, the region in which their plantation was located, Bainet, was hit with a drought and the couple moved their slaves to a new plantation in Aquin, also in the southern region of the colony. Again, within just a few decades, their new plantation was profitable and when Raymond died in 1772, at 80 years of age, he not only owned over a hundred slaves, but also an indigo plantation, his and Marie’s home, as well as some thirty-five slave cabins. Prior to Raymond’s death, he and Marie managed to raise almost a dozen children into adulthood. Unlike their father, they could at least sign their name, although it is again

⁷⁶ Garrigus, “Blue and Brown”, 248.

⁷⁷ Ibid, 248; “Although most children of color, unlike the Raymonds, were born out of wedlock, many of those who became successful planters began with assistance from a white father.” Garrigus, “Blue and Brown”, 249.

⁷⁸ Ibid.

unclear if they were literate. Garrigus notes that “at least two of their five daughters attended convent schools in France and married propertied Frenchmen, one at Bordeaux and the other at Toulouse”.⁷⁹ Another of their children, a daughter, did not marry during her lifetime and died just a year after her father. When she died, she left almost forty slaves and a plantation, likely to her family (though it does not specify). It is noted that eleven of those slaves were gifted to her from her parents.⁸⁰ In addition to these three daughters, five of the remaining seven children of Marie and her husband were sons. They also received inheritances from their parents and, like their parents, became indigo plantation owners.⁸¹ One son, Julien, married “the wealthy free mulatto daughter of one of his father’s white neighbors”. Julien at the time, 1782, had an estimated wealth valued at around 200,000 livres and his new wife, who was herself designated as a widow prior to her marriage to Julien, had a dowry valued at around 80,000 livres, a dowry *much* larger than Julien’s mother Marie’s was at the time of her marriage.⁸²

What the story of this family can tell us is that over the course of the eighteenth century, free persons of color, especially women of color, were able to access routes to social mobility, with the most accessible having been marriage to white Frenchmen or to propertied white or free colored men. As mixed-race marriages were never outlawed in Saint Domingue, though relatively rare, some women of color were able to take advantage and possibly move upwards socially.⁸³ Free mixed-race persons of color who possessed wealth and were recognized by their white father were often not recorded with racial designations over most of the eighteenth century. However, by the last quarter of the eighteenth century the social and racial flexibility and accessibility afforded them would become much more limited and their racial categorization became much more solidified.⁸⁴

⁷⁹ Garrigus, “Blue and Brown”, 249.

⁸⁰ Ibid, 248.

⁸¹ Ibid.

⁸² Ibid, 249.

⁸³ Ibid, 257.

⁸⁴ Garrigus, “Blue and Brown”, 258-261; and, “...before the 1760s notaries and clergy often did not describe the color or ancestry of wealthy free women of color in official documents but did give them courtesy titles like “Madame” or “Demoiselle” suggesting that they were white. Even at the end of the century, when stricter laws governed racial categories, unions between white men and free colored women were never outlawed. The percentage of religious marriages celebrated between white men and free women of color reached 17 percent in some parishes.” Burnard & Garrigus, *Plantation Machine*, 68.

Aside from anxieties surrounding Frenchmen marrying and producing children with women of color in the colonies, a similar social prejudice existed within France that revolved around the idea of different types of peoples mixing and its effects on society. The existence of this social prejudice and anxiety, which did not center around white and black racial lines, but instead a different conception of ‘race’, shows how race itself was complex notion that took shape over the course of the colonial period alongside slavery with influences from France, rather than it was an immediately understood category in the seventeenth century that developed completely separately in the colonies alone.

The practice of gaining nobility through venality of offices, inheritance, and marriage produced anxiety that predated the presence of slavery and the presence of even the colonies themselves. Within France, commoners would sometimes marry those of noble blood which raised their heirs into the nobility. This mixing of the blood caused anxiety and debates within France over what the outcomes of such mixing could result in.⁸⁵ Misalliances, as this mixing was termed, were thought to breed undesirable characteristics in the resulting children. If the notion that ‘color prejudice’ rather than more modern racialist prejudice and conceptions existed in the colonies at the time that the *Code Noir* was originally published and even into the first decades of the

⁸⁵ “Hierarchical and segregationist notions pervaded the early modern French ethos. Sixteenth- and seventeenth-century French metropolitan discourses of social order exacerbated the belief in the inherent superiority of certain groups of individuals or “races” by consistently emphasizing the transmissibility of physical characteristics and moral virtues through “blood” (sang) from one generation to the next. These metropolitan ideas of race were most clearly articulated with regard to the issue of misalliance, or marriage between people of different ranks, which was considered to threaten the integrity, or “blood purity,” of the best races or families of the kingdom... developments occurred in the emerging slave societies of the French Caribbean. By the end of the seventeenth century, the prospect of increasing numbers of free blacks and mulattoes in the islands led to a progressive reversal of French colonial tolerance for French-African liaisons. At the turn of the eighteenth century, official concerns over French-African sexual encounters in the French islands echoed the racist concerns developed in New France regarding Indians.” Aubert, “The Blood of France”, 440; Aubert goes on to state that: “According to early modern French aristocratic ideology, the most dreadful consequence of a misalliance was the type of children it produced. In most early modern French texts, these children were designated by the term “mitis,” defined in contemporary texts as the mixing of two different ‘species’.” Aubert, “Blood of France”, 448.

eighteenth century, then this fear of misalliances may have carried over into the colonies and presented as a fear of the mixing of African women with white French men.⁸⁶ The Africans in the colonies would have been slaves or descendants of slaves at that time. As manumission was relatively easy for slave owners to grant, some white slave owners who had children by their female slaves married them and left monies or other gifts and even inheritance of property to their free mixed-race children. This often included property, both in the form of *immeubles*, plantations, and *meubles*, slaves.⁸⁷ The ability of these mixed-race children in the colonies to “assume whiteness” depending on their family, on their class status, and on their occupation, could be tied to these ideas. This fear of mixing would have been easily transferable as it shared similarities with illegitimate children’s place in France.⁸⁸

Another issue the French faced over the sixteenth and seventeenth centuries was that each generation attempted to acquire more wealth and property, as well as a public office which could be passed down through inheritance to heirs. Thus, families which were once considered of

⁸⁶ “The Dictionary of the French Academy (1694) defined the French word ‘race’ as the ‘ancestry, lineage, origin’ of animals and old noble families. By the seventeenth century, the French élite often believed that the assumed values and virtues of the old nobility (Noblesse de Race) were transmitted through blood and that consequently, commoners were unable to become equal to the old nobility, even when they bought titles of nobility. Marriages of members of the old nobility with commoners were increasingly perceived as *mésalliances* – unions with people of inferior birth and social status, which corrupted blood purity. It has been argued that by the beginning of the eighteenth century, these metropolitan discourses had migrated to the French Atlantic World colonies and consequently, the French regarded inter-ethnic marriages as *mésalliances* threatening the purity of white blood.” Lamotte, “Colour Prejudice”; and, Aubert, “The Blood of France”, 439-442.

⁸⁷ Here it should be stated that not all slave owners in Saint Domingue were male, nor were they all white. “In the French Antilles, there were several European women plantation owners, most of whom inherited estates from their husbands. Morrissey has questioned whether female slaveowners were more abusive to their female slaves than male slaveowners, and, if so, what implications this had for the relationship between free and slave women.” Historian Bernard Moitt goes on to state that: “This study will show that women slaves were treated in much the same manner by male and female slaveowners. For example, besides being accomplices in their mistreatment, female slaveowners themselves tortured and brutalized women slaves, as did their male counterparts.” Moitt, *Women and Slavery in the French Antilles*, xvi.

⁸⁸ Matthew Gerber, *Bastards: Politics, Family, and Law in Early Modern France*, (Oxford University Press, 2012).

common blood in France became ennobled.⁸⁹ Within the colonies themselves, this is a very interesting discussion, as the *grand blancs* that came into the height of their power over the eighteenth century gained more wealth and more slaves which were passed down through inheritance. They also filled the seats of the *conseils superieurs* (at least in the seventeenth century) and acted as the nobility on the islands.⁹⁰ Indeed, the king granted titles to colonists who had served in the militia among other things during the seventeenth century.⁹¹

⁸⁹ Ralph Giesey, "Rules of Inheritance and Strategies of Mobility in Prerevolutionary France", *American Historical Review* 82, No. 2 (1977), 272-3; and Geggus, "Slave and Free Colored Women in Saint Domingue", 259-263.

⁹⁰ Those on the colonial sovereign councils got their seats "at the king's will". Boucher, *Tropics of Discontent?*, 250; For more on the councils, see Burnard & Garrigus' book *Plantation Machine*. "These bodies began in the seventeenth century as councils of leading planters, but by the eighteenth century they had become formal courts of law, modeled on France's thirteen regional *parelements*. Judges were appointed by the Crown and had to have legal training that was available only in France", and, "Superior Council of Port-au-Prince. Cap Francais was so far away that it had its own Superior Council, and its own provincial governor. The colony's southern coast also had its own governor, though never a Council. In terms of communication and administration, therefore, Saint-Domingue was 'three colonies in one'." Burnard & Garrigus, *Plantation Machine*, 17 & 13.

⁹¹ Boucher, *Tropics of Discontent?*.

BACKGROUND TO THE *EDICT DU ROY* OR *LE CODE NOIR* OF 1685

Examination of the metropolitan codification of slavery in the colonies highlights the fundamental struggle over classifying humans as a type of property. While it has been accepted by historians that Africans were codified as slaves due to primarily race, examination of the *Code Noir* and subsequent laws instead provides analysis on how this one form of unfree labor in the French Caribbean was instead a labor category which made economic sense for the rising importance of plantations in the colonies, as well as that slaves status as essentially lifelong property was more a result of preexisting understandings of property from France. The classification of slaves as a specific type of private property was a result of tensions between metropolitan and colonial authority, and the economic and political interests of France.

