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## **The Age of the Code Noir in French Political Economy**

In a neglected, highly evocative survey of French history, Edward Whiting Fox distinguishes between two worlds of eighteenth-century France.<sup>1</sup> The first is the France that once dominated historical consciousness of the Old Regime, and that most readily comes to mind in the popular imagination even today: the world of the agrarian economy, of peasants and nobles, of vicissitudes in the nation's grain supply and the social and political disturbances that resulted. The "other France" of Fox's title is the bustling world of the commercial towns and the prosperous mercantile elites it fostered, most notably in the western seaboard ports such as Bordeaux, La Rochelle, and Nantes.<sup>2</sup> With some exceptions, this "other France" was essentially a product of the eighteenth-century Atlantic economy and the emergence of sugar and coffee as two of the most prized items of French and European trade. The major currents in Enlightenment political economic thought correspond to these two forms of the early modern French economy: on the one hand, the Physiocrats and their obsession with the domestic French grain trade, and on the other, the rich body of writings associated with the debate over mercantilism and the colonial trade.

The colonial economy of Old Regime France has always taken a backstage to its domestic counterpart. This probably has something to do with the fact that colonial trade

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<sup>1</sup> A shorter version of this essay is forthcoming in M. J. Parrine, ed., *A Vast and Useful Art: The Gustave Gimon Collection on French Political Economy* (Stanford, CA: The Stanford University Libraries, 2004).

<sup>2</sup> Edward Whiting Fox, *History in Geographic Perspective: The Other France* (New York: W. W. Norton, 1971).

accounted for only one in eight French livelihoods in the eighteenth century.<sup>3</sup> Today historians of the French Atlantic are apt to cite this figure as a demonstration of the importance of such places as Saint-Domingue (Haiti), Martinique, and Guadeloupe to the pre-revolutionary French economy. For those not primarily concerned with the French colonies, the figure is more likely to trigger an opposite response: namely, why slavery and the Atlantic world were less important to France than they were to the nation's early modern arch-enemy: Britain. But there are other reasons as well. For historians of the French Revolution, the "other France" of merchants and colonies is still probably associated with discredited economic interpretations of the origins of 1789. There is no reason why a concern with slavery and overseas commerce need correlate with any particular explanation of the French Revolution, Marxist or otherwise. But it is also no accident that one of the few major histories of the French Revolution to give a more than a trivial amount of space to colonial developments is Jean Jaurès's *Histoire socialiste*, published at the beginning of the twentieth century.<sup>4</sup> Yet another reason for the relative neglect of the Atlantic world in French history is the association of Atlantic history with Anglo-American scholarship and influence.<sup>5</sup>

But there is an even more persistent explanation for this state of affairs, and it has to do with the politics of remembering slavery in France. Except in the metaphorical sense, slavery is not remembered as a constitutive element of the French Old Regime. Its overthrow in Haiti may

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<sup>3</sup> Lynn Hunt, "Forgetting and Remembering: The French Revolution Then and Now," *American Historical Review* 100, no. 4 (October 1995): 1129.

<sup>4</sup> Jean Jaurès, *Histoire socialiste de la Révolution française*, ed. Albert Soboul, rev. ed., 7 vols. (Paris: Éditions Sociales, 1968-73), 1(2):235-252, 2:253-294.

<sup>5</sup> Silvia Marzagalli, "Sur les origines de l'Atlantique History': Paradigme interprétatif de l'histoire des espaces atlantiques à l'époque moderne," *Dix-huitième siècle* 33 (2001): 30. Marzagalli's essay is part of a special issue on "the Atlantic" edited by Marcel Dorigny, one of the scholars most responsible for bringing slavery and the Caribbean to the attention of the French historical profession today.

have been a consequence of the French Revolution (though there is much debate about the relative importance to be accorded metropolitan versus colonial factors in this course of events). But when most French revolutionary orators and pamphleteers decried the “slavery” of “despotism” – a trope that went back to the antimonarchical literature of the 1730s<sup>6</sup> and found canonical expression in Jean-Paul Marat’s 1774 *The Chains of Slavery* – it was not the despotism of New World slavery they had in mind. As for the slavery of the French colonies, its fate during and after the Revolution has served to confirm rather than undermine the sense that slavery does not really belong to the French national narrative. Once Saint-Domingue became fully independent of France with the defeat of the Napoleonic expedition of 1802-03, the colony’s experience could be effectively erased from the collective story that France told of itself. Given that Saint-Domingue was the heart of the French and European colonial plantation complex, amounting to about forty percent of Europe’s sugar supply and more than half of its coffee supply, 1804 was a major turning point for both Caribbean and European history. A central chapter in the story of French involvement with colonial slavery had come to an end. The remaining components of the French Caribbean empire, most notably Martinique and Guadeloupe, were held in slavery until 1848, when they became departments of France – a status they have maintained until the present. But their economic marginality relative to Saint-Domingue, their post-1848 submersion into a homogenized and domesticated republican narrative, and their current position as supposedly carefree tourist destinations, have left France without any significant contemporary markers of its past identity as a major slaveholding nation. As a result of this discontinuity, France is able to magnify the contrast between its history and that of the United States, and Haiti is cast aside as a country alone in the world.

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<sup>6</sup> Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France, c.1500-c.1800* (New Haven, CT: Yale University Press, 1995), 5.

The markers of France's slaveholding experience now belong largely to the past, and are enshrined in the rich library of eighteenth-century colonial texts that historians of pre-revolutionary France are still in the process of discovering. These sources elucidate the workings of an important but now largely forgotten sector of the Old Regime economy, and so remind us of a France that once was. Understanding these texts is important even if our only object is to gain as broad and sophisticated a perspective as possible on what made the Old Regime tick. But there is another reason for directing our attention to these sources: they can serve as the basis for creating new historical narratives, whose significance is defined not by the economic contribution of Caribbean slave labor to European markets (for this would be to perpetuate the mercantilist tradition in historiographical terms) but rather by the emerging field of Atlantic history. At the most basic level, "Atlantic history" refers to an approach that goes beyond the conventional narratives of national history, be they Old World or New, and that studies the societies created in the Western hemisphere between roughly 1500 and 1800 as a result of distinctly transnational developments. However much it may be true that Atlantic history as hitherto practiced is dominated by an unspoken Anglo-American bias,<sup>7</sup> it remains the only contemporary historical paradigm capable of situating the experience of nations such as Haiti in the context of modern history writ large.

