THE WEST INDIAN SLAVE LAWS OF THE EIGHTEENTH CENTURY

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THE West Indian slave laws of the eighteenth century mirror the society that created them. They reflect the political traditions of the European colonizers and the political necessities of a way of life based upon plantation slavery.

The foundation of these laws was laid in the earliest days of colonization; and the body of slave laws existing in the eighteenth century included a substantial proportion of laws made at an earlier time. The thirteenth-century code of laws, known as the *Siete Partidas,* was from the beginning incorporated in the common law of the Spanish colonies and provided a series of principles for the government of slaves.[1] The great slave code of the French West Indies, which came to be called the *Code Noir,* was promulgated during the seventeenth century. The early slave laws of the British colonies, though they were not codified in this way, were generally retained as part of the slave law of the islands during the eighteenth century; and even when these laws were repealed in detail, a continuity of principle can be traced. The early laws were elaborated. Their emphasis changed with changes in the life of the islands. But the structure of the eighteenth-century slave laws rested upon older laws and was molded by forces, early at work in the islands, which had shaped not only the law but also the society of these slave colonies.

Both in the creation and in the maintenance of the slave laws, opinion was a factor of great significance. Law is not the original basis of slavery in the West India colonies, though slave laws were essential for the continued existence of slavery as an institution. Before the slave laws could be made, it was necessary for the opinion to be accepted that persons could be made slaves and held as slaves.

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[1] Samuel P. Scott, C. S. Lobingier and John Vance (eds.), *Las Siete Partidas* (New York, 1931) is an English translation of the code, based upon the 1843-44 edition of the text of the original printed editions by Gregorio López (Salamanca; 1st. ed., 1555; 2nd ed., 1565-98).

To keep the slave laws in being, it was necessary for this opinion to persist. Without this, the legal structure would have been impossible. Spain's role in establishing slavery as part of the pattern of European colonization in the West Indies is thus of primary importance. Of equal importance, is the influence exerted by developments within the West Indies in sustaining the legal structure, first introduced by the Spaniards, and, to a greater or lesser extent, transforming its content.

Slavery was an accepted part of Spanish law at the time of the discovery. It was legal to hold slaves, and it was accepted in law that slavery was transmitted by birth, through the mother to her children. This was the core of the system of enslavement transferred from Spain to the West Indies.[2] But in Spain, at this time, slavery was a relatively insignificant and declining institution, and by no means the dominant force that it was to become in the West Indies. The early and vigorous growth of plantations and slavery in the Spanish West Indies, though it was sharply checked, revealed the dynamic, expansive force of slavery in the new environment. With the growth of the French and English plantation colonies, slavery came to provide the economic and social framework of a whole society. Both the institution and the society were radically transformed.

In the Spanish colonies, the decline of the plantation system, after its first phase of rapid growth, created a situation still different from that of Spain, but different also from the classic pattern of plantation slavery to be found elsewhere in the West Indies. The Spanish slave laws were less completely adapted to the will of the slave-owning "planter" than was the case elsewhere, during the eighteenth century. In addition, the strong conservatism of the Spanish crown and government made possible the retention of some of the fundamental concepts borrowed originally from the slave laws of Spain.

These concepts are very clearly expressed in the *Siete Partidas,* in which may be found what is chronologically the earliest legal view of the slave and slavery in the history of the West Indian slave laws. In the *Siete Partidas,* the slave is considered as part of the "familia", and the distinction between slaves and serfs is not clear-cut. The term "servitude", which may cover the unfree condition of both, is defined, as is the concept of liberty, which is its opposite. According to the *Siete Partidas:* "Servitude is an agreement and regulation which people established in ancient times, by means of which men who

[2] See C. Verlinden, *L'Esclavage dans l'Europe médievale* (Vol. I, *Péninsule Ibérique-France)* (Brugge, 1955).

were originally free became slaves and were subjected to the authority of others contrary to natural reason". (Partida IV, Tít. XXI, Ley i.) Slavery is defined as "something which men naturally abhor and . . . not only does a slave live in servitude, but also any one who has not free power to leave the place where he resides". (Partida VII, Tít. XXXIV, Reg. ii.) Logically then, liberty is "the power which every man has by nature to do what he wishes, except where the force of law or *fuero* (privilege) prevent him". The preamble to the section on liberty states: "All creatures in the world naturally love and desire liberty, and much more do men, who have intelligence superior to that of others". (Part. IV, Tít. XXII.)

Deriving from these premises, the principle of the Spanish slave law was, on the whole, a principle friendly to the protection of the slave and to his claims of freedom. For the *Partidas* envisaged the slave as a "persona" and not as "mere property". The master was regarded as having duties towards his slaves, as well as rights over them: "A master has complete authority over his slave to dispose of him as he pleases. Nevertheless, he should not kill or wound him, although he may give cause for it, except by order of the judge of the district, nor should he strike him in a way contrary to natural reason, or put him to death by starvation." (Part. IV, Tít. XXI.) In the *Partidas,* slavery is undoubtedly accepted as legal. It is not accepted as good. Liberty is the good which the law strives to serve: "it is a rule of law that all judges should aid liberty, for the reason that it is a friend of nature, because not only men, but all animals love it." (Partida IV, Tít. XXXIV, Reg. i.)

The liberality of these principles relating to slaves cannot be denied, though it may be doubted whether they were ever fully enforced even in Spain. In the *Partidas,* it is clear that slavery is looked upon as a misfortune, from the consequences of which slaves should be protected as far as possible, because they are men, and because man is a noble animal not meant for servitude. The growth of enslavement in the West Indies undermined and even reversed this view; and many later apologists of slavery attempted to prove that enslavement is not an evil but a good. The myth of "inevitable progress" has prevented for long an appreciation of the fact that humaneness predates humanitarianism. The truth is that this "medieval" slave code was probably the most humane in its principles ever to be introduced in the West Indies. It appears to have been the one section of the West India slave law in which was made the unequivocal assertion that liberty is the natural and proper condition of man.

The case of the *Siete Partidas* illustrates that, within the general

agreement that slavery could legally exist, a considerable latitude of opinion about the institution itself was possible. The slave laws of the Spanish West Indies tended positively to favor the good treatment of slaves and their individual emancipation. From the beginning, under the provisions of the *Siete Partidas,* the slave was legally protected in life and limb. As the celebrated jurist Solórzano pointed out, the slave was, in law, entitled to the protection and intervention of the law on his behalf, and the master could actually lose his property in the slave as a result of proved maltreatment of him.[3] Failure to subsist the slave adequately was, from the standpoint of the law, a serious abuse. So was the infliction upon the slave of inordinate work.. In addition, slaves might be compulsorily manumitted for specific kinds of abuse—for example, in the case of women slaves, for violation or prostitution of the slave by her owner.[4] Under the Spanish slave laws codified in 1680, audiencias were instructed to hear cases of slaves who claimed to be free, and to see that justice was done to them.[5] When slaves of mixed blood were to be sold, it was provided that their Spanish fathers, if willing, should be allowed to buy them so that they might become free.[6] Orders were also given that peaceful settlements of free Negroes were not to be molested, and, throughout the eighteenth century, Puerto Rico followed the practice of giving asylum to fugitive slaves from non-Spanish islands, with very little variation from the principle that, once they had embraced the Roman Catholic religion, they were not to be returned.[7]

Custom, as well as law, appears to have favored the growth of the free colored group. By the custom of *coartación,* slaves by degrees bought themselves free from the ownership of their masters.[8] When the customary institution was incorporated in the slave laws, it had to be made clear that the master retained his property in the slave undiminished until the last payment was made. The law, which was more severe than custom had been, acknowledged a right in the master to claim all the *coartado's* time if he wished.[9]

Customary *coartación* was widespread in the Spanish islands in

[3] Juan de Solórzano, *Política indiana* (5 vols., Madrid and Buenos Aires, 1930), Vol. I, Lib. 2, c. 4, n. 34 and c. 7, n. 77.

[4] *Ibid.,* Vol. I, Lib. 2, c. 7, n. 13 and Vol. II, Lib. 3, c. 17, n. 23.

[5] *Recopilación de leyes de las Indias* (3 vols, Madrid, 1943), Vol. II, Lib. 7, tít. 5, ley 8.

[6] *Ibid.,* ley 6.

[7] *Ibid.,* ley 19. See also Luis M. Díaz Soler, *Historia de la esclavitud negra en Puerto Rico* (Madrid, 1953), p. 235; Fernando Ortiz, *Los negros esclavos, estudio sociológico y de derecho público* (Havana, 1916), p. 351; Arturo Morales Carrión, *Puerto Rico and the Non-Hispanic Caribbean* (Río Piedras, 1952).