While this thesis has continuously referred to the *Code Noir* as such, and indeed so do most French historians, this set of legal codes did not acquire this name until sometime early on in the eighteenth century. As historian Brett Rushforth has noted, the first references to the *Code Noir* was from “two letters written in Martinique in April and May of 1713. It seems that this became a convenient shorthand for the law, which was generally referred to as ‘the edict of March of 1685’,

or ‘the ordinance of March 1685’ before the 1710s.”⁹² Indeed, Rushforth also notes that the *Code* did not specifically address who could and who could not be slaves in the French colonies, although it did use the term *nègre* when referring to the enslaved in several of the articles.⁹³ This distinction, that the *Code Noir* was not termed as such until into the eighteenth century when the disparity between the enslaved and free populations would have been greater, and the number of plantations were continuously increasing, is intriguing partly because it has not been noted by any other historians studying race or even specifically the *Code* itself. That race has been tied to the issuance of the *Code* and the rise of plantation slavery which utilized majority African labor, the missing title of “*Code Noir*” from the document and the absence of who particularly could be enslaved is important to note.⁹⁴

Prior to the *Code Noir*, France did not have written laws regarding the regulation of legal slavery. Within France, there existed the ‘Free Soil Principle’, a customary legal tradition, which basically held that everyone in France (on the soil) was (supposed to be) free.⁹⁵ Within France itself, as there was the ideal of the “Free Soil Principle”, slaves were not supposed to exist.⁹⁶ Yet, by 1627, there were African slaves present on the island colony of Saint Christophe and for the rest of the colonial period, slavery would be a reality in most of the Caribbean colonies to an ever

⁹² Rushforth, *Bonds of Alliance*, 123.

⁹³ Ibid, 125.

⁹⁴ Rushforth, *Bonds of Alliance*, 123.

⁹⁵ “The rise of state-sponsored colonial slavery had to be translated in ideological terms as an ‘exception’ to the French freedom principle.” Sue Peabody, *There are no Slaves in France: The Political Culture of Race and Slavery in the Ancien Regime*, (England: Oxford University Press, 2002), 5, referenced in Ghachem, *The Old Regime and the Haitian Revolution*, 69.

⁹⁶ Sue Peabody and Keila Grinberg, *Slavery, Freedom, and the Law in the Atlantic World: A Brief History with Documents*, (Boston: Bedford/St. Martin’s, 2007); “Considerable evidence suggests that local, popular traditions, dating back at least as far as the sixteenth century, freed people in bondage when they crossed particular state borders. We call this custom, sometimes articulated in court decisions or positive legislation by various legislative bodies, the ‘free soil principle’.” Sue Peabody and Keila Grinberg, “Free Soil: The Generation and Circulation of an Atlantic Principle”, *Slavery & Abolition* 32, No. 3 (2011): 331.

increasing decree as the eighteenth century approached.⁹⁷ “Since 1571, French courts had declared definitively: ‘There are no slaves in France’. According to Antoine Loysel in 1608, ‘all persons are free in this kingdom and, as soon as a slave reaches our borders, and is baptized he must be considered free.’”⁹⁸ This ties into the justification for slavery that tied the condition to the need for baptism. In the early seventeenth century, Loysel wrote how this idea of the free soil principle was “a ‘fundamental maxim’ of the French nation. Prior to the justification of blackness or African descent to link humans to the status of slavery or property in the colonies, within the *Code Noir* the requirement “that slaves undergo conversion and receive instruction in the Catholic sacraments” existed to justify the enslavement of humans as essentially chattel.⁹⁹ Prior to the *Code*, Louis XIII had accepted slavery with the condition that slaves be baptized and instructed in Catholicism. Loysel’s connection between baptism and freedom for the enslaved however, would “dissolve” over the period of increased colonial settlement during the eighteenth century.¹⁰⁰

⁹⁷ “When d’Esnambuc put into Saint-Christophe in 1625 for recuperation of his battered vessel, he found a few African bondsmen among the French and English settlers. Unlike the ambiguous status of Africans in contemporary Virginia, those of Saint-Christophe were apparently slaves. When d’Esnambuc and Thomas Warner signed the first treaty of amity in 1627, they agreed not to steal each other’s slaves...” Boucher, *Tropics of Discontent?*, 154.

⁹⁸ Boucher, *Tropics of Discontent?*, 154; The reference to 1571 refers to: “The Parlement of Guyenne, in Bordeaux, declared a shipment of slaves brought there by a Norman merchant in 1571 free, stating, ‘France, mere de liberte, ne permet aucuns esclaves’ (de Saint-Romuald, 1664, 127). Jean Bodin pronounced France as Free Soil in 1579 (Bodin, 1579, 43)...” Sue Peabody, “The French Free Soil Principle in the Atlantic World”, *Studia Africana* (2010): 19.

⁹⁹ Ghachem, *The Old Regime and the Haitian Revolution*, 69-70; and Peabody, “Race, Slavery, and the Law in Early Modern France”.

¹⁰⁰ Peabody, “The French Free Soil Principle in the Atlantic World”, 19; On this page, Sue Peabody references her earlier work, *There Are No Slaves in France*, page 31.

THE *CODE NOIR* & THE ISSUE OF *MEUBLE* VERSES *IMMEUBLE*

Laws on slavery in the Caribbean were not uniform and came from colonial authority rather than metropolitan until 1685 when King Louis XIV and Colbert, his Minister of Finance, published the *Code Noir* which codified slavery.¹⁰¹ Slavery would continue to be illegal in the metropole until 1718 however.¹⁰² Each French Caribbean colony, Martinique, Guadeloupe, St. Christophe, and Saint Domingue chiefly among them, registered the *Code Noir* by the end of the seventeenth century.¹⁰³ Although in no French Caribbean colony did plantation societies yet exist at the time that the *Code* was published, there were sizable enslaved populations and a small but slowly growing population of free people of color in the colonies.¹⁰⁴ The *Code* itself was a mix of Roman slave law, influences from Spanish slave laws, Catholic elements, and local practices and laws on slavery which had already developed in the colonies of the Lesser Antilles by the 1680s.¹⁰⁵ These

¹⁰¹ Peabody, "Race, Slavery, and the Law in Early Modern France".

¹⁰² "The crown issued an official edict to that effect in 1707, ordering that any 'Negro' who set foot on French soil would be freed, but only if invoking the free soil privilege before returning to the islands. 'At the moment that, of their own free will, they have departed,' the king wrote, 'they can no longer claim the privilege of the soil of France, which they have seemingly renounced by their voluntary return to the place of slavery.' ... This ruling simultaneously discouraged planters from bringing slaves to France and prevented the return of freed slaves to the islands, drawing clear regional lines around opposing legal practices." Rushforth, *Bonds of Alliance*, 273.

¹⁰³ Boucher, *Tropics of Discontent?*,

¹⁰⁴ See my footnotes 29, 30 & 36.

¹⁰⁵ "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), 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. 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 is fifty years of France's own experience with slavery in the New World, not its reliance on the ancient law of Rome... 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" Vernon Palmer, "Origins and Authors of the Code Noir", 366-7, 376 & 390.

articles classified slaves as a form of private property, specifically movable property.¹⁰⁶

The differences between the two types of property, *meuble* and *immeuble*, held distinct significance for the legislation and practice of slavery. Given that within France these two categories of private property existed prior to the development of the colonies, it seems inevitable that slaves would have been categorized as one or the other. Within French law there also existed two other property categories – *acquets* and *propres*. *Acquets* were property which one bought and thus acquired. This property could be either sold or passed down through inheritance to heirs. *Propres* conversely was property which was inherited and could not be sold, it could only be inherited so that it remained in the family line. *Acquets*, since they could be passed down, could acquire the status of *propres* over time. While slaves and serfs were both classified as property in French law, they were classified as different types of property. Slaves were always technically *acquets* since they could be both bought and sold individually or separately from other types of property, and they also could be inherited along with real estate. Serfs were generally *propres* and were bought as part of an estate.¹⁰⁷

In the northern two-thirds of France, “customary laws (*coutumiers*) prevailed” during the early modern period. During that time, “most legal systems distinguish[ed] between personal property (*meubles*) and real property (*immeubles*, “immovables”) for such purposes as contract and obligation”, which France was no exception to. However, French law differed in that it “divided real property (originally only land and houses) into separate categories for purposes of inheritance...”¹⁰⁸ The classification of slaves as *meubles* may have been to cater to slave owners

¹⁰⁶ Article forty-four, “The ‘Code Noir’ (1685)”, trans. John Garrigus; See my footnotes 58-63.

¹⁰⁷ Giesey, “Rules of Inheritance and Strategies of Mobility in Prerevolutionary France”, 271-3.

¹⁰⁸ Ibid.

in the colonies in the way that this classification made it easier to buy and sell slaves individually. In addition, their classification as *meubles* may have partially resulted from the nature of the African Slave Trade itself. Within France itself, neither serfs nor slaves could legally be sold to another person, which was tied into the free soil principle itself. This was true prior to the turn of the seventeenth century and would be reiterated within France in the case of slaves through the eighteenth century as well.

However, prior to the *Code*, slaves had not always been classified as movable property. After the publication of the *Code*, there emerged discontent and anxiety over this change and fixed status of slaves by their owners. The metropole retroactively caved somewhat to this colonial pressure by legislating that any contracts which treated slaves as immovable that were made before the registration of the *Code* in that colony would continue to legally treat them as such despite the new codification.¹⁰⁹

An “*Arret*” from May 1684 listed in the work of Mederic-Louis-Elie Moreau de Saint-Mery states that *nègres*, that is slaves, and cattle were legally movable property.¹¹⁰ Another “*arret*” listed in Moreau’s book *Loix et consitutions* from August 1687 concerns the *Code Noir*, specifically article forty-four which considered slaves to be movable property.¹¹¹ This article also mandated that a plantation’s slaves be legally divided between inheritors. The *Arret* of 1687 refers

¹⁰⁹ Mederic-Louis-Elie Moreau de Saint-Mery, *Loix et consitutions des colonies francaises de l’Amerique sous le vent*, 5 vols (Paris: Moreau de Saint-Mery, 1784-1790), cited in Jennifer Palmer’s *Intimate Bonds*, 215.

¹¹⁰ “L’*Arret* decide que quoique les Nègres et Bestiaux soient insaisissbles, ils seront toujours meubles.” “*Arret* du Conseil de la Martinique, portant que les Nègress et Bestiaux sont reputes meubles”, in Moreau de Saint-Mery, *Loix et consitutions des colonies francoises de l’Amerique sous le vent: 1550-1703*, Vol. 1, 397.