Slavery is a central part of that context, and figures prominently in a very large proportion of eighteenth-century French pamphlets dealing with colonial affairs. Early modern European political economy included, as one of its branches, the study of how best to acquire and manage the labor of African slaves for coercive use in the New World. The origins of this branch of political economy are worth noting, as they highlight both the contingency and the

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<sup>7</sup> Ibid., 19, 30.

narrowness of a still influential understanding of the modern role of government in matters “economic.” That understanding has it that political economy is concerned first and foremost with the distribution of *impersonal* goods and services and hence with the creation of wealth.<sup>8</sup> Given that slaves were treated in law and custom as “goods” whose “services” were uniquely valued throughout the Atlantic world as a mechanism for the production of wealth, it would be logical to classify the government of slavery as a form of early modern political economy: logical, that is, but not customary. The deeper problem is that “household” or “domestic” government has never really been thought of as a central concern of that group of thinkers recognized today as the founders of political economy.

As far back as Aristotle’s *Politics*, the study of *oikonomike* has meant the study of dependent household relationships. For early modern English legal authorities from Hale to Blackstone, “relations œconomical” encompassed the relations between husband and wife, parent and child, master and servant.<sup>9</sup> In his discussion of the family in the *Six livres de la république*, Jean Bodin devoted considerable space to the threat that slavery posed to a “well-ordered commonwealth.” Indeed, Bodin’s overall theory of sovereignty is tied in important ways to his understanding of slavery, and vice versa.<sup>10</sup> Neither Aristotle nor Blackstone is considered one of the founders of political economy, of course. (Bodin published a treatise on money that is regarded as an important forerunner of eighteenth-century monetary theory.)<sup>11</sup> But

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<sup>8</sup> Carole Shammas, “Anglo-American Household Governance in Comparative Perspective,” *The William and Mary Quarterly* 52, no. 1 (Jan. 1995): 105.

<sup>9</sup> *Ibid.*, 105.

<sup>10</sup> See Malick W. Ghachem, “Sovereignty and Slavery in the Age of Revolution: Haitian Variations on a Metropolitan Theme” (Ph.D. diss, Stanford University, 2002), 5-17.

<sup>11</sup> Bodin’s *Réponse aux Paradoxes de Monsieur de Malestroit* appeared first in 1568 and then in a second edition in 1578.

it would be hard to exclude from this category Adam Smith, whose *Lectures on Jurisprudence* at the University of Edinburgh in the early 1760s included an extended discussion of the master-slave relationship in the context of a broader treatment of the law of “domestic relations.”<sup>12</sup> This discussion was later incorporated into Smith’s treatment of colonial slavery in *The Wealth of Nations* (1776), where it became part of the canon of Enlightenment political economy. Far more so than Blackstone, and in keeping with the Romanist roots of Scots law, Smith bridged the divide between the common and civil law traditions. His analysis of master-slave relations from ancient Roman times to the early modern period finds a persuasive echo in the experiences of eighteenth-century French colonial administrators and planters. (I will return to Smith’s analysis and its parallels to French administrative writings on slavery in the final part of this essay.)

In early modern jurisprudence generally, then, the law of slavery was only a branch of family or domestic law. And domestic law was itself subsumed, in the spirit of a tradition that went back to Greek and Roman law, under the broader rubric of the “government of the household”<sup>13</sup> and the “household economy.” But to say that the master-slave relationship belonged to the “domestic” sphere was not the same thing as saying that it was immunized from regulation by the state.<sup>14</sup> To be sure, there was no shortage of eighteenth-century planters who

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<sup>12</sup> Adam Smith, *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael, and P. G. Stein, vol. 5 of *The Glasgow Edition of the Works and Correspondence of Adam Smith* (Oxford: Oxford University Press, 1978), 181-199.

<sup>13</sup> Jean Bodin, *The Six Books of a Commonweale: 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, ed. Kenneth Douglas McRae (Cambridge, MA: Harvard University Press, 1962), 32.

<sup>14</sup> A very similar point could be made about the husband-wife and master-servant relationship. For the former, see Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000), 1-8. See also Daniel Scott Smith, “Behind and Beyond the Law of the Household,” *The William and Mary Quarterly* 52, no. 1 (Jan. 1995): 146-48. As Smith writes, “[s]lavery was so complexly intertwined with the economy and so potentially explosive politically that its familial dimension is only partly captured within the framework of the law of domestic relations” (148).

believed that the master-slave relationship was autonomous and self-regulating, beyond the reach of the law altogether. For the slaveholder who was conscious of such matters, the doctrine of *patria potestas*, which accorded fathers and husbands supreme authority over everyone in their households, was all that Roman law had to say about the subject of slavery. For colonial administrators and legal commentators, however, the situation was more necessarily more complicated.

In the French tradition, the text that most graphically illustrates the nature of slave law as a form of political economy is Emilien Petit's two-volume *Traité sur le gouvernement des esclaves*, published in Paris in 1777.<sup>15</sup> Petit was a judge on one of the two high courts (or *Conseils Supérieurs*) of Saint-Domingue who had earlier been hired by the French Naval Minister, the official responsible for overseeing colonial administration under the Old Regime, to begin the development of a systematic colonial code.<sup>16</sup> The very title of Petit's work, "government of slaves," reflects the language of eighteenth-century political economy, and reminds us that slavery was once conceived not simply as a form of individual property ownership, but rather as a complex and coordinated economic project with political overtones. "The need of slaves for the cultivation of land in our colonies, and the consequences for public safety of a more or less exact administration with respect to this class of men" were the twin considerations that, Petit said, had led him to embark on his exhaustive labors.<sup>17</sup> To own a slave was to be involved in the processes of early modern "government" in the Atlantic world: slavery was the private made public, such that how any particular master treated his slaves bore

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<sup>15</sup> Emilien Petit, *Traité sur le gouvernement des esclaves*, 2 vols. (Paris: Knapen, 1777).

<sup>16</sup> Probably in connection with this assignment, Petit had produced a treatise entitled *Droit public, ou Gouvernement des colonies françaises, d'après des lois faites pour ces pays*, 2 vols. (Paris: n.p., 1771).