[8] On *coartación* see H. H. S. Aimes, "Coartación," *Yale Review* (Feb., 1909), 412-31; Díaz Soler, *op. cit.,* especially chap. X; Ortiz, *op. cit.,* especially chap. XVII.

[9] Aimes, *loc. cit.,* pp. 424-25.

the eighteenth century, and it was probably of great importance in increasing the numbers of freed men in these territories at the time. One estimate of Cuban population in 1774, which Friedlaender apparently considers not too wide of the mark, gives a total of 171,620, of whom 96,440 were whites, 30,847 were free colored, and only 44,333 were slaves.[10] Figures for Puerto Rico, which was even slower than Cuba in turning to sugar and the great plantation, are equally interesting. As late as 1827, Puerto Rico was still a country with a predominantly free and even predominantly white population, though here the margin of difference between whites and non-whites was less than in Cuba of 1774.

The spirit of the Spanish slave laws, which was relatively liberal, undoubtedly influenced the form of these societies, in particular by aiding the growth of the free colored group. In turn, the less rigid and less slave-centered societies of these islands enabled the liberality of the Spanish law to survive and to exercise its influence upon them. When the change-over to sugar and the great plantation came in real earnest, the processes consequent on this change-over had to be worked out in a social environment different from that of other islands which had suffered transformation during the seventeenth and early eighteenth centuries. Despite the brutalities of the nineteenth century, slavery in the Spanish islands was, on the whole, milder than was the case elsewhere in the West Indies.

Nevertheless, this is a contrast which can be overemphasized. As Ortiz points out in his illuminating study *Los negros esclavos,* the attitude of the Cuban upper class throughout its history has not been so far different from that of the slave owners of other islands as the difference in their slave laws might suggest. The relative despotism of the Spanish government acted as a check on the local oligarchies, which did not necessarily share the view of slavery expressed in the *Siete Partidas.* In fact Ortiz suggests that, if the task of making slave laws had been placed as firmly in the hands of these men as it was in the hands of a slave-owning ruling class in the British islands, there might not be so much to choose between Spanish and English slave laws.[11] Certainly, when this class became strong enough in Cuba to resist official policy successfully, one of its earliest successes was the defeat of the humane Slave Code of 1789, in which the Spanish government had attempted to provide for the amelioration of conditions amongst a growing slave population. Certainly also, it is generally agreed that the increase in the numbers of slaves in Cuba, which

[10] H. E. Friedlaender, *Historia económica de Cuba* (Havana, 1944), p. 84.
[11] Ortiz, *op. cit.,* pp. 335-44.

accompanied the expansion of the sugar industry there, brought a marked and general deterioration in their treatment. As Cuba became a sugar colony, its slave conditions more approximately resembled those of the other sugar colonies.[12]

What is more, even in the period of relatively mild treatment of slaves in the Spanish colonies, enacted law and practice were not one and the same thing.[13] The custom of *coartación,* which existed before it was recognized in law, serves to illustrate a case where custom was in advance of the law from the point of view of the slaves. In other cases, the law was decidedly more humane than was custom. The existence of the slaves laws of the *Siete Partidas,* and of later enactments, did not prevent the existence of numbers of slaves who were underfed, overworked and badly treated.

Lastly, though this is by no means of least importance, the humane regulations do not tell the whole story of the enacted slave law in the Spanish colonies. In addition to the structure of protective regulations already described, there existed other and different laws governing slaves and free colored, and these show the direct influence of the necessities of the slave system which depended in part upon force for its maintenence. In his discussion of the Cuban slave laws, Ortiz has pointed out how much the Spanish and local governments were concerned with the problem of slavery as a problem of public order. He shows that in the evolution of the slave laws, as in the restrictions on the slave trade in the Spanish colonies, political considerations were often of great weight. The slave laws very clearly reflect this concern.[14]

In the Code of 1680,[15] for example, the police regulations governing slaves already outnumber all others, and there were also several restrictions on the free colored. (Vol. II, Lib. 7, Tít. 5.) All of these were based upon the determination to preserve public order. It was provided, for instance, that Negroes were subject to a curfew in cities; and the magistrates were enjoined to try them for any disturbances which they might commit. (Leyes 12, 13.) No Negro, whether slave or free, and no person of Negro descent, except in special cases, was to be permitted to carry arms. (Leyes 14-18.) There were several regulations for the police of runaways slaves. (Leyes 20-25.) One provided for their protection by forbidding that they should be mutilated in punishment. (Ley 24.) But it is fair to say that this was exceptional.

[12] *Ibid.,* passim. See also H. H. S. Aimes, *A History of Slavery in Cuba, 1511-1865* (New York, 1907).

[13] For an illustration see Javier Malagón, *Un documento del siglo XVIII para la historia de la esclavitud en las Antillas* (Havana, 1956).

[14] Ortiz, *op. cit.,* pp. 342 ff.

[15] *Recopilación, op. cit.*

Most of the provisions were made with an eye to the control and suppression of the runaways as a threat to public order. Finally, there were regulations for preventing, defeating and punishing the risings of slaves, and for the summary arrest of any Negro found wandering or engaged in similar suspicious activities. (Ley 26.)

As for the free colored, they were supposed to live under the supervision of a patron, even though free; and, by a special law, they were forbidden to wear gold, silk, cloaks or other kinds of clothing considered unsuitable to their station in society. (Leyes 3, 28.) From the first too, the Spanish government tried to prevent race mixture in its colonies between Spaniards, Indians and Negroes, whether slave or free. (Ley 5.) In this, it was, of course, generally unsuccessful.

Among the provisions made to secure public order in Cuba during the seventeenth century, Ortiz lists laws prohibiting the sale of wine to slaves, regulations governing the work of hired slaves, the perennial restrictions against the bearing of arms by slaves, and provisions for the pursuit of runaways and their punishment. These, rather than purely protective measures, continued most to occupy the active attention of the authorities until the ameliorative codification of 1789.

This code included provisions regulating the work and recreation of slaves, their housing and medical care, their maintenance in old age, their marriages and similar subjects, their punishments, and their formal protection in law. Besides providing for the protection of slaves, the code of 1789 made provision for the detection and punishment of abuses by the colonists in the management of slaves. Unlike the police regulations, this code ran into strong opposition from the colonists, especially in Cuba, where the resistance was so determined that the government was forced virtually to withdraw the new code in 1791.[16]

There was in Puerto Rico a comparative neglect of those regulations which affected the activities of the master, while the laws penalizing the criminal actions of slaves were far more effectively enforced.[17] The intention behind protective regulations could thus be defeated, and the law was given an emphasis in practice which does not emerge to the same extent in its enactment. Even in these relatively liberal slave islands, therefore, it can be seen that slavery presented a minimum requirement of rigor, which pressed upon the slave because of his status, and because of the necessity to maintain it.

In the British islands, during the eighteenth century, the marks left by the slave system upon the law are less ambiguous. This is not

[16] Ortiz, *op. cit.*, Ch. XX.
[17] Díaz Soler, *op. cit.*, pp. 192-93.

only because the plantation system had here taken a very firm hold, but also because of the nature of the British political tradition. England, which was earlier freed of slavery and even of serfdom than was Spain, had no *Siete Partidas* to transfer to her West India colonies when they were acquired, even though these colonies quickly adopted the slave system brought to the West Indies by the Spaniards. The English government never, until the nineteenth century, showed so careful and sustained an interest in the subject of slave regulations as did the government of Spain from earliest times. Most important of all, perhaps, traditions of representative government determined that the slave laws of the British colonies were made directly by a slave-owning ruling class. These laws were, therefore, an immediate reflection of what the slave owner conceived to be the necessities of the slave system.

It has often been said that the greater freedom incorporated in the British constitutional system helped to breed respect for the property of the subject, as well as for his liberty. This may be part of the explanation of the legal convention which, in the British slave colonies, left the power of the master over his property, the slave, virtually unlimited, even in some cases as to life and limb. For this convention to apply, however, it had to be made clear that the slave was property and subject to police regulations. In fact, the experience of the British colonies makes it particularly clear that police regulations lay at the very heart of the slave system and that, without them, the system became impossible to maintain.