¹¹¹ “*Arret* du Conseil d’Etat, sur l’exécution de l’Article quarante-quatrieme de la Declaration du mois de Mars 1685, touchant les Esclaves des Isles de l’Amerique, qui declare les Nègres meubles”. Ibid; and, “Declarons les esclaves etre meubles, & comme tels entrent en la communautè, n’avoir point de suite par hypoteque, & partager également entre les coheritiers, sans preciput, ni droit d’ainesse, n’etre sujets au Douaire Coutumier, au Retrait Feodal & Lignager, aux Droits Feodaux & Seigneuriaux, aux formalitez des Decrets, ni aux retranchemens des quatre Quints, en cas de disposition a cause de mort au testamentaire”. Article forty-four, *Le Code Noir ou Edit du Roy*, (A Paris, au Palais, 1735) Digitized by the John Carter Brown Library, 2010.

to this article and declares that slaves had previously been treated as *immeubles*, so that if their classification in the *Code* was retroactively enforced, it would cause issues for slaveowners. The *Arret* is essentially asking that the king allow any transactions/contracts with slaves which occurred prior to the publication of the *Code* be upheld regarding slaves as *immeubles*. Any future contracts/transactions would follow article forty-four in considering slaves as *meubles* once the *Code* were registered.¹¹² Indeed, Moreau de Saint-Mery noted that:

“The Code Noir classified slaves as *meubles*. An *Arret* of August 1687 reiterated this provision, but elaborated that it should not be enforced retroactively; if earlier testaments had treated slaves as inseparable from the estate they worked, for example, they would not be overturned. In 1705 a court case again challenged this classification... By 1718, although officials never formally reclassified slaves *immeubles*, policy stated that ‘they (slaves) are attached to that estate (where they work), in a manner in which they contribute to its nature and become *immobliers* with it’¹¹³

In regard to debts that slave owners, particularly sugar plantation owners, owed, the metropole dictated that “*negres de jardin* were for certain purposes to be treated as real estate (*immeubles par destination*).... If there was a seizure for debt, the slaves could only be seized with the plantation itself. If the slaves were to be seized separately, production would be threatened”.¹¹⁴ This derives from older traditions of property regulation rather than arising solely in regard to slavery in the colonies however.¹¹⁵

¹¹² Moreau de Saint-Mery, *Loix et constitutions des colonies françoises de l’Amerique sous le vent: 1550-1703*, Vol. 1, 460.

¹¹³ Mederic-Louis-Elie Moreau de Saint-Mery, *Loix et constitutions des colonies franaises de l’Amerique sous le vent*, 5 vols (Paris: Moreau de Saint-Mery, 1784-1790), cited in Jennifer Palmer’s *Intimate Bonds*, 215.

¹¹⁴ *Negres de jardin* refers to slaves “engaged in agricultural production”. Dale W. Tomich, *Slavery in the Circuit of Sugar: Martinique and the World-Economy, 1830-1848*. (Albany, New York: State University of New York Press, 2016), 178; and Palmer, *Intimate Bonds*.

¹¹⁵ “An important example of the dynamics of the royal-colonial relationship concerns the island custom of preventing creditors from seizing land, beasts, and slaves...” Boucher, *Tropics of Discontent?*, 253.

ALTERATIONS TO THE *CODE*

Over the course of the eighteenth century, several aspects of the 1685 *Code Noir* were altered for various reasons. Such reasons included colonists' complaints over certain legislation from the metropole over slavery, though more of the alterations to the *Code* and subsequent laws on free persons of color arose due to the increasing population of both slaves and free persons of color in the colonies while the population of whites was becoming more and more the minority. This indicates several things. First, that metropolitan authority was attempting to exert more control over slave owners' property. Second, that tensions were rising between the metropole and colonial slave owners centering around authority over property. Third, that while racist conceptions were still complex and fluid in this period, the rising population of persons of color in the colony increasingly overtaking that of whites, especially the outnumbering of human property over free subjects, was shifting the understanding and treatment of racial categories within the law. Subsequently from this, shifts in practical understandings and uses of social categories and classifications would occur as well.

A royal ordinance, issued in 1738, altered the restrictions regarding slave testimonies in court. Specifically, it admitted "a slave's testimony into evidence if there were no white witnesses and if the slave was an essential witness... Yet even under the new reign a slave could not testify against his own master".¹¹⁶ Manumission was another aspect of the *Code* which was altered several times. Within the *Code Noir* of 1685, legal manumission by a slaveowner was relatively easy to accomplish.¹¹⁷ According to article fifty-six, which stated that, "Children made universal beneficiaries by their masters... will be held and regarded as manumitted", children of masters

¹¹⁶ Ghachem, *The Old Regime and the Haitian Revolution*, 141.

¹¹⁷ Article fifty-five of "The '*Code Noir*' (1685)", trans. John Garrigus.

then were thus free if they were made beneficiaries or inheritors of their master's will.¹¹⁸ In terms of manumission, the *Code* stated that masters age twenty and over could manumit their slaves without permission from or a reason given to the court.¹¹⁹ Several subsequent laws were passed after 1685 which restricted how and who slaveowners could manumit. They now had to be at least twenty-five years of age and required court permission. In addition, the 1685 laws held that a male slaveowner who was "no[t] married to another person during his concubinage with his slave would marry in the church the said slave who by this means will be manumitted and the children rendered free and legitimate".¹²⁰ Subsequent laws removed this provision which removed one path to freedom. The 1724 *Code Noir* that was published for the Louisiana colony also held that concubines and children born of masters were to be confiscated without manumission and the master fined, regardless of his marital status.¹²¹ Lastly, in the first decades of the 1700s, the legality of leaving enslaved children or manumitted mixed-race children an inheritance or gifts in a master's will was revoked. No other form of private property required legislation over its very status as property or not property.

¹¹⁸ Article fifty-six of "The '*Code Noir*' (1685)", trans. John Garrigus.

¹¹⁹ *Ibid.*

¹²⁰ Article nine of "The '*Code Noir*' (1685)", trans. by John Garrigus.

¹²¹ Aubert, "'The Blood of France', 473; and, "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. 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. The Ministry soon attached the same requirement to the *Code Noir* for Louisiana, and raised the age of majority for Louisiana manumitters to twenty-five year." Vernon Palmer, "Origins and Authors of the *Code Noir*", 389.

TREATMENT OF SLAVES IN PRACTICE

Outside of specific legal challenges to the law, the line between slave and free (property or not property) was itself a blurred line which slaves sometimes crossed as their status shifted back and forth across this legal boundary over their lifetime. Freedom could be obtained by a slave running away from their master and thus from *the enforcement of their status as property*. They may have joined a maroon community within which their status would shift from enslaved, property, to free—at least until they were recaptured. Aside from runaway slaves there was another category of people in the colony that held a status outside of the law, that of a *quasi* free status which enslaved peoples inhabited in Saint Domingue. Furthermore, the *Code Noir* made provisions for individuals to become free. Thus, the very set of laws that are known for regulating slavery actually recognized the line between enslavement and freedom as porous. This discussion is in reference to legislation regarding manumission of slaves in the Caribbean colonies.

While examination of the difficulties of categorizing humans as property in the law has been explored, this same difficulty also existed within practice. Similar and different contradictions arose in practice as emerged within and because of law. While it was one thing to legislate the status of a specific type of labor within preexisting property conceptions, it was another to enforce them and to dismiss or subsume the humanity of enslaved peoples in practice. While within the law, there was a distinction between being free and being an object of property, the boundary was permeable and porous. However, this distinction itself was much less clear in practice.

Notaries were appointed officials who recorded gifts of sale, transfers of property through inheritance, and marriage contracts which included inventories of property of the spouses. The Catholic Church kept baptism, marriage, and death records for both the enslaved and free persons in Saint Domingue, however as slaves were rarely married in the Catholic Church and rarely

baptized, records for the enslaved are more difficult to locate. Also, as already mentioned, a person's free or enslaved status could be questionable over their lifetime which led to their being recorded as free (or it being intimated that they were free) when they were baptized though those records were not always upheld in court as legitimizing their status. However, the way that notaries treated slaves in practice in these different occasions, inventories of property, etc..., show examples of how slaves were categorized in practice as something inherently different from other types of property.

An examination of notary records from the colony of Saint Domingue give insight into how slaves were categorized in practice while racial categories and lines were fluid in the colonies. These notary records span the period between c.1700 to 1766 and are from primarily the south and the west of the colony.¹²² While there exists only a relatively limited number of notary records that survive and can be presently found in the Archives Nationales d'Outre-Mer, this small group of sources offers prime opportunity for analysis prior to a period on which most historians have traditionally focused.¹²³ Most of these sources discussed in the following pages stem from the south of the colony, while a few of the records are from the region around Léogâne, in the west.¹²⁴

¹²² "The southern peninsula remained little developed until the late eighteenth century, with an economy centered on smallholdings, intra-island trade, and smuggling. Only after 1760 did this region develop significant plantation agriculture." Boucher, *Tropics of Discontent?*, 16; As well, Garrigus notes that the southern region was not technically open for settlement by French immigrants until 1720, although there were French immigrants and slaves living in this region prior this time. Garrigus, "Blue and Brown", 247 & 250.

¹²³ Notary records were supposed to be sent to Versailles in France during the last half of the eighteenth century. Prior to this period, they were not required to be sent to France and even after the passage of this law, they were not all sent there. This law mandated that notaries send not only records recorded from that point on, but also old records as well. However, this was not always followed. More recently, colonial records have been kept in the Archives Nationales d'Outre-Mer in Aix-en-Provence, France. Thus, not all notary records can be located there and some are too worn or fragile to handle.

¹²⁴ The notary and census records are located in the Archives Nationales d'Outre-Mer (ANOM). ANOM NOT SDOM 1356, May 28th, 1724, June 3rd, 1726, and September 25th, 1727; ANOM NOT SDOM 427, May & June, 1706, August 23rd, 1709, July 9th, 1710, Oct 3rd, 1712, and August 6th, 1713; ANOM NOT SDOM 121, February 10th & 11th, 1797 and March, 1797; ANOM NOT SDOM 124, June & July 1703 and July 21st 1709; and ANOM NOT SDOM 1154, December 3rd, 1766.