<sup>17</sup> Petit, *Traité*, 1:i.

implications for the security of his neighbors and of larger empire to which they belonged.

Radical abuse on any one plantation posed the risk of a revolt that could spread to the others.

The wealth of detail in Petit's treatise about the punishment, nourishment, and clothing of slaves highlights not only the sheer volume and complexity of French slave legislation, but also what might be called (in the language of contemporary political economy) the "collective action" problem of Caribbean slave ownership. If mercantilism was driven above all by the desire to maintain exclusive economic control of New World colonies, that effort depended as much on the "prudent" management (or "police") of sugar plantations as it did on the apprehension of illicit traders on the high seas. The significance of this more local, labor-oriented form of mercantilist theory and practice has yet to receive the attention it merits in the historiography of European and Atlantic political economy. Particularly insofar as the West Indian colonies were concerned – and France's New World possessions after the Seven Years' War were almost exclusively Caribbean – the "government of slaves" was something no imperial administrator could afford to get "wrong." Many were the violations of mercantile restrictions that posed no threat to colonial sovereignty. By contrast, slave revolts, once begun, were far more difficult to contain – a threat that loomed large in the eyes of colonial commentators well before the Haitian Revolution broke out.

The subject matter of Petit's second volume, the comparative study of New World slave laws, has also managed to slip through the cracks in our understanding of the early modern political economy. There is no shortage of work that seeks to compare, from the distance of two hundred or so years, the laws that governed slavery in its various Western hemispheric manifestations.<sup>18</sup> What is lacking is any sense of the continuities between this more

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<sup>18</sup> See, *inter alia*, Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas* (New York: Vintage Books, 1946); Stanley M. Elkins, *Slavery: A Problem in American Institutional and Intellectual Life* (Chicago: University

contemporary scholarship and the agenda of eighteenth-century commentators such as Petit. An overview of the politics of colonial comparison in the age of mercantilism will help to bear out this point. Petit juxtaposed the various slave codes of the New World in the hope that such an exercise would prove to be “useful” to both planters and colonial administrators. Armed with an awareness of those laws that were “common” to the sugar colonies, and those that were unique to each of them, “the reader will be in a position to compare the government of slaves in the colon[ies] where he does not reside.”<sup>19</sup> Comparative colonial law was more than a matter of academic interest in the eighteenth century. Its salience derived from the prudential concerns of plantation management and colonial stability. If a particular British or Spanish law tended to produce more discontent among the neighboring island slave populations than was advisable from a strategic point of view, the French planter or colonial administrator could learn from this deficiency and avoid similar mistakes on his own territory.

Petit’s approach to these differences was relatively clinical and dispassionate: he was far more interested in classifying and rationalizing the law than in probing its political and social depths. But a thin line separated his style of analysis from one of the principal forms of mercantilist propaganda in the eighteenth century: the denunciation of other European nations’ slave codes as more barbaric and sanguinary than one’s own. Most often this propaganda had a legitimating thrust to it, and was embedded in the rivalry between France and Britain for supremacy in the New World. Indeed well into the antebellum era U.S. proslavery apologists invoked the practices of French (and sometimes even British) West Indian planters to defend the

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of Chicago Press, 1959); Elsa Goveia, *The West Indian Slave Laws of the Eighteenth Century* (Eagle Hall, Barbados: Caribbean Universities Press, 1973); and Alan Watson, *Slave Law in the Americas* (Athens: University of Georgia Press, 1989).

<sup>19</sup> Petit, *Traité*, 1:i-ii.

supposedly more humane treatment of slaves on the mainland. Occasionally, in the hands of abolitionist writers, these comparisons were turned on their heads and used to criticize rather than defend local forms of slavery.<sup>20</sup> Whether legitimating or critical, however, the very act of comparison was inseparable from the broader political economic context of European imperialism in the New World: the ideologies of mercantilism had a distinctly comparative dimension to them, in keeping with the nature of an economic system that emphasized competitive advantages and the outdistancing of rival powers. Twentieth-century historians who dealt with the subject of comparative slave treatment in the New World thus followed unwittingly in the footsteps of an eighteenth-century mercantilist tradition. The context had changed, to be sure, since (on the whole) there were no longer European empires to defend or criticize by the time these scholars wrote. But the consequences of slavery and racism have remained a live issue in the various nations of the Western hemisphere. Accordingly, the moralization of comparative slavery continues to find vague echoes in historical writing long after slave plantations themselves have ceased to exist in the New World.<sup>21</sup>

Whether digesting French slave law in isolation or comparing it to its more piecemeal British and Spanish counterparts, any serious eighteenth-century discussion of French colonial administration necessarily centered on the Code Noir. The term itself was employed in both a loose sense, to refer to the text of the famous 1685 royal edict, and in a broad sense, to designate the entire body of French law that bore on matters of slavery and race. The latter usage is

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<sup>20</sup> For an early nineteenth-century example commissioned by the London Society for mitigating and gradually abolishing Slavery throughout the British Dominions, see James Stephen, *The Slavery of the British West Indies delineated, as it exists in both law and practice, and compared with the slavery of other countries, antient and modern* (London: n.p., 1823), 60.

<sup>21</sup> Forced labor, on the other hand, has yet to disappear entirely from the scene. Indeed some of it takes places in distinctly plantation-like conditions, as in the region of the border separating Haiti and the Dominican Republic today.

reflected in the 1743 *Code Noir, ou, Recueil d'édits . . . concernant les esclaves nègres de l'Amérique*.<sup>22</sup> The 1685 edict is also included in two other texts that date to almost exactly the same time period: 1744 and 1745.<sup>23</sup> These publication dates mark periods of more or less intensive efforts to rationalize and publicize French colonial law. Arguably no such moment was more important in this regard than March 1685, seven months after the revocation of the edict of Nantes and eighteenth months after the death of Louis XIV's illustrious chief minister. It was then that the Sun King promulgated the last of the Colbertian ordinances. The Code Noir brought to an unanticipated culmination the absolutist revolution in French law of which Colbert had been the guiding hand and spirit.<sup>24</sup> As a posthumous bow to the deceased Controller-General's role in unifying the hodgepodge, unruly legal systems of both an established European monarchy and a fledgling Caribbean empire, the King signed Colbert's name after his own at the end of the Code Noir. With this stroke of the royal pen, seconded by the formal imprimatur of the *chancelier*, Michel Le Tellier, France became the first European colonial power to codify African slavery in law. Not surprisingly for a work of legislation instigated by the patron saint of French mercantilism, the political economic overtones of French slave law are clearly suggested by the Code's full title (as in the case of Petit's treatise): "Edict serving as a regulation for the

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<sup>22</sup> *Code noir, ou Recueil d'édits, déclarations et arrêts concernant les esclaves nègres de l'Amérique* (Paris: Les libraires associés, 1743). Stanford's Gimon Collection includes a copy of this text.