This was the moral of Somersett's case decided by the Chief Justice, Lord Mansfield, in 1771-72, and also of the case of the slave Grace decided by Lord Stowell in 1827.[18] Given police regulations, the English law in the West Indies worked against the slave, because he was there mere property or something very near it. In the absence of such regulations, the slave had to be regarded as an ordinary man; and, in this context, the respect for liberty of the subject, which was also a part of the English legal tradition, worked in his favor. Somersett's case illustrates the operation of the principle of liberty of the subject. There was no law against slavery in England. But the absence of a law providing sanctions for slavery enabled Somersett to win his freedom by refusing any longer to be held as a slave. The case of the slave Grace shows the potency of police provisions in maintaining the slave system. For on returning voluntarily to Antigua, she lost the temporary freedom gained by a visit to England.

[18] H. T. Catterall, *Judicial Cases concerning American Slavery and the Negro* (5 Vols., Washington, 1926-36), Vol. I, pp. 1-8, 14-18, 34-37.

English respect for the liberty of the subject was thus restricted by the erection of a slave system, and had to be so restricted to keep the slave system in being. Under the English slave system in the West Indies, the slaves was not regarded as a subject, but as a property; and when the English humanitarians attempted to take the view that he was a subject, they were advocating an innovation which only slowly gained acceptance in the controversies over amelioration and emancipation.

The basic conception of the English law in relation to the slave was not, as with the Spaniards, that he was an inferior kind of subject. It was rather that he was a special kind of property. First of all, he was merchandise when bought and sold in the course of the slave trade. Once acquired by a planter, the slave became private property —regarded in part as a chattel, in part as real property. As a chattel, for instance, he could be sold up for debts if other moveable assets were exhausted. But in other cases, he was subject to the laws of inheritance of real estate. He could be entailed, was subject to the widow's right of dower, and could be mortgaged.[19]

These aspects of the law appeared both in the law of the West Indies and in the law of England. Under both, trading in slaves was a recognized and legal activity. Under both, there were provisions for regulating the mortgage of slaves and obliging their sale as chattels in cases of debt.[20] The point is worth stressing. The idea of slaves as property was as firmly accepted in the law of England as it was in that of the colonies; and it was not for lack of this provision that Somersett had to be freed. It was the lack of the superstructure raised on this basis —in the form of police law governing slaves— which made it impossible for Somersett to be held in slavery by force in England. Before and after the Somersett case, slaves were taken to and from England, as the case of the slave Grace shows; and, so long as they did not refuse to serve, as Somersett did, it may be said that they remained property and did not become subjects in fact, though in theory this change was supposed to take place on their arrival in England.

In the West Indies, they were slaves because the superstructure, lacking in England, was there available. By the eighteenth century,

[19] A good summary of the basic provisions of the British West Indian slave law during the eighteenth century is given in Reeves' "General View of the Principles on which this System of Laws Appears to have been Originally Founded" in House of Commons Accounts and Papers, Vol. XXVI (1789), No. 646a, Part III. See the section dealing with "Slaves Considered as Property."

[20] Statute 5 Geo. II, c. 7, and Statute 13 Geo. III, c. 14. For a West Indian example see *Laws of Jamaica* (2 vols., St. Jago de la Vega, 1792), Vol. II, 23 Geo. III, c. 14.

it was elaborate and, generally speaking, comprehensive. On the basic idea of the slave as property, a whole system of laws was built up. Some concerned the disposal of the slave as property, others governed the actions of slaves as an aspect of public order. Some gave slaves a species of legal protection. But, up to the time when organized humanitarian agitation began in the 1780's, the protective enactments were relatively few and sometimes rather ambiguous. Police regulations occupied the most ample proportion of the attention of the British West India legislators.

Some of the regulations made are clearly related to the conception that the slave was property, but even these border on the idea of police. Thus, owners whose slaves suffered the judicial penalty of death were usually compensated for the loss. Obviously, this was because their property in the slave was recognized. But the intention was also to reduce the temptation of owners to conceal criminal slaves from justice. Again, persons who employed or hired the slaves of others without proper consent were guilty of a form of trespass, which was subject to both civil and criminal proceedings. Taking the slaves of another by violence was robbery. To carry off a slave from the provisions safeguarded the slave as private property. They also penalized those aiding runaways, either by enabling them to support themselves away from the master or by aiding their flight directly. They are part of a whole series of laws which penalized all persons, whether slave or free, who sheltered or otherwise assisted the runaway slave.[21]

Every island passed laws for the pursuit, capture, suppression and punishment of runaway slaves; and these laws were usually severe. Similar police regulations were made in islands other than those of the British. Slaves were not to wander abroad without written passes, they were not to have firearms or to assemble together in numbers. Usually they were forbidden to beat drums and blow horns, since these were means of communication which might be used to help runaways.[22] All such activities were dangerous, too, as means of concerting uprisings—another reason for the existence of these laws. Not all of them were enforced at all times with equal rigor. Slave dances, feasts and drumming were often allowed; and even the pass laws were not always strictly observed. The laws remained in force, however, and they were used when necessary to prevent or to control emergencies.

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[21] See for example *Laws of the Island of Antigua* (4 vols., London, 1805), Vol. I, no. 130 (1702), no. 176 (1723).

[22] Reeves, "General View," *loc. cit.*

The function served by the laws may be illustrated by a comparison. In Barbados, under an early law of the seventeenth century, it was provided that if a Negro slave died under punishment by his master and no malice was proved, the master killing his own slave was to pay a fine of £15. If the slave belonged to another master, the fine to be paid was £25, and an additional payment of double the slave's value was to be made to compensate his owner.[23] This law was made notorious by abolitionist criticism. It is one of the worst of its type, but its singularity lay rather in the lowness of its fines than in its principle. It was a brutal law, but its brutality flowed in well defined, socially accepted channels. This is why a struggle was necessary to achieve a change of principle. Few islands in the British West Indies, until the later eighteenth century, showed any willingness to recognize that the willful killing of a slave was an act of homicide or murder. It was usually regarded in theory, though not always in practice, as a criminal offense. But generally it was a criminal offense of a lesser order, to which it was not felt necessary to attach so heavy a penalty as that of death.

By contrast, heavy penalties were attached to the commission of a crime, the gravity of which depended entirely on its social context. For striking or insulting a white, slaves were subject to the penalties of whipping, mutilation or death; and usually the law provided that if the white was in any way hurt or if the blow drew blood, then the more severe punishments should be inflicted.[24] Even free persons of color were often made liable to similar punishments for similar offenses against whites—and this meant all whites, from the great planter to the poor white, and white indenture servant.[25] The contrast in treatment of the crime of killing a slave and the crime of striking or abusing a white is due in each case to the social significance attached to the crime.

Yet the slave was a special kind of property, as these laws attest. For to kill even one's own slave maliciously was penalized, though not usually as much as the killing either of the slave of another or of a free man. The law with regard to the striking or wounding of whites also had to envisage the slave as something more than a "thing." The dilemma was that he was not "mere property," as the

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[23] *Ibid.*, section on "Punishment by Masters." See Act no. 82 (1688) in *Acts Passed in the Island of Barbados (1643-1762)* (London, 1764); a ms. copy is in C. O. 30/5, P. R. O. London.

[24] For examples, see the Virgin Islands slave act (1783) in C. O. 152/67, the St. Kitts Act no. 2 (1711) "for the better government of Negroes and other slaves" in C. O. 240/4, and the St. Vincent Act (July 11, 1767) in C. O. 262/1, P. R. O. London.

[25] See the Antigua Act no. 130 (1702) and the Virgin Islands Slave Act (1783).

law wished to suppose him, but a creature possessing volition, and the capacity for resistance which must be checked, indeed crushed, if the society were to survive. Obviously, the slaves were also regarded as a special kind of property in the laws governing them as runaways, and punishing them as conspirators or rebels. If the slave had been truly a thing in fact, as well as in the fiction of the law, such legislation would not have been necessary. Because he was a person, he posed a problem of public order, which the police regulation tended to cover. The law was forced to allow the slave some kind of "persona" for the purpose of dealing with him under this aspect of his activity as a special kind of property.

In the earlier British slave laws, and even up to the beginning of the humanitarian controversy, the dominant tendency was to recognize the slave as a "persona" in a sphere far more limited than that allowed him in either Spanish or French slave law. Early English slave law almost totally neglects the slave as subject for religious instruction, as a member of a family, or as member of society possessing some rights, however inferior. In so far as the slave is allowed personality before the law, he is regarded chiefly, almost solely, as a potential criminal.

This is true of the police regulations governing the movements of slaves. It is true of the regulations to restrain and punish thefts by slaves, which were numerous. It is true even of the regulations governing the economic activities of slaves, in which may be traced a constant preoccupation with the problems of running away and theft, as well as a desire to limit the economic competition of slaves with whites.