Slaves were typically designated as *nègre(s)* rather than as *esclaves* and they were listed separately from other property, both movable and immovable, in inventory lists; they occupied their own category.¹²⁵ This is significant for several reasons. First, it shows that even after the colonists had beseeched the King to allow slaves to be retroactively treated as immovable property and that after the registration of the *Code* slaves would be legally treated as movable, colonists were still not treating slaves as essentially movable property in practice. Within inventories, slaves, rather than being listed under the category of movable property along with cattle and other items, were listed separately under a category all their own. They were also not listed along with immovable property. This means that a shift seems to have possibly occurred after the turn of the century in which colonists were no longer necessarily trying to treat slaves as immovable, but neither were they willing or able to treat them as other movable property.

In several of the notary records, these lists of slaves included their names, ages, and monetary values. The names were generally French names, likely given to the slaves by their owners although a few may have been their original, African names. The monetary values are interesting to consider when analyzing the gender and the age of the slaves in correlation with them. One notary record seems to list the value of female slaves in their later twenties either equal to or more monetarily valuable than their male counterparts, while another lists female slaves at a slightly lower monetary value than males in their age cohort. As already mentioned in this paper, especially in the later decades of the eighteenth century in Saint Domingue at Le Cap, most slaves

¹²⁵ In the seventeenth century, the term *nègre* was used frequently in place of *esclave* with the same connotation, that of denoting property status. Moreau de Saint-Mery in his writings at the end of the eighteenth century used both terms interchangeably, though he also referred to slaves as *nègres esclaves*. He also used the terms, *nègre libre* if he were speaking of a free black as well as he utilized the term *gens de couleur*. *Loix et consitutions des colonies françoises de l'Amerique sous le vent: 1550-1703*, Vol. 1 and Moreau de Saint-Mery. *Description Topographique, Physique, Civile, Politique et Historique de la L'isle Saint-Domingue*, (A Philadelphia, 1797) Digitized by the John Carter Brown Library, 2010.

sold were male and they were considered the most desirable labor source for plantations. While these records are for the early decades, some having been written prior to Saint Domingue's shift into a large-scale plantation society, they still show on plantations such as a sugar plantation in 1726, female slaves were present in similar numbers to male slaves.¹²⁶ The record from the 1760s shows that even at a time when reproduction was outpaced by death that female slaves were valued as much or at times more than their male counterparts.¹²⁷ This record then is from after Saint Domingue, even the relatively neglected southern region, had transitioned to a plantation society and was the leading sugar producing colony.¹²⁸ As well, historians have typically noted that female reproductive labor was not highly valued in the colonies due to the extremely high mortality rate of slaves.¹²⁹ As female slaves did most of the same work as male slaves, and being from the south of the island where more female slaves and children were imported from Africa than the northern port, this is interesting in that planters were treating female slaves the same as males in work and economic conditions at the same time in which female slaves were more easily able to garner manumission from their masters due to the practice of concubinage.

¹²⁶ ANOM NOT SDOM 1356. 1724, June 3rd, 1726.

¹²⁷ ANOM NOT SDOM 1154, December 3rd, 1766.

¹²⁸ "In 1692, a partial census recorded 164 plantations in the western part of the colony, and by 1703 there were another 32 along the south coast. In the Caribbean, indigo plantations frequently served as stepping stones to the creation of sugar estates. This trend was already evident in Saint Domingue's northern plain by 1700. Nevertheless, the two crops developed almost in parallel until the 1740s – indigo cultivation expanding more rapidly before 1720, sugar accelerating thereafter. "After 1713, indigo rapidly lost ground to sugar cultivation in the northern plain and the Cul de Sac and Léogâne plains of the west, but it expanded into areas of pioneer cultivation... When the recorded number of indigo plantations peaked at 3,445 in 1739, 27 percent were located in the Artibonite and 22 percent on the south coast." Geggus, "Indigo and Slavery in Saint Domingue", 23. "High prices during the War of the Spanish Succession stimulated both crops. By war's end in 1713, Saint Domingue had 138 sugar estates and 1,182 (much smaller) indigo plantations, of which half were in the west province." Geggus, "Indigo and Slavery in Saint Domingue", 23.

¹²⁹ Sasha Turner, "Home-Grown Slaves: Women, Reproduction, and the Abolition of the Slave Trade, Jamaica 1788-1807", *Journal of Women's History* 23, No. 3 (2011), 45-53.

A notary record from June 3rd, 1726 from the south of the colony, near Aquin, where the notary, Casamajor worked, lists property from a sugar plantation that was being sold between two parties.¹³⁰ The document states that one man agreed to sell this property to another the previous April. The second page of the document lists such property as tools, hammers, and other small property, while the third page lists animals such as two dairy cows and their calves, a horse and a duck. This same page lists slaves, although separately from animals.

The slaves in this record are separated by sex and by age, in that adults and children are listed separately. The slaves were separated into their own category that went on for two pages. On the first page of the list of slaves, the adult male slaves were termed as *negres* and they were listed first, followed by the adult female slaves who were termed *negressere*. The male children were listed next, followed by the female children and were termed *negrillons* and *negrattes* respectively. This list gives a total at the bottom of each of the four lists of names. There were 44 adult male slaves on this sugar plantation and 17 adult female slaves. There were 14 enslaved children in total which means that there were over twice as many males as females and over three

¹³⁰ June 3rd, 1726, DPPC NOT SDOM 1356, ANOM; This notary is himself interesting as he “arrived in the southern peninsula in the 1720s as it officially opened to settlement. A royal notary and planter, Casamajor built Aquin’s first pier in 1730...About 25 years later a royal land grant near this pier was awarded to ‘Pierre called Casamajor,’ one of at least three mulatto sons born out of wedlock to David Casamajor and the slave Marie Madeleine... By his death in 1773”, Pierre’s that is, “he had expanded into planting, leaving an estate whose total value was nearly 134,000 livres, including 57 slaves and an indigo plantation to be divided among his large family... In 1756 Pierre Casamajor’s illegitimate daughter Marie Rose Casamajor contracted a marriage with Thomas Ploy. From her father Marie Rose received a dowry valued at 18,800 livres, including... six slaves.” Thomas Ploy himself was a free mulatto and the illegitimate son of a Dutch trader and a free black woman. Thomas Ploy’s son, Jacques Thomas Ploy, himself the great-grandson of David Casamajor, married “a free *quarteronne*” and “identified himself as a free *quarteron*, despite the fact that both his parents were labelled ‘mulatres’ in that same document... Each set of parents contributed 15,000 livres to the new household and in 1788 Thomas Ploy agreed to let his cotton plantation pass under his son’s control.” “In Saint-Domingue, as in France early in the eighteenth century, *Sieur*, *Demoiselle*, or *Madame* were titles given in documents to respected members of society; those farther down the social scale were referred to without any appellation, or as *le homme*. oman and an “unknown father.” Although critical of Thomas Ploy’s greed, a Cayes merchant cited above nevertheless accorded him the respectful titles ‘Sieur’ and ‘Monsieur’ in 1763.” Garrigus, “Blue and Brown”, 253-5 & 260-1.

times as many male adults as there were enslaved children of both genders. For these children then, they constituted 18.7% of the total number of slaves listed in this record. This is slightly higher than the percentage which historian David Geggus gives as the average for the percentage of children present on sugar estates in 1720 in Saint Domingue's southern region but slightly slower than the average percentage of child slaves on sugar plantations in the northern region. Adult female slaves made up 22.7% of the slaves listed in this record while adult males made up almost 59%. The percentage of males on this list is slightly lower than the average percentage of males for the Atlantic Slave Trade as a whole, however since the southern region generally imported more females than did the port at Le Cap, this is not necessarily surprising.¹³¹

This list is for a sugar plantation which has 75 slaves named in total in its inventory list. Their monetary values and any other information about each slave were not given in this list. It is interesting that the ages of the slaves were not given nor were their monetary values since this seems to have been a list of property which was sold between two men. The ages and their values, one would think, would have been important. This list also does not provide any family connections between the slaves however, the children were likely the offspring of the adult female slaves who were also named, and it is certainly possible that some of them may have been siblings.¹³² David Geggus has noted that there is not always the expected correlation between

¹³¹ June 3rd, 1726, DPPC NOT SDOM 1356, ANOM; "Herbert Klein's earlier assessment would seem more accurate -that males constituted between 60 and 70 per cent of captives in almost all slave trades across the Atlantic.⁸ Sex ratios fell below this level (of 150 < 233: 100) in some minor branches of the trade, such as the French trades to Guadeloupe and Cayenne..." Geggus, "Sex Ratio", 25-6.

¹³² However, birth rates in Saint Domingue were very low, so it is also certainly possible that these children were imported slaves from Africa rather than the children of the female adult slaves listed. "Measured fertility levels for Saint Domingue slaves are among the lowest known in any American slave society. In plantation inventories, well under half of adult females are listed as mothers. Perhaps one in four never gave birth at all... On both types of plantations (sugar & coffee) creole women gave birth at much earlier ages than Africans, and there is evidence that they may have continued to give birth later. Creole mothers had, on average, more children and gave birth at slightly shorter intervals... Africans may have also experienced a shorter childbearing span owing to nutritional deficiencies in childhood. The fact that creoles were taller than most Africans (in the 1780s) shows they had enjoyed a better

numbers of adult female slaves and child slaves. Indeed, he noted that the ports which supplied the highest percentages of children to French Slave Traders also sold the lowest percentages of adult female slaves.¹³³ If this inventory provided ages perhaps then we could postulate how many of the children and the adult female slaves may have been related as the very youngest of the children would have more than likely been related by blood, whereas the children closest to the age of 15, which is when officials began to consider them as adults, would have quite possibly been sold at a port in Africa as a slave and been present on this plantation without their biological parents.