<sup>23</sup> *Recueil de règlements concernant le commerce des îles et colonies françaises de l'Amérique* (Paris: Les libraires associés, 1744); *Recueil de règlements, édits, déclarations et arrêts concernant le commerce, l'administration de la justice, et la police des colonies françaises de l'Amérique* (Paris: Les libraires associés, 1745) (both part of the Gimon Collection).

<sup>24</sup> The earlier highlights of Colbert's campaign to unify the laws of France included the 1667 *Ordonnance civile*, the 1670 *Ordonnance criminelle*, and the 1673 *Ordonnance commerciale*. See Duane Anderson, "The Legal History of the Reign," in *The Reign of Louis XIV: Essays in Celebration of Andrew Lossky*, ed. Paul Sonnino (Atlantic Highlands, NJ: Humanities Press International, 1990), 79-84. Anderson's essay is typical of the scholarship on French and European legal historiography generally in omitting any mention of the Code Noir.

Governance and Administration of Justice and Police of the French Islands of America, and for the Discipline and the Trade in Negroes and Slaves in these lands.”

With the exception of an eight-year revolutionary hiatus (1794 to 1802), the Code Noir remained on the statute books of France until it was eventually abrogated on April 27, 1848, as a result of the abolitionist campaign spearheaded by Victor Schoelcher and actively supported by Alexis de Tocqueville (among others). No other monument of Old Regime legislation can claim so great a degree of longevity. Nor is it likely that any of the other Colbertian ordinances will ever appear in a dedicated, pocket paperback edition (1998), retailing for the equivalent of one dollar and sixty cents in the largest bookstore chain of France (FNAC) courtesy of a small counter-cultural publishing house in Paris named L’Esprit frappeur.<sup>25</sup>

Printed in conjunction with the one hundred and fiftieth anniversary of the abolition of slavery in the French empire, this edition was not the only version of the Code Noir to appear in metropolitan bookstores that year. The country’s preeminent academic publisher, Presses Universitaires de France, also reissued Louis Sala-Molin’s *Le Code Noir, ou le calvaire de Canaan*.<sup>26</sup> A professor of political philosophy and author of numerous books in critical legal theory, Sala-Molins had left an appointment at the Sorbonne earlier in his career to take up a post at the University of Toulouse II, where he now teaches. His edition of the Code Noir included the complete text of the 1685 ordinance and its 1724 Louisiana variation, commentaries on each of the articles, and two lengthy essays criticizing the philosophes of the French Enlightenment for what Sala-Molins viewed as their silence toward the 1685 legislation specifically and New World slavery more generally.

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<sup>25</sup> *Le Code Noir*, ed. Robert Chesnais (Paris: L’Esprit frappeur, 1998).

<sup>26</sup> Louis Sala-Molins, *Le Code Noir, ou le calvaire de Canaan* (Paris: Presses Universitaires de France, 1987).

These sesquicentennial reprints of the French slave code might be dismissed as little more than well-intentioned efforts by progressive publishers and intellectuals to draw attention to one of the least glorious aspects of an already inglorious Old Regime. But considering these publications in the light of their early modern predecessors suggests a different perspective. To take the most suggestive example, Sala-Molins' painstakingly systematic glossing of each of the Code Noir's articles reminds one of nothing so much as the parallel eighteenth-century labors of Emilien Petit. The impulse to take apart the slave laws one by one, subject them to rigorous analysis, and compare them to their counterparts in the colonial codes of Britain and Spain takes an equally powerful form in both author's texts.<sup>27</sup> By contrast, there is little in the Anglo-American tradition to compare with this highly rationalistic and legalistic form of exegesis.<sup>28</sup> The contrast reflects not only different styles of legal and textual analysis in French and Anglo-American culture, but also the different paths that each tradition's slave law followed through the early modern period. Codification is one of the distinctive aspects of French slave law. England's remained the precinct of individual New World colonies, and the Spanish *Codigo Negro* was not promulgated until 1788, and remained largely unenforced during its short life.

Rigorous and evenhanded enforcement of the Code Noir's various provisions was not one of the leading characteristics of French colonial legal history either. Article 42 of the Code Noir, prohibiting masters from torturing or mutilating their slaves, was for most of the eighteenth-century a dead letter in Saint-Domingue. Similarly, there was little to prevent plantation

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<sup>27</sup> Sala-Molins has also published a book (unread by me) on the Spanish 1788 *Codigo negro* entitled *L'Afrique aux Amériques: Le Code Noir espagnol* (Paris: Presses Universitaires de France, 1992).

<sup>28</sup> The closest Anglo-American counterpart, for the eighteenth century, would be the justice of the peace manuals published for the use of local magistrates and litigators. But these manuals attempted to summarize the entire legal corpus of a given colony, rather than slave law specifically. What coverage they provided of slave law paled in comparison to the far more elaborate treatment of the French slave law manuals. The most interesting example I have encountered is Richard Starke, *The Office and Authority of a Justice of Peace* (Williamsburg, VA: Purdie and Dixon, 1774), 326 ff.