The humanitarians, in their criticism of the West India slave laws, attacked this limited legal concept of the slave, and, in the course of their long struggle with the West Indians, substantial changes were made in the laws by the island legislatures. In particular, attempts were made, during the controversies over amelioration, to define the duties of masters towards their slaves, and the degree of protection to which slaves were entitled in law. During this phase, the status of the slave as a "persona," in the eyes of the law, was significantly broadened. But this development came relatively late, and was, to a considerable extent, due to the pressure built up by the humanitarian critics of the West Indies.

Before the beginning of the humanitarian assault, the British West India slave laws included relatively few protective clauses, and even these often seem to rest on an ambiguous view of the slave. Indeed, it is misleading to regard many of these regulations as provid-

ing anything comparable to the "positive protection" sought for in later laws. There was, for instance, a Montserrat regulation of 1693, which provided that one acre of provisions should be cultivated for every eight slaves belonging to a plantation. But this is only one clause of an extremely severe act intended to punish thefts by slaves, and especially thefts of provisions. The act was concerned with a problem of public order, rather than with any idea of the rights of slaves to sufficient food in return for their services.[26]

Provisions for holidays to be given to slaves at particular times reflect similar police problems. In these laws, fines were often imposed on those who gave more, as well as those who gave less, than the prescribed holidays, and this practice only gradually came to be modified later in the eighteenth century.[27]

Laws to prevent old and disabled slaves from being abandoned by their masters have a similar ambiguity. For wandering and destitute slaves always constituted a serious problem of public order; and local authorities usually refused to have them become a burden on poor relief. The most obvious expedient was, therefore, to insist upon the master's obligation to keep even useless slaves, rather than have this burden thrown on the public.[28] Here, for once, the idea that the slave was private property operated against, rather than in favor of, the master's will. The result of this insistence upon the private responsibility of the master was not always favorable to the slave however. For it led to severe laws providing life-sentences of hard labor for destitute slaves whose masters could not be found, and to an unwillingness on the part of the legislators to permit even the manumission of able-bodied slaves unless the public was indemnified beforehand against the possibility that the new freedman might become destitute. During the second half of the eighteenth century, in particular, several laws were passed, imposing a tax for this purpose upon manumissions.[29] Even where the object was not directly to check the growth in numbers of the free population, the effect was certainly to make the achievement of manumission more difficult, because more costly.

In the British West India slave laws in force during the eighteenth century, there were, of course, some unambiguous protective clauses. But some of these carry little weight in comparison with the other kinds of regulation. For example, Barbados in 1668 had pro-

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[26] Montserrat Act no. 36 (1693).

[27] Compare Antigua Act no. 176 (1723) and Antigua Act no. 390 (1778) in *Laws... of Antigua, op. cit.*, Vol. I.

[28] Virgin Islands Slave Act (1783).

[29] See Reeves, "General View," *loc. cit.*, section "Of Manumissions."

vided that slaves should be given clothing once a year, specifying drawers and caps for men, and petticoats and caps for women. The penalty for failure to comply with this law was 5/per slave.[30] In the newer colonies of the eighteenth century, for instance, St. Vincent and Dominica, heavier fines were imposed, but the amount of clothing provided as a compulsory allowance was still either small or inadequately defined in the law.[31] Even under the consolidated slave law passed at Jamaica in 1781, where the penalty of £50 was inflicted for neglect, the allowances to be made to slaves were stated without proper definition.[32] It can hardly be doubted that such weaknesses must have lessened the effectiveness of these protective laws.

Other more considerable regulations for the protection of slaves were also instituted. But their comparatively small number indicates that they were exceptional. It has already been noticed that the wilful killing of slaves was not generally considered to be murder, but was nevertheless judged to be a criminal offense of some gravity. Jamaica, from relatively early days, went a step further than the other islands by providing under an act of 1696 that anyone found guilty of a second offense of willingly, wantonly or "bloodymindedly" killing a Negro or slave, should be convicted of murder. The first offense was declared a felony, and, as this was found to be an insufficient deterrent, an additional punishment of imprisonment was provided in 1751.[33]

There were also laws penalizing the dismemberment or mutilation of slaves, by fine or imprisonment or both. The range of fines ran from a minimum fine of £20, provided at Antigua in 1723, to the much heavier fine of £500, provided by the St. Kitts legislature sixty years later.[34] But such provisions were by no means ubiquitous, and in many of the islands it remained true that, as one report of 1788 states: "Very little Measure appears to have been assigned by any general laws, to the Authority of the Master in punishing Slaves."[35] In particular, the regulation of lesser punishments by law was very generally neglected, and the partial nature of such legislation is illustrated by the fact that a St. Vincent law which provided against mutilation of slaves also contained a clause inflicting a £10 fine on

[30] Barbados Act no. 82 (1688).

[31] St. Vincent Act (July 11, 1767), in C. O. 262/1, P. R. O. London.

[32] 22 Geo. III, c. 17, in *Laws* (Spanish Town, Jamaica), Lib. 8, I. R. O.

[33] Jamaica Acts 8 Wm. III, c. 2, and 24 Geo. II, c. 17, in *Laws* (Spanish Town Jamaica), Lib. 4, I. R. O.

[34] Antigua Act. no. 176 (1723); St. Kitts Act (1783) in C. O. 152/66, P. R. O. London.

[35] Reeves. "General View," *loc. cit.*

persons taking off iron collars and similar instruments of punishment from slaves, without the consent of the master.

When the controversy over abolition of the slave trade drew attention to the inadequacy of statutory protection offered slaves in the matter of punishment and maltreatment, defenders of the West India interest had recourse to the argument that common law protection was available, where statutory protection was lacking.[36] In so far as this was clearly true, however, it affected the slave as a piece of property rather than as a person. The master had the right to bring suit for damages against anyone harming his slave, even where there was no statutory provision for this. Indeed, acts which added a criminal penalty for such offenses generally made specific reference to this civil right. The more dubious part of the case concerns not this right, but the right of slaves to personal protection, without the intervention of the owner, or against the owner or his representatives.[37] A thorough search of judicial records throughout the British islands at this time would be necessary to determine whether, before the matter became a contentious one, cases against owners and their representatives were normally, or even occasionally, brought to the common law courts in any of the islands.

The evidence already available does not suggest that the personal protection of slaves under the common law was very effective. As late as 1823, when Fortunatus Dwarris, as a member of the legal commission to the West Indies, investigated this matter, he was forced to report a "want of remedy" for slaves at common law in Barbados, and a conflict of opinion on the subject there and throughout the British islands.[38] Dwarris wished to have the situation clarified and recommended that

> it might be advantageous, that in the Windward as well as in the Leeward Islands, the common law of England should be declared to be the 'certain rule for all descriptions of persons being subjects of His Majesty, and to obviate all doubts real or pretended upon this head, it might be recited and set forth explicitly in such declaratory law, that all African, or Creole slaves admitted within the King's allegiance, are, and

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[36] For instance, evidence given by James Tobin before a Select Committee of the House of Commons (1790), printed in House of Common Accounts and Papers, Vol. XXIX (1790), no. 695/5, esp. pp. 272-73.

[37] This view of the case is put by Drewry Ottley, Chief Justice of St. Vincent, in his evidence, reported in House of Commons Accounts and Papers, Vol. XXIV (1790-91), no. 476, pp. 158 ff.

[38] F. Dwarris, "Substance of the Three Reports of the Commissioners of Enquiry into the Administration of Civil and Criminal Justice in the West Indies," extracted from the *Parliamentary Papers* (London, 1827), pp. 113 ff., 431 ff.

> shall at all times be taken and held to be, entitled to the protection, and subject to the penalties, of the common law; and to this, the slave code carefully compiled would properly be supplemental.'[39]

Yet he doubted that even when this had been done, the common law would protect the slave from other than scandalous abuse.[40]

Dwarris' report, and his doubts, reflect an uncertainty as to the degree of protection offered under the common law. At St. Kitts, in 1786, a jury trying a case of maltreatment involving a slave also questioned whether "immoderate correction of a slave by the Master be a Crime indictable."[41] On this occasion, the judge decided that it was. But, what the attorney-general of Dominica said in 1823 of the whole question of common law protection is true here too: "the rule upon this subject is so vague, and so little understood in the colonies, that decisions founded upon it will be often contradictory."[42]

Even graver doubts about the application of the common law to slaves were current in the West Indies, and these may have sprung from an unwillingness to recognize the slave as having personal status in law. In 1823, Dwarris reported many assertions made by the judge and crown law officer of St. Kitts to the effect that "the justices have no jurisdiction over slaves except what is expressly given them by Colonial Acts." It was not their duty, or even their right, to hear and deal with the complaints of slaves.[43]

The existence of this belief in the West Indies underlines the contrast, already noted in the discussion of Somersett's case and of the case of the slave Grace, between the situation of the slave in England and in the West Indies. Somersett's freedom was due to the common law, the slavery of Grace was secured by enacted law. In the West Indies, the slave was a "thing" rather than a person, a "property" rather than a subject. The same conception, which led to inadequate protection of slaves under enacted law, explains the uncertainty regarding their protection under the common law. The legal nullity of the slave's personality, except when he was to be controlled or punished, was the greatest obstacle to his adequate personal protection.