It is also somewhat surprising that only 75 slaves were named in this record for a sugar plantation as the average number of slaves on such plantations was typically around 200 slaves. However, it is possible that not all of the slaves on this estate were sold in this record with the animals and tools, or it is possible that this was a relatively smaller plantation than the average.¹³⁴

Another notary record, an inventory of property inherited by two heirs whose father owed a debt against them, lists slaves with their estimated values. Within this inventory is also the inclusion of many of the slaves' ethnicities (or likely the region where they were sold from), among other attributes, like '*creole*', '*negritte*', '*negre*', or '*negrsse*', or 'Congo', 'Senalaise', or 'Bambora' for the slaves recorded in this particular record.¹³⁵ The inclusion of certain aspects of

level of nutrition than those who had been sold across the Atlantic." Geggus, "Slave and Free Colored Women in Saint Domingue", 268.

¹³³ Geggus, "Sex Ratio, Age and Ethnicity in the Atlantic Slave Trade: Data from French Shipping and Plantation Records", 1989.

¹³⁴ "By the end of the colonial period, the average Saint Domingue sugar estate had a workforce of close to 200 enslaved people, an area of 750 acres with 230 acres planted in cane, and a capital value of around 1.5 million livres coloniales (42,000 pounds sterling). Coffee plantations averaged between 250 and 350 acres, with 65 acres of coffee trees, about 50 enslaved laborers, and a capital value in the region of 225,000 livres coloniales (6,250 pounds sterling). Much less is known about indigo plantations." According to David Geggus however, one region from the colony which boasted 21 sugar estates had a mean average of 60 workers, much lower than the overall average for the colony as a whole. The 75 slaves listed for the discussed sugar estate then would more understandable. David Geggus, "Indigo and Slavery in Saint Domingue", 27-8.

¹³⁵ December 3rd, 1766, ANOM NOT SDOM 1154.

slaves' identity is important in that the ratios between adults and children, between the sexes, and between African born and creole slaves denotes several things. For example, the region in the colony of Saint Domingue that the record is from differs from the other two regions in terms of demographics and in terms of the ethnicities of the slaves imported there. Also, the southern region and even around Leogane, the history of piracy and illegal trade with the British in those regions differentiates them from the north. In terms of the sex ratio and the ratio between adults and children, this can indicate what type of property the record was for and what tasks slaves were doing. It also relates to the region from the which the record derives. In regard to whether there were more "creole" or African-born slaves, this can indicate multiple things: that whites were having sexual relations with the enslaved, that enslaved women were having children with enslaved men, that mothers and their children were brought to Saint Domingue together from Africa possibly, or that the adults and the children were not related which could mean that they were sold separately from family members in Africa. It also could indicate that owners were not following the prescription in the *Code Noir* which dictated that enslaved children could not be sold separately from their mothers.

The differences between the designations of '*negritte*', '*negre*', or '*negresse*' for this inventory record are that they mean respectively, a male slave child, an adult male slave, and an adult female slave. The ethnic designation assigned to the slaves in this inventory most likely indicate where they were sold in Africa to French (or another European) Slave Traders, thus are not the most reliable indicator of the slaves' true ethnic origins. Both these categorizations, of demographic and ethnic categories, demonstrate that in practice, notaries were not always treating the enslaved as simply movable property. They were not simply termed "slaves."

During this period, many of the slaves forcibly imported to Saint Domingue were taken from the Congo region, while slaves from the area of “Senegal”, or Senegambia, had been in the majority of the slave population in Saint Domingue in the first decades of its French settlement and the establishment of plantations in the colony.¹³⁶ Thus, it may be that masters and notaries listed slaves as being “Senegalaise” because that is where their older slaves were from or because it was a known origin to the masters of many slaves in the colony by the 1760s. The ethnic designation of Bambara was part of the Mande ethnic group from the Senegambia region. It may have also been where they were sold from African ports to European slave ships, however these slaves may have been from further inland yet their actual ethnic origin was not named or possibly even not known. In addition, the southern region of Saint Domingue received a number of slaves from illegal trade with the British, Le Cap and then Port-au-Prince received most of the slaves from French ships and the western region purchased more women, children, and slaves from that were considered less desirable ethnicities than the main port of call, Le Cap, in the northern part of the colony.¹³⁷

The ethnic composition of workforces also varied considerably between each of Saint Domingue’s three provinces. For instance, there was a prevalence of certain ethnicities in each of the three regions of Saint Domingue. While it has been noted by historians that the French imported

¹³⁶ Geggus, “Sex Ratio”

¹³⁷ “Unlike Kingston, however, Saint-Domingue did not re-export its African captives. Rather, the French colony received slaves from other empires, often illegally. Saint-Domingue, as one expert describes it, was continually in the grip of a terrible labor shortage. Planters blamed imperial restrictions on foreign trade, though the real culprit was the relentless work regime on many plantations, and the ongoing expansion of those plantations. David Geggus estimates that in one region of Saint-Domingue’s southern peninsula, between 10 and 15 percent of slaves there had been purchased from British traders, probably sailing out of Kingston.” Garrigus, “Blue and Brown”, 60; Although, demographics of both the sex ratio of the enslaved and of the comparison between adults and children is complicated by the statistics that, adult female slaves were more likely than adult males to survive the Middle Passage, but that children were more likely than adults to survive especially adult male slaves. Geggus, “Sex Ratio”.

more slaves from the Congo region in West Central Africa through the eighteenth century than from their secondary region, the Bight of Benin, historians who have examined sugar plantation records have found that they tried not to buy slaves from the Congo region and that slaves with the ethnic designation ‘Congo’ were more often found in higher numbers on coffee plantations.¹³⁸ Thus, the ethnicities listed in the records also relate to the type of real estate property that record pertains to, though not reliably. It may also indicate, as historians have noted, that the south had certain ethnicities because it was a relatively “neglected” region where planters resorted to importing slaves illegally from British rather than French traders. Thus, there statistically should be more women and children found in the notary records from the southern region of Saint Domingue than were present in the northern region. The reasoning behind the desirability versus the undesirability of some ethnicities of slaves over others had to do with gendered understandings of these groups of slaves by colonists that developed concurrently with the emergence and regulation of slavery in the colonies, especially after plantations grew in prevalence.

In the same inventory, some slaves’ occupations are also designated in their description such as ‘*negre de jardin*’.¹³⁹ This designation was given to a large number of slaves on plantations as it meant that they were a slave of the field. They were not slaves who worked specialized jobs or who were primarily stationed in a home occupied with domestic labor.¹⁴⁰ Specialized jobs on plantations, especially sugar and indigo plantations, were given to male slaves rather than female slaves. Indigo plantations in particular attempted to purchase a higher percentage of male slaves than female or child slaves for the specific tasks needed to produce a profit from indigo. Historians

¹³⁸ “West Central Africans – a group that colonists broadly described as ‘Congos’ – became a majority of new captives in Saint-Domingue” by the 1760s. Burnard & Garrigus, *Plantation Machine*.

¹³⁹ December 3rd, 1766, ANOM NOT SDOM 1154.

¹⁴⁰ Geggus, “Slave and Free Colored Women in Saint Domingue”, 253 & 267-8.

have noted that planters often worked female slaves just as hard and gave them the same arduous work in the fields on plantations as male slaves, however male slaves were given the specialized tasks while female slaves were assigned to domestic labor.¹⁴¹ Domestic laborers were more often to be female *creole* slaves rather than African born, however, while African born female slaves were more likely to be field laborers. Creole female slaves also tended to live longer, were healthier in general, and had a higher reproductive rate than African born female slaves.¹⁴² While female slaves' humanity was more easily visible in practice, such as through sexual relations with white men and through their status as mothers, which was also backed legally, male slaves' humanity is more difficult to highlight within records. However, the very acknowledgement of their possession of skills and knowledge which made them more valuable assets for plantations and separated them from unskilled slave labor, subsequently acknowledged their humanity while at the same time dismissing it. As well, slave owners, especially on plantations where there was a higher ratio of the enslaved in comparison to 'whites', enslaved women of color received the same punishments as their male counterparts. Since on the larger plantations, especially in the south, there were possibly more female field workers than there were males, enslaved women sometimes were punished more harshly or for reasons which male slaves were not.¹⁴³

¹⁴¹ "There is some evidence that planters worked women even harder than men. They were more likely than men to be field laborers, and they did extremely physically demanding tasks, such as cane holing and dunging, in greater proportions than did men. Accordingly, women tended to have very high rates sickness... Nevertheless, slave women proved demographically tougher than slave men..." Burnard & Garrigus, *Plantation Machine*, 41.

¹⁴² "Creole women everywhere were much healthier than all other slaves... The male death rate seems to have been about 20 percent higher than that for females." Garrigus' chapter in *More than Chattel*, 268; See also my footnote 121.

¹⁴³ Moitt references historian Hilary Beckles' work for the treatment of female slaves in comparison to males. Moitt, *Women and Slavery in the French Antilles*, 101; See my footnote 146.

Finally, in that same inventory, a family tie was also included for six slaves alongside their other descriptors.¹⁴⁴ For example, the notary listed one slave as ‘Marie Louise, 30, 2000’ and underneath her name another slave is listed as ‘Marie Roze (*sa fille*), 13, 1500’, indicating that Marie Roze was Marie Louise’s daughter. Given their ages, Marie Louise age 30 and Marie Roze age 13, this is certainly possible although it is also possible that these were their estimated rather than their actual ages. The value of the mother, Marie Louise, and of Marie Roze are interesting in that they are almost the same value, and that the mother’s value is relatively close to that of the enslaved adult males in the list. Since ‘creole’ was not listed after the daughter’s name, it is possible that they were sold together from a port in Africa and bought together in Saint Domingue. It is interesting that the mother’s ethnic designation in this document is “moundongue” which likely means that she was from the Madinka ethnic group, which was part of the Mande ethnic group in the Senegambia, Sierra Leone region, although she could have been sold from the Windward or Gold Coast as well, since the French did not typically purchase slaves there by this point. However, as previously stated, the southern coast, and the western coast in comparison to the north, received different ratios of slaves than was generally desired by plantation owners.

In this inventory is a second family designation, ‘Houme, arada, 30, 2000’ and ‘Cathars, (*sa fille*), 12, 1200’.¹⁴⁵ This indicates that Houme, likely a female slave because it was easier for owners to track maternity than paternity, is listed as being aged 30 while her daughter was listed at age 12. Her value also indicates her femininity: Cathars, Marie Roze and Marie, the younger sister to Catherine, were valued almost exactly the same, while the value of Houme is the same as Marie Louise who was also exactly the same (estimated) age. Houme is listed as ‘arada’, an ethnic

¹⁴⁴ December 3rd, 1766, ANOM NOT SDOM 1154.