managers and overseers from violating the mandate of Articles 22 and 26, which sought to guarantee minimal supplies of food and clothing to the slaves. But even the slave laws of France had what Montesquieu called a “spirit,” as distinct from what is conventionally known as the “letter” of the law. The spirit of a law is revealed in what it says about the nature of the society whose conventions it purports to regulate. And despite the unpredictability and arbitrariness of Caribbean plantation society, certain conventions and norms structured life in Saint-Domingue, ever more so as the eighteenth century drew to a close. The most important of these was the principle of “domestic authority,” as it was called by a one-time colonial administrator, plantation owner, and prolific writer named Pierre-Victor Malouet. In a 1785 book titled *Essai sur l’Administration de Saint-Domingue*, and published under the name of the famous philosophe and critic of slavery, the Abbé Raynal, Malouet insisted that “there are . . . two governments in Saint-Domingue, the principles of which are different.” There was, first, the government of “public authority.” By this Malouet appears to have meant simply the officially delegated representatives of the French monarchy in Saint-Domingue, whether judicial, military, or civil. But there was also a kind of shadow government to take into account, a government of “domestic authority.” This second government was distinctive to Caribbean society and more or less independent of the royal administration; it derived from the largely autonomous existence of the slave plantations relative to those charged with supervising the “government of slavery” from their official positions in the colony’s urban centers. As a result, Malouet concluded that “there are two bodies of law, two administrations, two forms of justice. I don’t believe that people have insisted enough on this distinction and on its effects relative to [colonial] administration.”<sup>29</sup>

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<sup>29</sup> Abbé Guillaume-Thomas-François Raynal [Pierre-Victor Malouet], *Essai sur l’administration de Saint-Domingue* (N.p.: n.p., 1785), 14.

Malouet published his book shortly after the French monarchy, in December 1784, passed the most sweeping revision of the Code Noir to occur in the eighteenth century. Plantation managers and agents were required to keep a register of the births and deaths of all slaves under their jurisdiction; each such register was to be sent once a month to the plantation's legal owner in France (most plantations in Saint-Domingue were owned by absentee proprietors, particularly in the period after the Seven Years' War). Managers and overseers were prohibited from "treating their slaves inhumanely, by giving them more than fifty lashes of the whip, by beating them with a stick, by mutilating them, or finally by causing them to die in different ways." Provision was made for the "revocation" of plantation overseers and managers who engaged in the radical abuse of their slaves; the colony's governor and intendant were authorized to prosecute any such violators. Finally, a system for the "ongoing regulation" of the plantations was proposed, and its direction placed in the hands of the colony and intendant.<sup>30</sup> As was to be expected in a society founded on the principle of "domestic authority," the reforms were vehemently opposed by those who held the reins of power in Saint-Domingue. The planters' representatives on the high court of Cap Français resisted lending their stamp of approval to the new ordinance for more than a year after it was first promulgated by the monarchy. By the time the law was finally registered locally, its most interventionist provisions had been watered down in an effort to pacify the dissenting colonists.<sup>31</sup>

The new regulations were a response to a number of factors, including a climate of opinion (both metropolitan and colonial) that by 1785 had begun to swing decisively against the

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<sup>30</sup> "Ordonnance du Roi, concernant les Procureurs et Economes-gérans des habitations situées aux Isles sous le Vent, du 17 Décembre 1784," in Médéric-Louis-Elie Moreau de Saint-Méry, *Loix et constitutions des colonies françaises de l'Amérique sous le vent* (Paris: by the author, 1784-90), 6:656-57, 660, 662, 666-67.

<sup>31</sup> See Ghachem, "Sovereignty and Slavery in the Age of Revolution," 156-66.

most abusive of the planters. But as Malouet's analysis of the "two governments" of Saint-Domingue suggests, a concern with the radical abuse of slaves did not necessarily spring from humanitarian motives. The new regulations were issued in the context of predictions of an impending crisis in the colony prompted by isolated reports of small-scale uprisings on the plantations. A prudential anxiety about the consequences of planter brutality, and not the demands of abolitionists,<sup>32</sup> led Louis XVI and the French Naval Minister to act when they did. This same prudential interest underlay the former administrator and proprietor Malouet's interpretation of the two-tiered structure of authority in Saint-Domingue.

Whether planter brutality actually declined in Saint-Domingue in the aftermath of the 1784 and 1785 reforms is probably doubtful, but also largely beside the point. The colonists continued to protest the imposition of the new regulations until the time of the French Revolution, when the legitimacy of slavery itself was openly questioned. But those protests could not disguise the reality that any attempt to cut back significantly on the discretion of the domestic sphere was bound to have only a marginal impact on the daily treatment and welfare of slaves in Saint-Domingue. The 1784 reforms, even in their unmodified form, were no exception to this rule.

The intractability of the problem of domestic sovereignty in Saint-Domingue was an issue that no commentator on the French colonial scene in the late eighteenth century could avoid. Its significance had been apparent as early as the time of the Code Noir's promulgation, which was itself a reaction to the prevalence of planter brutality and the resistance such treatment provoked on the part of slaves. The least enforced provisions of the Code Noir – those articles that governed the treatment, nourishment, and clothing of slaves – are also the ones most

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<sup>32</sup> But see Philippe Haudrère, "Code Noir," in *Dictionnaire de l'ancien régime*, ed. Lucien Bély (Paris: Presses Universitaires de France, 1996), 274.

revealing of its purpose and spirit. In a society in which whites constituted about 6% of the total population in 1789, nothing could be more important than the link between planter conduct and the danger of a revolution carried out by “domestic enemies.”<sup>33</sup>

The tension between absolutism and slavery thus characterized the entire administrative history of colonial Saint-Domingue and even helped to shape the early stages of the Haitian Revolution. The latter story is beyond the scope of the present essay, but a consideration of one final text – Malouet’s 1788 *Mémoire sur l’esclavage des nègres*<sup>34</sup> – will help to explain the relationship between the critique of planter brutality and antislavery sentiment at the end of the Old Regime. To be sure, the story of the antislavery movement’s crystallization in pre-revolutionary France is an issue quite distinct from the question of what made the Haitian Revolution possible. For one thing, as we have already seen in the case of Malouet, the critique of planter excesses was not tantamount to a rejection of plantation slavery *tout court*; far from it. Moreover, the events of the Haitian “pre-revolution” revolved around far more than attacks upon and defenses of colonial slavery: abolitionism was not the monolithic revolutionary specter that it has sometimes been made out to be. Planter grievances about the persistence of mercantilist restrictions and the vices of the colonial administration were at least as salient at the time of the Declaration of the Rights of Man and the Citizen in 1789. Revolutionary sentiment in the metropolitan legislative assemblies would swing now for, now against the colonists.