The law of evidence with regard to slaves reveals both the nullity and the anomaly of the conception of the slave as property. Any free man could give evidence against or for a slave. But during the

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[39] *Ibid.*, p. 433.
[40] *Ibid.*, pp. 114-16.
[41] House of Commons Accounts and Papers, Vol. XXVI (1789), no. 646a, pt. 3 (St. Kitts), appendix A.
[42] Dwarris, *loc. cit.*, p. 432.
[43] *Ibid.*, pp. 431 ff., 113 ff.

eighteenth century, the evidence of slaves was not admitted for or against free persons in the British islands. Nevertheless, at the discretion of the courts, the evidence of slaves was admitted for or against other slaves. Thus the legal disability of the slave reinforced his inferior position. Still exposed to detection for his own crimes, he was deprived of protection against the crimes of all but his fellow slaves. He had no legal redress against those very abuses of power to which his inferior position already exposed him.

The existence of special forms of trial for slaves in the British islands, as well as the limited validity of their evidence, served to mark them off from the rest of the body politic. In many cases, they were placed under the summary jurisdiction of judges, acting without a jury, for the trial even of capital crimes.[44] When a solemn form of trial was provided, as for instance in Montserrat, where capital cases were tried by the Governor in Council, the form of trial still differed from that given to free men.[45] The Barbados legislature put the matter succinctly in 1688, when it provided a solemn court for capital cases but omitted the usual jury of twelve men, on the ground that the accused "being Brutish Slaves, deserve not, from the Baseness of their condition, to be tried by the legal trial of twelve men of their Peers, or Neighbourhood, which truly neither can be rightly done, as the Subjects of England are."[46]

Every aspect of the slave law of the British islands reveals the fundamental political concern with the subordination and control of slaves. This emphasis was characteristic right up to the beginning of the abolitionist struggle and beyond. In 1784, when their first cautious ameliorated slave code, the Act of 1781, expired, the members of the Jamaican legislature were apparently too busy to bring in a new improved slave law. But this did not prevent them from passing an act providing for parties to hunt runaway slaves, nor from reviving the very severe laws under which thefts and destruction of horses and cattle by slaves were visited with the punishment of death.[47] It seems fair to conclude not only that these were less controversial than improvements in the slave laws, but also that they were regarded as being more urgently necessary than, for instance, the new provisions against mutilation and dismemberment of slaves which lapsed when the Act of 1781 did.

It was not that the West Indians were always disinclined to serve the cause of humanity, but simply that they considered the cause of

[44] Antigua Act no. 130 (1702).
[45] Reeves, "General View," *loc. cit.*
[46] Barbados Act no. 82 (1688).
[47] 25 Geo. III, c. 23 and 22, in *Laws of Jamaica, op. cit.*, Vol. II.

self-preservation infinitely more important. The primary function of the British West India slave laws was either directly or indirectly repressive. For, as Bryan Edwards, who was himself a planter and a slave-owner, put it: "In countries where slavery is established, the leading principle on which the government is supported is fear: or a sense of that absolute coercive necessity which, leaving no choice of action, supercedes all questions of right. It is vain to deny that such actually is, and necessarily must be, the case in all countries where slavery is allowed."[48]

The French West Indies, unlike the British islands, had, after 1685, a slave code drawn up by the metropolitan government as the basis of their slave laws.[49] However, the contrast between these groups of islands, with regard to their slave laws, was not as great as that between the Spanish and British islands. The *Siete Partidas* was a code of Spanish laws, containing provisions relating to slaves. The *Partidas* came into existence long before the creation of a West Indian empire. They were not framed to deal with the circumstances of the West Indies, though they were incorporated into the law of the Spanish colonies there. But the *Code Noir,* though drawn up in France, was never intended to be a code of French laws. Like the laws of the British islands, the *Code Noir* of the French West Indies was made with West Indian conditions firmly in mind, and for the purpose of dealing with problems already posed by the existence and acceptance of slavery in the West Indian colonies. The *Code Noir* bears some resemblance to the *Siete Partidas* because both were influenced, to some extent, by the concepts of Roman and canon law. Nevertheless, it more fundamentally resembles the slave laws of the British West indies by reason of its intention and function

The fact that the *Code Noir* was a metropolitan code is, nevertheless, important. Even in the early 1680's, the French monarchical government was less limited than that of England, a difference reflected in the government of the French and English colonies. In the English colonies, the crown's legislative power was incorporated in the structure of a representative legislature, including council and assembly. In the French colonies, the crown retained more autonomous powers of legislation. The laws of the French colonies were made by the royal government in France, by the royal officials in the West Indies, and by the local councils. The *Code Noir* is described as a

[48] Bryan Edwards, *History of the British Colonies in the West Indies* (3 vols., London, 1801), Vol. III, p. 36.

[49] See the definitive text of the Code Noir of 1685 in L. Peytraud, *L'Esclavage aux Antilles Françaises avant 1789* (Paris, 1897), pp. 158-66.

metropolitan code, because it was made by the exercise of the legislative power of the royal government in France.

However, the Code, although made in France, was based upon earlier local laws and was prepared in consultation with the local authorities in the West Indies. Even after promulgation, it was revised to meet strong local criticisms on some points. Long before the *Code Noir* was prepared, local authorities had concerned themselves with the problems of religious conformity, with the regulation of the status and conduct of slaves, with the necessity for public security, and with the protection to be given to slaves as property and as persons. These were the matters which also occupied the framers of the *Code Noir;* and a few examples will show the similarities between the earlier laws and the later Code.

As early as 1638, it was provided that Protestants should not be allowed to own slaves in the islands; and, by later laws, made by representatives of the crown in the West Indies, provisions were added for the punishment of blasphemers, and the regulation of Jews and non-Catholics, and also to encourage the Christianization of slaves.[50] Undoubtedly, the crown may be regarded as having special interests in religious conformity; and it is hardly surprising that the *Code Noir,* which was promulgated in the same year that saw the Revocation of the Edict of Nantes, should have given great prominence and emphasis to the provisions enforcing religious conformity. But the regulations of the crown in this matter already had precedents in the accepted local law, and did not arouse much local opposition. On the one subject—the abolition of Negro markets on Sundays and holidays—where local opinion showed itself immediately hostile to the provisions of the crown for enforcing religious observance, the crown quickly gave way.[51] In the matter of religious conformity, the predilections of the crown enjoyed the general support of a large body of local opinion.

As for regulations concerned more directly with the slaves, a good many may be cited which occur in the earlier laws and recur in some form in the *Code Noir.* They illustrate that, before the *Code Noir* was instituted, the French colonies already possessed a fairly comprehensive series of slave laws, and that the *Code Noir* really may be regarded as an extended codification of these laws.

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[50] France, Archives Nationales. Colonies F3 247, p. 63 (Martinique), règlement of Sept. 1, 1638; F3 221, pp. 477-80 (Guadeloupe), ordonnance of Sept. 14, 1672. Louis Elie Moreau de St.-Méry, *Loix et constitutions des colonies françaises de l'Amérique sous le vent* (6 vols., Paris, 1784-90), Vol. I, pp. 117-22 (règlement of June 19, 1664).

[51] *Ibid.,* Vol. I, pp. 447-48 (arrêt of Oct. 13, 1686).

Some of these laws were made by officials and some by the Council; and perhaps it is significant that the Council appears to have concerned itself mainly with police laws. It is notable, however, that the Council, as a court, heard cases arising from the cruelty of masters to their slaves, and already, before 1685, had made judgments punishing cruelty.[52] The point is probably significant of a contrast in attitudes in the British and French islands arising from a contrast in their political traditions.

In British law, the tendency was to limit the sphere of interference of the crown, and to foster, in particular, a respect for the rights of private property. In France and in its colonies, because the power of the crown was less limited, its sphere of interference, even with private property, was commonly accepted to be much wider. The slave, by being private property, did not cease to be in his person a matter of public concern; and public interference in the management of slaves was more taken for granted at this stage of development in the French West Indies than it was in the British islands at the same time. With the continued growth of slavery in the French West Indies, and with the related development of a feeling of white solidarity in those colonies, two very important changes of sentiment with regard to slaves made themselves felt. Public concern for their welfare declined rapidly, and public acceptance of interference between the master and his property became less and less certain.