¹⁴⁵ December 3rd, 1766, ANOM NOT SDOM 1154.

group from the Bight of Benin region. During the time that this inventory was written, the Bight of Benin was supplied the second highest percentage of African slaves to Saint Domingue, with the Congo region being the largest supplier. Again, for this parent/child relationship, it is possible since ‘creole’ was not listed next to the child that they were sold together from Africa and then bought together in Saint Domingue, however it is not known for certain since we do not know at what age and in what year the adult slave was brought to the colony.

The other slaves whose family ties were noted included ‘Catherine, creole, 17, 1600’ and ‘Marie (*SaSoeur*), 12, 1300’.¹⁴⁶ These two female slaves were then listed as sisters, with only Catherine listed as being ‘creole’ although if she was indeed born on the island then likely so was her younger sister Marie. Their values are slightly lower than Marie Louise and Marie Roze, however this could have been due to a number of factors, including their age. A large number of the female slaves were given the name Marie in this inventory, likely due to the fact that many masters named their slaves and often gave them French names and Marie was perhaps the most popular name for females at that time. Some slaves did keep their African names or were given something more akin to pet names from their masters rather than legitimate French names. The first family designation discussed makes sense in the light that the Code Noir legislated that mothers and children under the age of fourteen were not to be separated, however there is nothing in the Code which relates to sibling relationships so it is intriguing that the notary, or indeed the owner himself, chose to include their relationship in this inventory.

This inclusion of siblings in the notary record, especially since they were both creole and not listed with a mother, could indicate that they were the children of a white Frenchman, possibly

¹⁴⁶ Ibid.

their owner, and that their mother was either deceased at the time of this record or had been manumitted but they were not. Aside from this possibility, this inclusion also denotes the tensions between legal codes on slavery and practice of slavery in the colonies in a few ways. First, while the *Code* specified that slaves were property but minors could not be sold separately from their mothers, this owner may have done so regardless. Second, although slaves were legally property and not free *humans*, within this record at least, the inclusion of a kinship tie without the pressure of a legal reasoning for such may indicate that the owner (or the notary) was cognizant of their humanity in a way that strays outside of the bounds of understandings of property.

For this particular inventory record, there were four slaves listed with ‘Congo’ as their ethnic designation, two with ‘Sengalaïse’, three with ‘arada’, two with ‘moudongue’, one with ‘bamabara’, while there were seven with no ethnic designation given.¹⁴⁷ There were seven slaves listed as ‘creol(e)’ with a few of these having been children. For this list, it matters that there were slaves who were not given an ethnic designation while the majority were, since most were adults but a few were children. For the children who were not given an ethnic designation, it may have been unknown to the owner, possibly because they were purchased illegally, or it may have been because they had been bought by this owner illegally – in that they were sold away from their mothers, thus violating the *Code*.

There were a few child slaves listed after an adult that were either not given an ethnic designation or were listed as creol(e) but a kin relationship with the adult slave listed before them was not given. It is interesting that there were more slaves listed who were either not given an ethnic designation or were listed as ‘creole’ slaves than were given African ethnic designations

¹⁴⁷ December 3rd, 1766, ANOM NOT SDOM 1154.

which have been taken as meaning that they were African born, at a rate of 14 to 12. There were also 5 slaves from the upper coast of West Africa as opposed to three from the Bight of Benin and four from West Central Africa. Generally, as previously discussed, slave owners of sugar plantation tried to buy majority Africans from the Bight of Benin while coffee plantation owners tried to buy majority African slaves from the Congo region, with indigo planters in the middle.¹⁴⁸ However, more of these slaves were from elsewhere in Africa. Again, this may have been due to the fact that this record is from Léogâne, which was in the western part of the colony which was a secondary port of call for French slave traders after Le Cap in the north. David Geggus noted that for 33 indigo plantations from 1742 to 1792 (which this inventory falls between) that 30% of the slaves in the west were from the Slave Coast, 38% from Central Africa, and 5% from the Bight of Biafra with a total enslaved population on these 33 indigo plantations at 659.¹⁴⁹ It is unclear however, what type of property (in terms of what type of plantation) this inventory record is for.

Twenty-seven slaves in total were listed in this particular inventory with ten being clearly adult women, nine children, and five adult men, with the others being slightly uncertain.¹⁵⁰ In terms of their monetary value, while there was slight fluctuation, female slaves aged between twenty and thirty years were listed at “2,000” to “2,500”, while female slaves younger than twenty ranged from between “1,000” to “1,600” with the youngest listed at age twelve. Male slaves between the ages of twenty-five and thirty-six were listed from “2,000” to “2,800” with most listed at “2,000” or “2,200”. Only two children were listed as male slaves and they were aged ten and eight with

¹⁴⁸ Geggus, “Sex Ratio”, 29.

¹⁴⁹ Table 1.2 “Origins of enslaved Africans on 33 indigo plantations, 1742-92 (selected regions)”, from David Geggus “Indigo and Slavery in Saint Domingue”, 29.

¹⁵⁰ ANOM NOT SDOM 1154, December 3rd, 1766.

their values listed at “900” and “700” respectively.¹⁵¹ The sex ratio for child slaves was typically the same as for adults if not relatively equal, with only one region in Africa supplying more girls than boys.¹⁵² Female slaves were typically 25% cheaper for French slave traders to buy in Africa than were male slaves.¹⁵³ The incentive was for traders to purchase one adult female for every two adult male slaves, however this was typically not followed with the average falling more between 60-70% male. Each region that supplied slaves to the Transatlantic trade supplied varying percentages of male and female slaves though. The French also bought the highest percentage of child slaves from African ports compared to other Europeans.¹⁵⁴ As previously mentioned, creole female slaves were generally healthier, lived longer, and were successful reproductively than African born female slaves. Thus, since this record is from the western part of the colony which was a secondary port of call for Saint Domingue and since there was a high proportion of creole slaves in this list, perhaps that is why female slaves were valued almost equally to male slaves, especially adult females of childbearing age.

These notary records from relatively neglected regions in Saint Domingue prior to the conquest of the plantation system, highlight how the categorization of humans as property involved complex processes which both related to and differed from the contradictions which emerged within and from legal codes on slavery. When masters took female slaves as concubines, they were acknowledging their humanity while at the same, if the relationship was not consensual, dismissing it. When male slave owners did not free these women or their mixed-race children, they were

¹⁵¹ ANOM NOT SDOM 1154, December 3rd, 1766.

¹⁵² “The fact that the Bight of Biafra was the only region to export more girls than boys also points to the prevalence of pawning in Igboland.” Geggus also notes that Igbo slaves were more likely to be female and found in the southern part of Saint Domingue. Geggus, “Sex Ratio”, 38.

¹⁵³ Ibid, 37.

¹⁵⁴ Ibid, 23-27.

giving preference to their property status rather than to their inherent humanity. For male slaves, those who were given specialized and skilled labor tasks on plantations were also at the same time being acknowledged as human, as possessing valuable skills, while also actively being monetarily valued for their status as property. When slave owners acknowledged their mixed-race children, whether by simply freeing them or by providing inheritance or monies to them after freedom, they were prioritizing their humanity over their labor value or status. Further, when slave owners or notaries recorded personal characteristics of enslaved persons for no apparent monetary or legal motivation, they were circumventally acknowledging slaves as humans.

What census records highlight differs from notary records. While census data can still show the struggle in practice of categorizing humans as property, they uniquely highlight the emergence and treatment of categories themselves. While within the law it is unclear who can be enslaved and who can not, as well as it is unclear what place exactly in society the enslaved held, there was still a distinction between those who were property and those who were free subjects. Historians have accepted three major categories for classifying peoples in the colonies, thanks in large part to Moreau, and have not significantly examined them for practical purposes. By analyzing census records stretching from the seventeenth to the eighteenth century while race was fluid, one can see how racialist, gendered categories appeared and were utilized. The categories for both white and black do not fit neatly into the divisions which legal codes attempted to distinguish, nor do they fit neatly into the separation of enslaved persons as property within notary records. Instead, the separations by color, employment, age, gender, and status within census records provide examples of the complex nature of human categorization which existed prior to the mid eighteenth century in the French Caribbean.

Census data from the French Caribbean colonies in the second half of the seventeenth and the first half of the eighteenth centuries, show the emergence of social categories and their treatment in practice in the colonies, which further highlight the legal and social continuities between France and its Caribbean colonies.¹⁵⁵ The census records include data for individual islands such as Grenada, St. Christopher and Saint Domingue, as well as data for all of the French Caribbean islands for one year.¹⁵⁶ The census records considered here include the years 1669, 1678, 1685, 1686, 1687, 1688, 1718, 1726 and 1730. The census record from 1686 includes all of the French islands while the record from 1730 pertains only to Saint Domingue.¹⁵⁷ Some of the categories included in the 1686 census are: men, women, girls, indentured servants, '*nègres*', '*negresses*', '*negrillons*' and '*negrittes*' (one column), '*mulatresses*', *mulattos*, '*caraibra libres*', and '*caraibas engages*'.¹⁵⁸ The categories, men, women, girls and indentured servants are the numbers for whites on the islands. The categories, '*nègres*', etc..., are taken as the number of slaves while the *mulattos* could possibly be the number of free people of African descent in the colonies, or they could also be slaves. It is interesting that for the indigenous populations none are categorized as *esclaves*, at least for this census in particular.

The categories in the census records considered here differ from the notary records previously discussed in that there are more categories present. Historian John Garrigus noted that prior to the last quarter of the eighteenth century, wealthy persons of color were either not given a racial designation in records or were listed as *mulatto* or *nègre libre*. However, at the end of the

¹⁵⁵ "From 1671, census-makers began to divide these groups more visibly, by creating tables and columns with headings and the category *serviteur blanc* (white servant) appeared. This grouping was probably created in order to clearly distinguish the remaining white indentured servants from black and *mulâtre* domestic servants." Lamotte, "Colour Prejudice".

¹⁵⁶ ANOM G 1 498.