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<sup>33</sup> On the characterization of slaves as “domestic enemies” in both political theory and French colonial administrative correspondence, see Ghachem, “Sovereignty and Slavery in the Age of Revolution,” 8, 30-40. In political theory, the phrase was used by Jean Bodin, John Locke, and Montesquieu. In administrative correspondence dating from 1685 and 1687, the governor of Saint-Domingue, Pierre-Paul Tarin de Cussy, used the same language by way of illustrating the dangers of having more black slaves than white indentured servants in the colony.

<sup>34</sup> Pierre-Victor Malouet, *Mémoire sur l’esclavage des nègres* (Neuchâtel, Switzerland: n.p., 1788).

But there is still an important and little-known story to be told about how criticisms of the renegade planter at the end of the Old Regime and the beginning of the French Revolution occasioned some very novel and unlikely proposals for the reform of slavery. That story has been obscured by all of the attention paid to the more memorable and clear-cut moments in the debates over slavery, Condorcet's and Robespierre's interventions on behalf of the Society of the Friends of the Blacks being perhaps the most famous examples. Such figures stand in revealing contrast to Malouet and his 1788 *Mémoire*, one of the more peculiar and complicated texts to appear in France on the subject of New World slavery. It was initially drafted in 1775-76 as a memorandum "on the treatment and usage of negroes in the colonies," a list of objections to slavery and rejoinders by Malouet that sometimes did more to discredit the proslavery cause than its advocates may have liked.<sup>35</sup> The document was left unpublished by Malouet, perhaps in recognition of just how controversial some of his more extreme assertions on behalf of the planters had become in the face of a changing intellectual climate in France. He may also have hesitated because of his own ambivalence about the problem of planter brutality, a position that would come through with striking clarity in the 1785 *Essai sur l'Administration de Saint-Domingue*.

The 1788 republication of Condorcet's *Reflexions sur l'Esclavage des Nègres*, first printed in 1781, finally led Malouet to make public his earlier work and to append a set of "new observations" responding directly to Condorcet's abolitionist appeal. Malouet also made reference in this book to an almost surrealistically feudal proposal to replace slavery with serfdom in the French colonies, a proposal that was fully sketched only in manuscript form but that graphically illustrates the ambiguous nature of Malouet's proslavery logic. The only

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<sup>35</sup> Pierre-Victor Malouet, "Du traitement et de l'emploi des Nègres dans les colonies," Centre des Archives d'Outre-Mer, Aix-en-Provence, France [hereafter CAOM], F/3/90, ff. 165-79.

existing draft of this proposal is dated 1789,<sup>36</sup> but to judge from the *Mémoire* a version of it had already seen the light of day as early as 1776. Central to Malouet's strategy was his attempt to position himself as a middle-of-the-road voice in the slavery debates, a sensible pragmatist trying to salvage the French empire from the dual threat of antislavery extremism, on the one hand, and reactionary planter brutality, on the other.

Thus in opening his rejoinder to Condorcet, Malouet drew attention to one of the more contested assertions in the original memorandum: the argument that slaves in the Americas were no worse off, and in some respects were even better off, than their peasant serf counterparts in Europe. At least the former, Malouet had argued, could be assured of adequate supplies of food and clothing. Abolition was out of the question given the "national interest" and the "disastrous consequences" that would ensue from dissolving the master-slave relationship in the colonies. On the other side of the debate, Malouet observed that "several colonists" whose "enlightenment" and "honesty" he claimed to respect would not tolerate his proposal to phase out slavery in favor of serfdom. These objections only underlined the need for new laws to replace the "impotent" ones that permitted "a few unjust masters" to commit all sorts of "abuses" and "excesses" on their slaves. The Code Noir had never taken enough care to regulate the treatment of slaves. In lines that echoed Thomas Jefferson's argument in his 1785 *Notes on the State of Virginia*, Malouet observed that 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

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<sup>36</sup> Pierre-Victor Malouet, "Projet de Loi sur le traitement et la Police des Nègres Serfs dans les Colonies," CAOM, F/3/90, ff. 276-84.

led to accept these “prejudices.” All men, Malouet concluded, have a “natural tendency” to abuse their power over others.<sup>37</sup>

Convinced that the polarization of the slavery debate in 1788 would sooner or later lead Saint-Domingue to the point of full-scale revolution, Malouet submitted a draft of his proposed regulations to the Ministry of the Marine.<sup>38</sup> Never adopted, the plan nonetheless bore some interesting resemblances to the monarchy’s own 1784 plantation ordinance. Indeed, the shared objective of these two reforms – to introduce what Malouet called a “mediating power” into the master-slave relationship – explains why both were destined to remain disregarded. Malouet’s proposal took the idea of an “ongoing regulation” of the plantations, one of the most controversial elements of the 1784 ordinance, to its logical next step, and contemplated the creation of a “domestic tribunal” in each parish of the colony that would be charged with hearing the complaints of slaves against their masters. As with the 1784 ordinance, Malouet also proposed a moderated work schedule, the steady provision of food and clothing for the slaves, and limits on the “excess” and “severity” of slave punishments.<sup>39</sup> Indeed, in Malouet’s vision of the future slaves would no longer be slaves, but would rather improve (or revert, depending on how literally one takes the feudal connotations of this proposal) to the status of “serfs.” As such, in the manner of their medieval predecessors, they would be legally attached to lands once known as plantations but now to be understood as fiefdoms.<sup>40</sup> It was as if Malouet were trying to

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<sup>37</sup> Malouet, *Mémoire sur l’esclavage des nègres*, 4-6, 15-16.

<sup>38</sup> *Ibid.*, 5. It is unclear who exactly (if anyone) requested the proposal. As noted above, a manuscript version of the plan exists in the French Colonial Archives (see note 27).

<sup>39</sup> *Ibid.*, 63-64.

<sup>40</sup> Malouet, “Projet de Loi,” ff. 276-84.

arrest the development of the New World slave colonies, now at a point of crisis, by forcing them to live through the same gradual process of evolution that the Old World had traveled.