An analysis of the content of the *Code Noir* reveals the same concern for public order which marks the slave laws of the British West Indies. But the *Code Noir* was, nevertheless, based on a wider conception of the slave as a "persona" and on a different conception of the elements of public order. The contents of the code may be placed under a number of heads. Provisions regarding religious conformity are laid down in the earlier clauses; provisions governing the status of slaves and their political control follow. The protection of slaves is then provided for, after which their civil disabilities are carefully listed. These disabilities arose, of course, from the legal view that the slave was property, though as in the British law, he had to be admitted to be a peculiar kind of property. The element of political control over slaves, which was inseparable from their regulation as property, appears clearly in the section of the code which deals with the slave as property, as it does in the slave laws elsewhere. In this section, however, the police regulations are accompanied by protective regulations; and, in fact, these two categories make up a

[52] *Ibid.*, Vol. I, p. 203 (arrêt of Oct. 20, 1670). Arch. Nat. Cols. F3 247, pp. 825-26 (Martinique), arrêt of May 10, 1671.

large part of the code. Lastly, there are clauses providing for the manumission of slaves and for the regulation of the status of freemen. Underlying these provisions is the asumption that all groups in the community are subject to the will and direction of the state.

A short summary of the more important clauses of the code shows this assumption in operation. Under the provisions of the code, Jews were to be expelled from the colonies, and Protestants were subjected to religious and civil disabilities—such as incapacity for legal marriage by their own rites. The object was to secure public conformity of all, and not even the slaves were excluded. They were to be baptized and instructed as Catholics; and their overseers could be of no other religious persuasion. They were to observe Sundays and the holidays of the church, to be married, and if baptized, buried in holy ground. The concubinage of free men with slaves was penalized, except in those cases where the irregular union was converted into marriage. (Cls. 1-11.) Under this section, conformity to the state religion is the duty enforced on all.

The regulations concerning slavery provided that children should take the status of the mother in all cases. (Cls. 12, 13.) The slave mother being property, the slave child was property. This property was to be kept in a state of subordination by the usual means. Slaves were forbidden to carry arms or other weapons, to assemble together, to engage in certain kinds of trade, to strike the master or mistress or to use violence against free persons. Penalties were provided for those slaves who were guilty of thefts, and for those slaves who were guilty of running away. Finally, it was expressly provided that slaves could be criminally prosecuted, without involving the master if he was not responsible for the crime. (Cls. 15-21, 33-38.) As in the British law, therefore, the slave was subject to coercion; and was treated as being personally responsible to the state before the law.

He was also viewed as, to some extent, a person in a state of dependence. As such, the master who owned him was obliged to give him fixed allowances of food and clothing, to care for old and disabled slaves, to avoid concubinage with his slaves, and to leave them free to observe the rules of the church. His property in the slaves was regarded as conferring on him the right to punish them by whipping, or by putting them in irons. But he was expressly prohibited from torturing or mutilating them; and a master killing a slave was to be prosecuted as a criminal, and penalized "acording to the atrocity of the circumstances." The clergy were enjoined not to marry slaves without the master's consent, but also not to constrain slaves to marry if they were unwilling to do so. Under the law, families were not to

be broken up when slaves were sold; and those slaves between the ages of 14 and 60 who were employed in sugar —or indigo— works and plantations were attached to the soil and could not be sold except with the estate. Slaves not falling within these categories were, however, regarded as chattels. (Cls. 9-11, 22-25, 27, 42, 43, 47-54.)

As a piece of property, rather than a person, the slave was incapable of legally possessing property or of legally making contracts, and he was, of course, incapable of holding any public office or acting legally as a responsible agent. The code declared that slaves could not legally be parties to a trial, though they themselves were subject to criminal prosecution. Masters received compensation for their loss when criminal slaves were executed. But they were also liable to make good losses caused by their slaves. (Cls. 28, 30-32, 37, 40.)

All these clauses with regard to the protection and disabilities of the slave assumed that the master, in return for public recognition of the dependency of the slave, accepted certain conditions of obligation laid down by the state. His property in the slave was held subject to these obligations, and could be forfeited as a result of failure to observe the limitations on his authority, imposed by the state as a condition of its support. Under the British slave laws, where the disabilities arising from the slave's dependency were the same, the conditions of this dependency, as they affected the master, were less carefully defined. In both British and French slave law, the inferior position of the slave was accepted. But in the British slave law, the state showed far greater unwillingness to interpose in the relations between masters and slaves.

The inferior position of the slave, though it was recognized in the French slave laws, was not directly reflected in the forms of trial provided for slaves under the *Code Noir.* The slave was to be tried before the ordinary judges, and he had the right of appealing his case to the Council—"the process to be carried on with the same formalities as in the case of free persons." (Cl. 32.) In 1711, however, the slave's right of appealing against his sentence was restricted to capital cases and sentences of ham-stringing.[53] This was one of the symptoms of the change which gradually transformed the French West Indian slave code. But, at the time of the promulgation of the *Code Noir,* concern for the protection of the slave in law was still strong. Clause 30 of that code, which provided that slave evidence was inadmissible except against slaves, was immediately protested by the Martinique Council, on the grounds that this would result in an im-

[53] Moreau de St.-Méry, *op. cit.,* Vol. II, pp. 241, 242-43 (letter and ordonnance of April 20, 1711).

punity for many crimes committed against slaves. As a result of this protest, the crown, in 1686, amended the code so as to allow the admission of evidence by slaves, in the absence of evidence by whites, in all cases except against their own masters.[54]

Even here, at one of the most touchy points in the whole slave system, the *Code Noir* provided for the protection of the slave in law, by enabling him, under clause 26, to make complaints to the crown's *procureur-général* against his master in cases where the master failed to give him subsistence, or treated him cruelly. The attorney-general was thus given a status as protector of slaves which compensated, to some extent, for the unwillingness to admit slave evidence against masters. In keeping with this relative liberality, manumissions were made easy for all masters who had attained their legal majority; and, once freed, the former slave was to be treated as a freeborn subject of the king, entitled to the same rights as other subjects, so long as he lived in obedience to the law and performed the duties of the subject—with this difference only that he was expected to give due respect to his former master, the source of his freedom. (Cls. 26, 55-59.)

In one respect, the provisions of the *Code Noir* regarding manumissions were restrictive. Until the promulgation of the code, it was customary for children of mixed blood to be freed during their teens.[55] But the crown, in its desire to secure religious conformity, was most anxious to discourage concubinage; and therefore, it provided that the illegitimate offspring and their mothers could never be free, except by the marriage of the parents. (Cl. 9.) But in this matter, the will of the crown was at variance with the will of the local society, and was defeated. Masters continued to engage in irregular sexual unions with their slaves and continued to free their offspring. In the end, the crown itself expressly withdrew from its former position, in the belief that the mulattoes, being sworn enemies of the Negroes, might safely be freed.[56]

While the special provisions against manumission of mulattoes fell into disuse, the general provisions for manumission became more difficult. Early in the eighteenth century, the royal representatives in the colonies made it a rule that their written permission was necessary to validate all manumissions of slaves.[57] In 1713, this rule was

[54] *Ibid.*, Vol. I, pp. 447-48 (arrêt of Oct. 13, 1686).

[55] See R. P. DuTertre, *Histoire générale des Antilles habitées par les françois* (3 vols., Paris, 1667-71), Vol. II, pp. 511-13; H. A. Wyndham, *The Atlantic and Slavery* (Oxford, 1935), pp. 256-57.

[56] Moreau de St.-Méry, *op. cit.*, Vol. III, pp. 453-54 (letter of March 29, 1735).

[57] *Ibid.*, Vol. II, pp. 272-73 (ordonnance of Aug. 15, 1711). Arch. Nat. Cols. F3 222, pp. 189-90.

confirmed by the crown, and it continued to be enforced during the century.[58] Instead of encouraging manumissions, the crown and its officers in the colonies showed a constant determination to control the accession of slaves to freedom. Even in France, where it was an accepted axiom of law that slaves became free on entering the realm, the crown proved willing to protect West Indian property by altering the law so as to nullify this usage.[59] The crown and its officers also allowed the wide privileges, originally granted to freedmen under the *Code Noir,* to be gradually contracted, and joined with the councils in multiplying laws against them and in subjecting them to increasing disabilities.[60]

This series of changes in the laws reflects the process by which the law was adapted to fit in with the development of society in the French colonies. In framing the *Code Noir,* the metropolitan government had shown itself generally disposed to follow local practice and to respect local opinion, even though, as in the case of the mulattoes, it occasionally rejected local customs. Unlike the Spanish government which, for long, showed a tendency to limit the increase of slaves in its colonies, the government in France was early committed to a policy of increasing slave numbers and even, though somewhat more reluctantly, to encouraging the growth of large plantations. In line with mercantile thought, it regarded these as the means of acquiring wealth and power from its West India possessions. Slavery must be maintained if these benefits were to be secured and enjoyed.