¹⁵⁷ Ibid.

¹⁵⁸ ANOM G 1 498.

century, notaries began recording them along racial lines and designating them as *gens de couleur*, a group which included poor blacks and former slaves.¹⁵⁹ Also, it is possible that for the census records from the seventeenth century, two reasons could have contributed to the emergence of more categories for the purposes of population rather than for the purposes which individual notaries served. That the older islands already had populations of enslaved Africans, indigenous peoples who were free, enslaved, and categorized as indentured servants, and free whites and white indentured servants while there was not any, or very little real metropolitan control over them. Also, that these categories were themselves emerging and being defined as the populations of unfree peoples grew in the colonies. Finally, that for the notary records discussed earlier, they cover only the colony of Saint Domingue, which was settled later than the Antilles, as well as they were from the southern and western parts of the colony which developed later than the northern part and had a lower percentage of plantations in the first half of the eighteenth century especially.¹⁶⁰ This itself shows a divergence between metropolitan control, which often expressed itself through legal codes, and colonial conceptions of slavery and the enslaved.

The number of free whites on the island of Saint Domingue according to this census was 2,995 while the number of indentured servants is given as 647.¹⁶¹ The number of slaves is totaled at 3,358, while the total number of free people of color is listed at 224. For all the islands, the number of white indentured servants is given as 1,073, the total number of blacks is given as 26,160, the total number of mulattos was 962 and the total number of free whites was 13,554. The

¹⁵⁹ Garrigus, "Blue and Brown", 248-9 & 257.

¹⁶⁰ Burnard & Garrigus, *Plantation Machine*, 35.

¹⁶¹ ANOM G 1 498; In 1700, Saint Domingue was "4,560 whites and 9,082 slaves". And indeed, "by 1700, Saint-Domingue and the bigger Windward Islands contained 90 percent of the French Caribbean population, as compared to 70 percent in 1670". Boucher, *Tropics of Discontent?*, 240 & 237.

number of sugar plantations for the islands is also listed on this census and for Saint Domingue, the island is listed as having had 16 in 1686.¹⁶²

For the census on Saint Domingue only, the categories listed are: '*hommes portants armes*' (or armed men) 150, '*femmes et veuves*' (women and widows) 58, '*garçons au dessous de 14 ans*' (boys under 14) 74, '*filles a marrier*' 11, and '*filles au dessous de 12 ans*' (girls under 12), 58.¹⁶³

The separation of the free white population by gender and by age, reveals the gendered hierarchy present in the Caribbean colonies at this time. That the adult men were separated from other free white males by age through the designation that they were men who could fight while males under the age of fourteen were not reveals the complex nature of the colonies and their precarious position. It was precarious in several ways, in that the French often shared islands with other European powers who they were often at war with, and that once there was a higher population of unfree peoples in the colonies, there was always the threat of revolt.¹⁶⁴ The separation of women into three categories, that of married and widowed women, single women, and females under the age of twelve, reveals the concerns which preoccupied the metropole over the free white population in the colonies and who Frenchmen were sexually involved with. The metropole required the continued importation of French indentured servants into the eighteenth century, partly to increase the number of white women there as wives for Frenchmen rather than white men turning to African women in Saint Domingue for wives or concubines, for example.¹⁶⁵ Further, whereas fifteen was typically the age at which slaves were counted as adults, and the male children were counted here as fourteen years and under, girls were considered to be twelve and under. That

¹⁶² ANOM G 1 498.

¹⁶³ Ibid.

¹⁶⁴ Several revolts did occur prior the Haitian Revolution in the colonies. See my footnote 49.

¹⁶⁵ See my footnotes 29 & 34.

there were the same number of girls as there were wives and widows is interesting since it is most likely that the children were born on the islands while the adults immigrated there. The designation of the category of widows for women but not for men is interesting, although the high death rate for everyone living in the colonies lends itself to the obvious presence of both widows and widowers. The total number for these five categories of whites was 351.

The other categories listed are: '*mulatres et negres libres*' 12, '*mulatresses et negresses libres*' 10, '*leurs enfants*' 8 (total free colored population was 30), '*mulatres et negres esclaves*' 266, '*mulatresses et negresses esclaves*' 45, '*leurs enfants*' 84 (total of 385 slaves).¹⁶⁶ As previously stated, the categories of mulattos and *nègres libres* held, according to John Garrigus, a more positive connotation than did *gens de couleur*, at least during the eighteenth century in Saint Domingue.¹⁶⁷ Thus, it is interesting that for both free and enslaved persons of color they were termed the same. It is also interesting that mulattos and black slaves were listed together, although they were still separated by age and by sex, at least for the adults. The numbers for the free persons of color are much lower than the numbers for the enslaved for all the categories, but especially for the males, and secondarily for children. The numbers of free and enslaved adult women of color are relatively close. That the number of enslaved children outnumber the adult enslaved women in this record likely indicates that the children were imported from Africa rather than that the majority were island born.

As the total number of inhabitants given for Saint Domingue by this census in 1730 was 776, likely then this was only the population of a specific region of the colony rather than the colony as a whole. While the numbers between the two censuses do not match with each other, it

¹⁶⁶ ANOM G 1 498

¹⁶⁷ Garrigus, "Blue and Brown", 259.

is interesting to note that for both of these census, as well as the others I have seen, (for free whites, African slaves, and free people of African descent), males and females and children and adults were listed separately, while white indentured servants were grouped together under one number.¹⁶⁸ Indeed, in one of the notary records previously discussed, male and female adult slaves were separated from one another in the inventory list with the slave children listed under their respective mother. As the *Code Noir* dictates that the condition of the child followed the condition of the mother, and this notion carried into the *Code* from prior customs regarding slavery in at least the island of Guadeloupe, it is not surprising that this notary at least listed the children after their mothers. For the children only their ages and their value were included and in this record in particular they were not listed as “creol(e)”, but it is assumed that they likely were. In regard to both slaves and whites on the islands, they were generally listed in separate gender categories while indigenous populations on the older islands and indentured servants were not, which also serves to complicate the picture that slaves were classified as such and as movable property by the *Code Noir* due to simply race.

A record from Grenada from 1678 provides a counterpoint to both census and notary records and suggests that labor, not race, was the primary concern in the organization of households. ¹⁶⁹ Grenada received the less “desirable” slaves as did the southern part of Saint Domingue, although it was older in terms of settlement. For Grenada, by the time of this record, indentured servitude had significantly begun to give way to slaves, mainly African slaves, as had Saint Domingue. Lastly, while there indigenous peoples in Grenada and a few are listed in the following record, they were not present in as large of numbers as in Martinique and Guadeloupe.

¹⁶⁸ ANOM G 1 498.

¹⁶⁹ ANOM G 1 498.

These households were made up of various categories of people, some of them not actually specified. Most of the households were listed under men usually accompanied by a wife and children. Three households had no husband named and three other households had no wife. Just a few of the households had a husband and wife but not children. The couple for these households were young in comparison to the other heads of household listed. Eight of the households did not specify any indentured servants or slaves, while the rest had at least one. Only one household listed anyone as an engage, though over a dozen households listed unspecified persons. Each group gave names and ages and for some people, a family designation was given. For most, it was given if they were related to the head of household, although a few slave children were designated with their parent. There were more male black slaves than there were any other category, with female black slaves, unspecified persons, and female black children following in number. Male heads of household, black male children, sons of the head of household, *sauvagesses*, and wives of heads of household follow them in number.¹⁷⁰ And finally, daughters of heads of households and labeled persons as *mulatresse and engages*, were the least in number.

Of the children of heads of households, they ranged in age from 2 to 14, and then adult children at 23 and 33. The enslaved children were between the ages of a few months old to generally 12, although some were listed higher and others who were younger than 12 were sometimes listed with adults instead of separately. There were also a 13, a 14, and two 15 year-olds listed. The adult enslaved women ranged in age from 22 to 60 with most having been in their

¹⁷⁰ “The meaning of the term *sauvage*, often used among French settlers to designate the indigenous inhabitants of the Americas was negative in the seventeenth century. The 1694 Dictionary of the French Academy described *sauvages* as ‘people who usually live in the woods, without religion, law, and fixed abode, more like animals than like humans’. Such negative ideas were perhaps due to French feelings of cultural superiority following the conquest.” Lamotte, “Colour Prejudice”.

twenties and thirties. The adult enslaved men ranged in age from 20 to 70, with more than half having been between 20 and 40. The two people who were listed as *mulatresses* were ages 4 and a few months old. As for the heads of household themselves, only three of the wives were listed as older than their husbands while usually the husband was at least ten years older, especially if there were slaves listed as well. The instances where there were young female slaves and child slaves under the age of five listed, the head of household was either relatively young or his son was a young adult. The youngest male head of household was 26, with the youngest wife having been 22, and the youngest female head of household was 25. The oldest head of household was 70 with the oldest wife having been 60 and the oldest female head of household having been 70 as well. A few of the unspecified persons were listed with a wife and/or a child/ren. As for the category of *sauvagelles* the youngest listed was 2 and she was listed as being the daughter of the oldest person listed in this category who herself was 40.¹⁷¹

A list from this record gives totals from various categories for the company.¹⁷² The categories listed are for white men, women, girls and boys, followed by adult male black slaves, adult female black slaves, black male slave children, black female slave children, *sauvagesses*, and *vagabondes*. There were 102 free whites listed, 112 adult black slaves, 37 black slave children, 4 *sauvagesses* and 13 *vagabondes*. Another list from the year gives the same categories except for *sauvagesses* which are missing. The numbers for this record are 149, 44, and 14 (following the above), so more free whites and fewer enslaved persons. Another record for the island of Grenade from the year 1687 lists 170 *hommes portans les armes*, 62 women, 52 boys, 26 girls, 109 *negres*, 76 *negrelles*, 49 *negrillons*, 39 *negrillonnes*, 24 *negres infirmes*, and 31 *mulastres & mulastrelles*.

¹⁷¹ ANOM G 1 498.

¹⁷² See my footnote 159.