Perhaps the bizarrely anachronistic nature of these labels and concepts merely reflects just how desperate Malouet felt the situation to be in 1788. In that year Saint-Domingue witnessed a scandal over the torture of two female slaves on a coffee plantation in the colony's northern province. The plantation's owner was prosecuted before one of the two high courts, after fourteen of his slaves had left the plantation to bring a complaint before the royal prosecutor in a nearby town. For the more reactionary of the planters, the Lejeune affair (as it was known) symbolized the willingness of colonial administrators to meddle in a matter of "domestic" sovereignty, and the dangers of encouraging slaves to believe that they had "rights" vis-à-vis their owners. For Malouet, the case no doubt demonstrated the necessity of clamping down on the phenomenon of planter brutality and introducing the principle of mediation into the law of slavery. Malouet makes no direct reference to this event in his *Mémoire*, and it is possible that he may have published his book before the spring and summer when the matter unfolded. But it seems likely that he was motivated to make public his unlikely proposal partly in response to the controversy that the Lejeune affair occasioned.

Though the plan remained little more than a fanciful idea and was never published in its full details, many of Malouet's ideas would make their way into the revolutionary debates over slavery and abolition that broke out in 1789. The assumption that a choice had to be made between the prerogatives of private property and the need to regulate the master's sovereignty over his slave in the name of either humanitarian or prudential interests would not only survive into the revolutionary era but acquire a significance that even the most perceptive and wary of colonial observers could not have anticipated in the spring and summer of 1788. That

assumption characterized both pro- and anti-slavery positions in the controversy over whether and how Saint-Domingue ought to be represented in the metropolitan legislative bodies that succeeded in the wake of the Estates General. And it was the tug-of-war over colonial representation that created the circumstances in which the famous slave revolt of August 1791 took place.<sup>41</sup>

Marking the beginning of the Haitian Revolution in the strict sense of the name, the 1791 slave revolt had its own very complicated, local prehistory. Nonetheless, the continuities that link absolutism and the Code Noir to abolition and the end of slavery in Saint-Domingue are an essential part of the story of the Haitian Revolution seen in its broadest context. That context was a transatlantic one, and it made the Haitian Revolution a possible though hardly inevitable event. To understand why the Revolution was not the necessary product of an Atlantic ideological cauldron that spilled over from France into the New World, one need only consider the fate of Guadeloupe and Martinique during and after the French Revolution. Sister colonies of Saint-Domingue, in the revolutionary period they both witnessed significant slave uprisings whose effects the French authorities managed to contain. Still a part of the French empire today, in the form of *departments d'outre-mer*, Martinique and Guadeloupe are reminders that the French Revolution was not inherently destined to result in the overthrow of colonial slavery. The sugar colonies' importance to the French economy, as well as Napoleon's conviction of the need for France to maintain its empire in the Americas, sufficed to limit the impact of revolutionary ideology.

But the French economy, and with it French ideas about political economy, were irrevocably altered after the Haitian Revolution. Napoleon's sale of Louisiana to the United

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<sup>41</sup> See Ghachem, "Sovereignty and Slavery in the Age of Revolution," 299-357.

States in 1803 marked the end of French imperial ambitions in the New World and of traditional colonial mercantilism as an organizing principle of political economy. In the nineteenth century France turned its attention to the settlement of colonies in North Africa, and renewed a preexisting interest in Asian colonization. Unlike its Old Regime predecessor, the nineteenth-century empire would be an empire of settlers. It would be organized not around the mercantilist extraction of sugar and coffee revenues from absentee-owned slave plantations, but rather around the belief in a French civilizing mission overseas.

The French-British rivalry in world affairs was an important factor in the development of that mission, and to this extent the political framework of mercantilist economic thought remained in place. Nor did the post-mercantilist dogma of “free trade,” a product of the late Enlightenment, entirely sweep away all of the protectionist impulses of the old order. More than anything, it was the demise of the conviction that slavery could be used to sustain empire that marked the decisive shift in French colonial thought.<sup>42</sup> In 1848, not long after a new imperial foothold had been firmly secured in North Africa, slavery was finally abolished in France’s remaining Caribbean and Indian Ocean colonies. The Age of the Code Noir in French political economy was over.

Partly because of the Haitian Revolution, the tension between “public” and “domestic” sovereignty seems to resonate with special force in the eighteenth-century French pamphlet literature on slavery. But hindsight is not everything in history, and there is much more to the relationship between slavery and eighteenth-century political economy than this particularly French concatenation of ideas and events would suggest. It bears repeating that the “government

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<sup>42</sup> On the continuities and discontinuities between the “first” and “second” phases of European imperialism, see Pagden, *Lords of All the World*, 1-10.

of slavery” was a form of early modern political economy. In the writings of a figure such as Adam Smith, the legal and administrative writings discussed above can be seen as French variations on a larger Atlantic theme. That theme – the nature of slavery as a complicated political project with collective action implications for entire colonial societies and their imperial sponsors – occupies an important place in early modern economic debates about the role of government in the age of mercantilism.

Smith’s prominence in these debates needs little explanation. From an Atlantic perspective, it is worth remembering that the discussion of mercantilism and colonialism in Book Four of *The Wealth of Nations* was directly inspired by Smith’s reading of and personal encounters with the leading French physiocrats: Turgot, Quesnay, Mirabeau, Dupont de Nemours, and Mercier de la Rivière. Smith met all of these men in France in the mid-1760s while serving as tutor to the young Duke of Buccleuch. Mercier de la Rivière’s *L’Ordre naturel et essentiel des sociétés politiques* (1767) Smith regarded as “the most distinct and best connected account” of physiocratic doctrine.<sup>43</sup> Among his other distinctions, Mercier de la Rivière was an outspoken defender of the right of the French colonists to trade directly with New England merchants in violation of the mercantile regulations of both France and Britain.<sup>44</sup>

As we have seen, Smith’s interest in slavery and the colonies dates back at least to his lectures on jurisprudence at the University of Edinburgh in the early 1760s. In the first of his lectures dealing with slavery, on February 15, 1763, Smith remarked that Europeans are “apt to imagine that slavery is entirely abolished at this time, without considering that this is the case in

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<sup>43</sup> Quoted in Andrew Skinner’s introduction to Adam Smith, *The Wealth of Nations, Books IV-V* (New York: Penguin Books, 1999), xvi.