In his monumental study of French West Indian slavery, Peytraud supports the view that Colbert, who was largely responsible for preparing the *Code Noir,* was moved to protect the slaves by commercial, rather than humane, considerations.[61] Material considerations, a concern for public security, and a strengthening of race prejudice later produced a much greater hardening in the attitude of the crown and its officials towards the Negroes. The crown's desire for order, which had led to the regulation of masters as well as of slaves under the *Code Noir,* led on to a certain tolerance of the abuses committed by masters against their slaves.

En 1713, the crown expressed great indignation on learning that masters were torturing their slaves barbarously.[62] In 1742, disap-

58 Moreau de St.-Méry, *op cit.,* Vol. II, pp. 398-99 (ordonnance of Oct. 24, 1713). Wyndham, *op. cit.,* pp. 256-57. An instance of a later law regulating manumissions is found in Arch. Nat. Cols. F3 233 (Guadeloupe), ordonnance of March 3, 1789.

59 Arch. Nat. Cols. F3 249, p. 818 (Martinique). Moreau de St.-Méry, *op. cit.,* Vol. II, pp. 525-28.

60 Wyndham, *op. cit.,* pp. 256 ff.

61 Peytraud, *op. cit.,* pp. 150-57.

62 *Ibid.,* p. 326.

proval was also expressed, this time concerning a case in which a slave had been killed.[63] But the crown was now rather more concerned with the need for maintaining subordination among the Negroes. In the following year, the crown declared that "while the Slaves should be maintained and favorably treated by their Masters, the necessary precautions should also be taken to contain them within the bounds of their duty, and to prevent all that might be feared from them".[64]

The humaneness of the *Code Noir* itself can be overstated. The allowances of food and clothing fixed in the code were small. In the matter of punishments, the code prohibited the private infliction of torture and mutilation, but did not prevent their use by judicial authorities. Slaves could still be tortured in official investigations, and judges were left free to sentence slaves to be burnt alive, to be broken on the wheel (a favorite punishment), to be dismembered, to be branded, or to be crippled by hamstringing—a penalty expressly provided for runaways under the code.[65] Masters maltreating or killing slaves were liable to prosecution, and there are records of cases having been brought against them, although no master appears to have suffered the death penalty for killing a slave. By contrast, atrocious sentences were usually passed on slaves guilty of killing whites; and even for the crime of raising a hand against one of the children of his mistress, a slave was sentenced to have his hand cut off and to be hanged.[66] The attorney general, who was appointed as guardian of slaves under the *Code Noir,* was far oftener engaged in prosecuting slaves, or in complaining of abuses by them, than in presenting the abuses committed against them. Like his employer, the crown, he was preoccupied with the task of securing public order.

A glance through the very numerous police regulations, passed with the object either of enforcing or of supplementing the police clauses in the *Code Noir,* shows that many of these were initiated by a complaint on the part of the *procureur-général,* citing incipient or actual disorders. Thus, at the beginning of the eighteenth century, the Council of Léogane passed laws forbidding slaves to carry arms, or to assemble together, and providing for a hunt of runaways. At Le Cap, a pass-system was enforced; and the attention of masters was

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[63] Arch. Nat. Cols. F[3] 225, p. 777 (Guadeloupe), letter of May 17, 1742.

[64] Moreau de St.-Méry, *op. cit.,* Vol. III, pp. 727-29 (déclaration of Feb. 1, 1743). pp. 500-2 (jugement of Nov. 11, 1691); Vol. II p. 103 (arrêt of Aug. 1, 1707).

[65] For examples see *ibid.,* Vol. V., p. 805 (arrêt of Dec. 11, 1777); Vol. I, Arch. Nat. Cols. F[3] 221, pp. 925-28 (Guadeloupe), arrêt of March 4, 1698. Also, *Code Noir,* Cl. 38.

[66] Moreau de St. Méry, *op. cit.,* Vol V, p. 744 (arrêt of Nov. 20, 1776); Vol. IV, p. 136 (arrêt of Nov. 5, 1753).

again called to the prohibitions against slaves carrying arms. Later, the council at Port-au-Prince penalized those selling arms and ammunition to slaves without the master's written authority.[67]

The attorney-general also occupied himself with the suppression of thefts by slaves and with the restrictions on their trading. In 1710, complaint was made that the clauses of the *Code Noir* regulating trade by slaves were not being properly enforced. In the same year, the council at Petit-Goâve, on advice from the crown attorney, forbade gold-and silver-smiths to buy anything from slaves without express permission. Neglect of the rules against trading with slaves in the staple crops at Guadeloupe was similarly brought to the attention of the council there during the eighteenth century.[68]

Even in performing those duties which might be regarded as protective, the *procureur-général* showed a tendency to consider the public interest rather than the slave. Thus, one source of unfailing annoyance was the practice adopted by masters in giving their slaves Saturday or some other day of the week to work for themselves, instead of giving an allowance. This was presented as an abuse, not only because it might lead to thefts of provisions by slaves, or to want among those who paid no attention to their cultivations, but also because the gain made by industrious slaves as a result of this practice "has made them so proud that they can scarcely be recognized for what they are."[69] The laws for the planting of provisions by estates, constantly reiterated and constantly neglected, were not motivated only by the desire to protect the slaves.[70] Similarly, though the attorney-general complained when colonists had their slaves beaten in the streets, the disorder caused in the towns by this practice was obviously important in calling forth an objection to it.[71]

The crown, the royal officials and the councils did not need much urging to concern themselves with police regulations in any case. These made up the large majority of the laws passed after the *Code Noir* was instituted. The subjects of these laws are, generally speaking, those to which attention has already been drawn in discussing the complaints made by the crown's attorney—the control of runaways, the general subordination of slaves and the need to prevent them

[67] *Ibid.*, Vol. II, pp. 25-27 (arrêt of March 16, 1705), p. 117 (arrêt of May 9, 1708), pp. 568-69 (ordonnance of July 1, 1717); Vol. III, pp. 177-78 (arrêts of July 2 and 8, 1726); Vol. V, pp. 97-98 (arrêt of March 9, 1767).

[68] *Ibid.*, Vol. II, pp. 208, 213 (arrêts of Sept. 1 and Oct. 6, 1710). Arch. Nat. Cols. F^3 223, pp. 717-23 (Guadeloupe), arrêt of Sept. 6, 1725; F^3 225, pp. 139-45, arrêt of Nov. 8, 1735.

[69] Arch. Nat. Cols. F^3 226, pp. 269-82 (Guadeloupe), arrêt of July 9, 1746.

[70] Moreau de St.-Méry, *op. cit.*, Vol. IV pp. 401-03 (ordonnance of Aug. 19, 1761).

[71] *Ibid.*, Vol. IV, p. 566 (ordonnance of March 24, 1763).

from concerting risings, the prevention and detection of thefts, and the limiting of their economic opportunities, as well as of their physical mobility. The laws emphasized their dependence, because it was an element of social stability, directly related to their subordination. The regulations occasionally made, enforcing the allowances fixed under the *Code Noir,* to have to be seen in this context.