It also lists 21 indigo plantations on the island for that year and no sugar plantations. A list for the next year for the island of Grenade lists 102 men, 53 boys, 62 women, 18 girls, 172 *negres et negrillons*, 107 *negresses et negrettes*, 18 *mulatres*, 16 *mulatresses*, 6 *sauvages*, and 11 *sauvagesses*. This is interesting since the previous year did not list any indigenous persons and it had separated blacks and mullattos differently than it was the following year. For 1688, 1 sugar plantation is listed and 20 indigo plantations are.¹⁷³

This separation of categories of peoples in the colonies by gender, age, and race highlights the divergences between legal codes and understandings of social categories from the metropole, with practical understandings of peoples, categories, labor, and property by those in the colonies themselves. Again, free white men were separated from boys by the designation that they could fight, while free white women were separated by age more so for the purposes of their marital status. For people of color, they were separated by age, race, gender, and ethnicity in a sense. Meaning that, *nègres* were separated from mulattos, which could be a separation of African born and island born slaves. Or the mulattos could potentially be free persons of color rather than slaves.

Finally, a record from Grenada from 1718 lists, 73 *hommes portans armes*, 93 *garcons portans armes*, 13 *hommes infirmes*, 67 boys under the age of twelve, 100 women and widows, 75 *filles a marier*, 54 girls under the age of twelve, 36 indentured servants or white domestics, 11 *mulatres libres*, 22 *mulatresses libres*, 17 *negres libres*, 21 *negrelles libres*, and 11 *enfants de ceux cy ensemble*.¹⁷⁴ The same record goes on to state that there were, 40 *sauvages libres vagabons*, 40 *sauvagesses libres*, 44 of their children, 1,166 *esclaves males travaillons*, 640 *esclaves femelles*, 790 of their children, and 183 *infirmes et suages* which equaled 2,779 persons of the last four

¹⁷³ ANOM G 1 498.

¹⁷⁴ ANOM G 1 498.

categories altogether. This record, from a few decades later, is much more detailed in its categories of free and enslaved, and by race. It separates boys who could fight from boys under the age of twelve which the others did not, so potentially the 93 boys were between the ages of 15 and 12. It also has a larger number of indentured servants although the term, white domestics is also given for this population. It is also interesting that this list termed free indigenous men as *vagabonds* but did not do so for women. This record as well specifies for both mulattos and blacks who was free and who was enslaved rather than leaving the categories ambiguous.

There were 9 sugar plantations in 1718, 0 refineries, and 151 indigo plantations.¹⁷⁵ For 1718, there were many more animals listed than the previously discussed two years, including horses, sheep, cows and oxen, and pigs. Of pigs for instance, there were 1,063 in Grenada in 1718. The number for all three categories of free indigenous peoples is very low. It is also intriguing that according to this list, there were more enslaved children than there were enslaved adult women, although several records already discussed have shown this occurrence as well.¹⁷⁶ Finally, for this particular record in regard to the categorization of the enslaved, this record differs from most of the other census records in that whereas most separate indigenous peoples from African enslaved or free persons, this record instead separates free adult African males from free adult African females, with their children in their group, from adult free indigenous males and adult free indigenous females, with their children in their own group. Then it goes on to list the enslaved in only three groups, adult men, adult women, and their children without having separated them from African and indigenous at all. Also, the categories for free persons include not only categories

¹⁷⁵ Ibid.

¹⁷⁶ As previously discussed, this may have been due to slave owners manumitting enslaved women, although it also could have been due to other factors as well.

for indigenous persons and Africans but also for mulatto males and females whereas the three categories for the enslaved populations do not designate them as such at all. Lastly, this record categorizes indentured servants in much the same way as the other census records in that it does not separate them by sex. This record does differ from most of the census records however in that it counted indentured servants together with another group, white domestics.¹⁷⁷

Then there is a list for all of the islands from 1685. This record states that in terms of the free population of whites in the islands there were 6,965 men, 3,453 boys, 3,354 women, and 3,235 girls. In 1685 there were, 1,073 indentured servants, 9,882 *negres*, 9,238 *negrelles*, 7,040 *negrillons et negrittes*. The record also includes numbers for mulattos, stating that there were 582 *mulastres* and 380 *mulastrettes* and 116 free indigenous peoples and 138 enslaved indigenous in the islands which gives a possible total of 27,260 enslaved persons with over a thousand indentured servants. The fact that slaves far outnumbered indentured servants in this year according to this record is interesting as it is the same year that the *Code* was published and it was also during the time when quotas were introduced for the importation of French indentured servants to balance the rising population of slaves.

It is possible that the mulattos listed were not enslaved, however since there was a category of indigenous peoples which specifically stated that they were free and the record did not list mulattos that way, it is more likely that they were enslaved. The total free white population of the islands at that time was then 17,007, with men more than double the population size of free white women, and white children composing either slightly more than or slightly less than the population of free white women. The population of enslaved women, taking into account the categories of

¹⁷⁷ ANOM G 1 498.

negrelles and *mulastrettes* but not the enslaved indigenous population as it was not broken down by age or gender and assuming that the category *mulastresses* were all adults, was roughly 9,618 which is slightly less than triple the number of white women present in the islands as indicated by this record. The population of enslaved children was much lower than the population of free white children, however this makes sense considering that the death rate in the islands was always higher than the birth rate among the enslaved, especially on plantations which were present by 1685, and that persons of color outnumbered whites by this time as well, especially the ratio between women of color and white women.

This same record goes on to list that there were 374 sugar plantations, 7 refineries, and 66 indigo plantations in the islands altogether in 1685. This number for the indigo plantations seems low compared to previously discussed records, however the number of plantations altogether lends itself to the prior discussion on the reproductive capacity of the enslaved on the islands. Also, the slave trade overall for the French islands lent itself much more to adult slaves, more male than female, than toward enslaved children. While enslaved children did make the Middle Passage and were bought in French Caribbean ports, they were much lower in number and in very low demand when compared to adult male slaves. Both of these factors contributed to their low number in this record. The presence of mulattos in this record likely indicates that there was racial mixing occurring between the free white male population of the islands and the enslaved population prior to 1685. This was most likely occurring in the older islands of the Antilles rather than Saint Domingue, although it is certainly possible that it was happening there as well since there were already established plantations on the island.¹⁷⁸

¹⁷⁸ ANOM G 1 498.

What these primary sources from the southern and western regions of Saint Domingue show is that, not only was the classification of enslaved persons as movable property inherently difficult due to their very humanity itself, but the treatment of slaves in practice was equally if not even more challenging. This was due to several factors. First, that within notary records certain inclusions about the enslaved unwittingly, or perhaps consciously, acknowledges slaves' humanity. Second, that within both notary and census data the categorization of slaves and of free people of color was flexible and not uniform. Third, that within census records social categories emerged in practice which diverged from strict legal distinctions between property status and free subjects. These categories were complex and resulted from intersecting factors such as gender, race, property status, social status, and age. These divisions themselves do not fit neatly into a binary between free and slave, white and black, and neither did slavery itself during this period.

CONCLUSION

While slaves were repeatedly classified as *meubles* in the law, certain laws and proscriptions aligned them more with *immeubles*. Indeed, slaves were tied to the land in at least one circumstance in the way that serfs, whom were considered *immeubles*, had been prior.¹⁷⁹ Slaves could be passed down through inheritance (and were) along with other forms of immovable property such as plantations. Yet, they could also be bought and sold to another master which was typically associated with movable property. Within France itself, slaves (and serfs earlier) could not legally be sold. They were essentially tied to one master, which would be an aspect of *immeubles* and specifically of *propres* status. Prior to the registration of the *Code Noir* in the last two decades of the seventeenth century, some colonists did treat slaves as *immeubles* and the passage of the *Code* with its codification of slaves as *meubles* posed problems which resulted in the reiteration of the classification of slaves as movable property over the colonial period. All of these aspects of French slavery, the tensions, justifications, and blurred lines, existed due to the difficulty of classifying humans as property, especially the difficulty of classifying humans as a specific type of private property.

The notion that the French Caribbean colonies developed in a legal vacuum is certainly contested within this thesis. The *Code Noir* of 1685, the subsequent reiterations of slaves as *meubles*, laws passed in the 1700s curtailing the freedoms of free persons of color which culminated in the last quarter of the century, as well as laws passed in that same century which returned a certain amount of power to the metropole and away from slave owners, all show the

¹⁷⁹ This is in reference to slaves being legally restricted from being seizable for the payment of debts. See my footnotes 116 & 117.

interconnected nature of the legal realm between France its Caribbean colonies. The inclusion of certain customs and precedents in the *Code Noir* from Martinique and Guadeloupe and the shifting of certain legal regulations with the publication of the Louisiana *Code Noir* in 1724 also highlight the interwoven fabric of legal understandings and codes across the Atlantic. The social challenges to the metropolitan laws on slavery that arose in Saint Domingue and the other Caribbean colonies over the seventeenth and the first half of the eighteenth century also emphasize the complex relationship between France and colonists which was partially played out in legal interactions. Finally, the very categorization of slaves as movable property in the *Code Noir* and subsequent *arrets* by the King derive from conceptions of property and property rights which preexisted the emergence of slavery and which were used to regulate the economic category of enslaved labor prior to the binary racial justification and foundation for plantation slavery which had solidified by the end of the 1800s.

There also existed a division between laws on and the treatment of slavery in practice even after the acceptance of the *Code* in the colonies. Analysis of notary records and census data shed light on the inherent difficulties in practice of classifying humans as property which are similar yet different from the difficulties of doing so within law. The binary between white and black and between slave and free were blurred lines that could be crossed over a person's lifetime in both France and Saint Domingue for most of the colonial period. While the historiography has sufficiently shown that racist conceptions and the lines between white and black were fluid prior to the end of the eighteenth century, it has been generally accepted that the *Code Noir* and the designation of Africans as slaves in the colonies, particularly as movable property, was a result of race. Yet, consideration of the treatment of slaves in practice as well as the concepts that existed in Early Modern France surrounding property owners' rights, and the presence of other unfree

forms of labor in the French Atlantic, all highlight the notion that the classification of slaves in law as *meubles* and as property itself was a result of more complicated issues and notions than just race alone can explain. Rather, race itself was not the primary factor in classifying people of color in the colonies as slaves, but instead property and labor were central to the classification of certain people as slaves, as property, and property for life, within which race played a secondary role.

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