<sup>44</sup> Paul-Pierre le Mercier de la Rivière, *L’Ordre naturel et essentiel des sociétés politiques*, ed. Edgar Depitre, Collection des économistes et des réformateurs sociaux de la France (Paris: Librairie des Sciences politiques et sociales, 1910), x.

only a small part of Europe,” whereas in fact most of the rest of the globe still labored under its yoke. Indeed, he observed, it is

impossible that [slavery] should ever be totally or generally abolished. In a republican government it will scarcely ever happen that it should be abolished. The persons who make all the laws in that country are persons who have slaves themselves. These will never make any laws mitigating their usage; whatever laws are made with regard to slaves are intended to strengthen the authority of the masters and reduce the slaves to a more absolute subjection. The profit of the masters was increased when they got greater power over their slaves. The authority of the masters over the slaves is therefore unbounded in all republican governments.<sup>45</sup>

In the remainder of his lecture that day, Smith elaborated on this argument with reference to the history of slavery from ancient times to the present. Under the Roman republic, he argued, “the freedom of the free was the cause of the great oppression of the slaves.” Masters could put their slaves to death for the smallest of reasons, without any concern that the state would hold them accountable. Such a laissez-faire system clearly threatened the safety of Rome, since it left slaves with no incentive for continued toleration of the deprivations they faced. But, according to Smith, the tension between the magisterial prerogative and the danger of a slave uprising was inevitable in any political system that prided itself on self-rule. In a monarchical government, by contrast, “there is some greater probability of the hardships being taken off. The king can not be injured by this; the subjects are his slaves whatever happen; on the contrary it may tend to strengthen his authority by weakening that of his nobles.”<sup>46</sup>

On the following day, February 16, Smith applied these same principles to account for the gradual elaboration of slavery and villeinage in western Europe. His

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<sup>45</sup> Smith, *Lectures on Jurisprudence*, 181.

<sup>46</sup> *Ibid.*, 182.

general theme in this lecture was that slavery was much more “tolerable” in a “poor and barbarous” country than in a “rich and polished” one. But the central analytical point had once again to do with the competition between royal and noble authority. “To abolish slavery . . . would be to deprive the far greater part of the subjects, and the nobles in particular, of the chief and most valuable part of their inheritance.” Any attempt to do so could only result in an insurrection on the part of the nobles themselves. So it was that slavery, once established in any particular society, was very unlikely ever to give way.<sup>47</sup>

Among the many remarkable aspects of this argument, not least is its uncanny appreciation for the power dynamics of an absolutist society such as early modern France, in which the conflict between royal and noble authority that broke out during the Fronde and continued through the French Revolution was such a familiar theme of eighteenth-century political commentary. And yet Smith’s intuitions are also applicable to the colonial context, as we have seen in reference to the monarchy’s 1784-85 plantation reforms and the planter resistance they generated. Beginning with his Edinburgh lectures, Smith was always closely attuned to events on the ground in the West Indies, which he considered the prime test case of his thesis that slavery took different forms under absolutist and republican governments. Indeed, he observed, the very establishment of plantation colonies in the West Indies was made possible by “the weakness of government.”<sup>48</sup>

Thirteen years later, in *The Wealth of Nations*, Smith was still fixated on the relatively harsher conditions of slavery under republican government. But this time he

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<sup>47</sup> Ibid., 187.

<sup>48</sup> Ibid., 199.

was much clearer about the particular national contrast he had in mind. Slaves in the English colonies, he argued, could only envy their counterparts in the French Caribbean, where the power of colonial administrators over planters supposedly served to introduce “a better management of their negro slaves.” This relative humanity was only possible in a society whose officials were prepared to recognize and enforce limits on the principle of private property. “In every country where the unfortunate law of slavery is established,” Smith wrote,

the magistrate, when he protects the slave, intermeddles in some measure in the management of the private property of the master; and, in a free country, where the master is perhaps either a member of the colony assembly, or an elector of such a member, he dare not do this but with the greatest caution and circumspection.<sup>49</sup>

Rather imaginatively, Smith even contemplated the possibility of masters receiving *lettres de cachet* from the magistrates of an absolutist government that sought to rein in arbitrary rule at the plantation level.<sup>50</sup> The point was not that absolutist societies were more aware of the dangers of a slave revolt arising from radical abuse, but rather that they were institutionally and ideologically better equipped to forestall this scenario.

Smith’s analysis of the “collective action” dilemma of slave societies hearkens back to a similar argument made by Jean Bodin in the *Six livres de la république*. But it also speaks to the actual tactical efforts of French colonial administrators who sought, in the period after the Seven Years’ War, to reform plantation slavery in Saint-Domingue so as to guarantee the stability of the world’s wealthiest colony. As it happens, Smith was wrong to say that slavery could never be abolished under absolutist rule. He lived to see

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<sup>49</sup> Smith, *The Wealth of Nations*, 168-69.

<sup>50</sup> *Ibid.*, 169.

the beginnings of the French Revolution, but not its ripple effects in the territory that became Haiti. On the other hand, he would probably not have been surprised to see slavery survive under republican auspices in North America until the second half of the nineteenth century. Arguably, however, the same determination of central authorities to intervene in the management of private slave property was responsible for triggering both the Haitian Revolution and the American Civil War.

There is an as yet unexplored connection between two forms of laissez-faire policy in the age of colonial slavery. The first is the laissez-faire philosophy that physiocratic critics of mercantilism brought to bear on the Atlantic system during the eighteenth century. It was perhaps inevitable, as Smith and others speculated, that any weakening of the strictures of mercantilism would eventually result in the independence of the colonies. The French monarchy did just this – relax the rules of mercantilism – in 1784, the same year that it sought to implement its plantation management reforms. Those reforms suggest the second kind of laissez-faire that may have made possible revolution in a colony such as Haiti: the laissez-faire of slaveholders determined to maintain that slaves were private property not subject to the intervention of colonial administrators. Famously, Smith's *Wealth of Nations* was published in 1776, on the eve of American independence, and many commentators have seen in it a prognostication, at a political economic level, of the American Revolution. Perhaps it is also worth considering as an anticipation of the Haitian Revolution, one predicated on the notion that the “government of slavery” was a branch of political economy deeply implicated in the modern debate between the advocates of “limited government” and those of a strong central state.