In 1712, the crown returned to its insistence that slaves should not be privately tortured, and the cases brought against masters from time to time for cruelty to slaves were a reminder that the principle of governmental supervision was not forgotten.[72] But the crown would have needed to maintain a much closer watch than it did, if it had meant to enforce those protective clauses which were included in the *Code Noir.* Religious instruction, at first so much insisted on, was neglected or prevented by the colonists, and their attitudes were in turn defeated by government officials like Fénelon, who had come to believe that: "The safety of the Whites, less numerous than the slaves, surrounded by them on their estates, and almost completely at their mercy, demands that the slaves be kept in the most profound ignorance."[73] Pierre Regis Desalles, himself a colonist, writing in the second half of the eighteenth century, admitted that regulations favoring the marriage of slaves, and providing fixed allowances of food and clothing for them, were generally neglected. The laws against concubinage were notoriously ineffective. Abuse against slaves went undetected because "No one cares to inform on his neighbor; and it is so dangerous to let Negroes make complaints against their masters."[74]

All evidence points to one conclusion. As they were actually administered during the eighteenth century, the French slave laws differed far less from their English counterparts than might be imagined. The enforcement of the *Code Noir* during this period, in fact, shows a well-defined emphasis markedly similar to that already noticed in the British slave laws before the period of amelioration. Thus the provisions safeguarding the slave as "persona" were either laxly enforced or neglected. His religious instruction, his protection against ill-treatment, his right to food, clothing and care, provided for in the law, depended in practice far more on the will of the master than on enacted regulations. The law tended to become more and more a dead letter in these matters. Changes in the law made his manumission less easy, and deprived him, when free, of equality with other free men. Thus, the benefits which the law had originally conferred upon the slave and the freedman were either lost or reduced in their value

[72] Arch. Nat. Cols. B. 34, ordonnance of Dec. 30, 1712.
[73] Peytraud, *op. cit.,* pp. 193-94
[74] Adrien Desalles, *Histoire générale des Antilles* (Paris, 1847), III, pp. 291 ff.

by practice or by legislative change. Meanwhile, the part of the law which was provided for his control and submission continued in vigor—as the activities of the crown's attorney serve to make abundantly clear. As in the British islands, so in practice in the French, police laws were the heart of the slave code. They were not neglected because the continuance of slavery depended upon them, and was understood to depend upon them. The law actually and continuously enforced was here, as in the Spanish colonies, different from the law as enacted. As Peytraud says: "Reality is sometimes far from corresponding to legal prescriptions."[75]

The will to bring about a correspondence was also much weaker than it had been. In 1771, the crown issued official instructions which show this change at work:

> It is only by leaving to the masters a power that is nearly absolute, that it will be possible to keep so large a number of men in that state of submission which is made necessary to their numerical superiority over the whites. If some masters abuse their power, they must be reproved in secret, so that the slaves may always be kept in the belief that the master can do no wrong in his dealing with them.[76]

That the feeling of white solidarity had grown even stronger in the colonies is indicated by the well-known case involving the coffee-planter, Le Jeune, who was alleged to have killed four slaves and to have severely burnt two others, in the course of torturing them. Heavy pressure was brought to bear upon the governor; and the judges, afraid to go against local opinion, dismissed the case. The Council also refused to see Le Jeune punished, and he suffered no legal penalty whatever for his crimes.[77]

The Le Jeune case occurred in 1788, about four years after the crown had made several new provisions for the protection of slaves in its act "concerning Attorneys and Managers of Estates situated in the Leeward Islands." This order which was intended to correct abuses at St. Domingue, where the Le Jeune case occurred, contained clauses limiting the working hours of slaves and fixing their holidays, and also allowing them to cultivate small plots of land for their own profit, besides compelling proprietors to plant provisions and to make allowances of food and clothing to their slaves. Provision was also made for the care of pregnant women and the sick, and for encouraging child-bearing. The protection against physical maltreatment given the slaves under the *Code Noir* was renewed, and a limitation

[75] Peytraud, *op. cit.*, p. 150.
[76] Pierre de Vaissière, *St. Domingue (1629-1789)* (Paris, 1909), p. 181.
[77] *Ibid.*, pp. 186-89.

was placed on the number of lashes which a master might give his slave.[78] These last clauses did not prevent Le Jeune's escape, and it is difficult to believe that the rest of the code can have been much more effective. Peytraud appears to be justified in his conclusion that "the material condition of the Negroes did not cease to be miserable. As for their legal condition, so for their moral education, the advances achieved were very small. The facts cry aloud the condemnation of slavery, which reduced so many human beings to being scarcely more than beasts of burden."[79]

The rule of force inherent in slavery produced comparable results in the Spanish, British and French colonies in the West Indies, though variations were introduced by the degree of their dependence on slavery and by differences in their political traditions. The experience of the Dutch and Danish colonies supports this conclusion. Westergaard, in his study of the Danish islands, has said that the slave laws, which were made by the local government, "became more severe as the ratio of negro to white population increased." He cites repressive measures against runaways, who were specially aided by the nearness of the islands to Puerto Rico, and against thefts and the trading carried on by slaves without the permission of their owners.[80] In particular, he refers to the very severe ordinance of 1733, which, in his opinion, precipitated the serious slave rebellion of that year at St. John's. This ordinance provided such punishments for the crimes of slaves as pinching and branding with hot irons, dismemberment, hanging and flogging. It was a police law, entirely concerned with the prevention of revolts and conspiracies, the control of runaways, thefts and slave assemblies. It forbade the carrying of weapons by slaves, and punished severely any Negro found guilty of raising his hand against a white. These were the elements which attracted most attention in the government of slaves. Other laws protected the master's property in the slave, and masters were indemnified for their losses when their slaves were judicially punished.[81] There was also supposed to be official supervision of the punishment of slaves, but, generally speaking, their protection was left to custom rather than law. The Company, which governed the islands, was more interested in the slaves as objects of trade and sources of manual labor for the production of wealth, than as persons. Here as elsewhere, they were subject to public repression and private tyranny.

[78] Arch. Nat. Cols. F^3 233, pp. 231-35 (Guadeloupe), ordonnance of Dec. 17, 1784.

[79] Peytraud, *op. cit.*, p. 241.

[80] W Westergaard, *The Danish West Indies under Company Rule (1671-1754)* (New York, 1917), pp. 158 ff.

[81] *Ibid.*, pp. 162 ff.

The Danish West Indies under Company rule were at once entrepots and plantation colonies. The Dutch also held both plantation colonies and trading colonies in the region; but these were geographically separate. In the main trading centers, Curaçao and St. Eustatius, and in the other small islands held by the Dutch, planting was of almost negligible importance. They lived by trade. The Guiana colonies, by contrast, developed a planting economy.

Throughout these Dutch colonies, the slaves were considered in law as things rather than as persons.[82] But the difference in the economic functions of the two types of colonies was reflected in a difference of slave conditions within them, despite their common basic law. The slaves in the Guiana colonies were subject to very harsh conditions of enslavement. The resident slave populations of the trading colonies —as distinct from the slave cargoes merely brought to be sold through these ports— generally enjoyed more humane treatment. In the Guianas, also, the slave laws, especially those for the control of runaways, were extremely severe in comparison with the laws of the islands. The influence of the plantation economy on slavery is thus again demonstrated.

In many of its aspects, the Dutch slave law resembled the slave law of the French West Indies—a resemblance due no doubt to their common origins in Roman law. Under the Dutch law, slaves could be bought and sold as chattels, and slave status was transmitted by birth through the mother. Plantation slaves were attached to the soil, and could only be sold with the estate. The dependency of the slave on his master was held to imply an obligation on the master to feed, clothe and otherwise care for his slave; and a degree of protection was, in principle, made available to the slave through the fiscal of each colony. For a time, also, the Dutch West India Company showed some interest in the religious instruction of slaves, and made provisions to prevent their masters from forcing them to work on Sundays.

But the divorce of law and practice was as characteristic of the Dutch as of the other colonies in the West Indies. In general, the Dutch Company, like the Danish, regarded the slaves primarily as objects of profit; and the settlers in the Dutch colonies took a similar view. The police regulations, which were numerous and often severe, were constantly invoked. Extra-legal and illegal punishments were privately inflicted on slaves, especially in the Guiana colonies, where the existence of bands of runaway slaves in the hinterland encouraged a brutal stringency in estate discipline. Fear of the Bush Negro threat

[82] The discussion of the Dutch West Indian slave law is based upon the article "Slavernij" in *Encyclopaedie van Nederlandsch West Indie* (Hague, 1914-17), pp. 637 ff.

increased also the repressive tendencies of public policy. Inhuman punishments were inflicted on slaves, not merely by masters privately and illegally, but also by the judicial authorities acting under the law.

As in the French colonies, a conflict arose between the principle of repression and that of protection; and, on the whole, it was repression that triumphed.

> Scandalous mistreatment of slaves by plantation-managers and others, acting on their own authority, was more than once punished by banishment or otherwise; but the persons responsible for the punishment were themselves slaveholders and this was reflected in the kind of punishment inflicted. The slave laws, which were revised from time to time, also failed to achieve the end in view. Those who administered them were all slaveholders. At the beginning of the nineteenth century, there was humane treatment of the slaves because of the abolition of the slave trade, but long after that time very crude punishments were apparently still in existence and the slaves were looked upon as a sort of cattle.[83]

Both in their content and in their enforcement, the West India slave laws follow a remarkably consistent pattern, imposed by the function of the law in maintaining the stability of those forms of social organization on which rested the whole life of the West India colonies during the eighteenth century.

[83] *Ibid.*, p. 640.