

Prosecuting Torture: The Strategic Ethics of Slavery in Pre-Revolutionary Saint-Domingue (Haiti)

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In the spring and summer of 1788, a master was prosecuted for the torture of two female slaves in the French Caribbean colony of Saint-Domingue (present-day Haiti). The exceptional nature of the case was immediately obvious to the participants who lived through it. The governor and intendant of Saint-Domingue—in essence, the colony’s chief military and administrative officers, respectively—described it as a “unique opportunity

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to arrest, by means of a single example, the course of so many cruelties.”¹ In 1788, the most recent victims of this long eighteenth-century history of cruelties included two slaves known only as Zabeth and Marie-Rose, ostensibly tortured because they were suspected of having administered poison to their master and fellow slaves. This article tells the story of the prosecution of the master who tortured them, Nicolas Lejeune.²

There is much more to the singularity of Saint-Domingue than its unremitting history of violence. Between the 1660s, when French settlers began to colonize the western third of Hispaniola, and the late eighteenth century, Saint-Domingue became a surpassingly lucrative base of sugar and coffee production, easily the most profitable plantation colony in the entire Western Hemisphere. It was, even more notably, the site of the world’s first and only victorious war of slave revolution on a national scale, a foundational event that had major repercussions for all of nineteenth-century United States constitutional and African-American history, from the Louisiana Purchase to *Plessy v. Ferguson*.³

1. Letter from François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, to César-Henri de la Luzerne, Naval Minister, August 29, 1788, Archives nationales d’outre-mer (hereafter ANOM), Fonds ancien, Série F, F/3/90, fol. 266. With a few exceptions, all subsequent archival references in this essay are to manuscript volumes of the F/3/90 classification in the ANOM, located in Aix-en-Provence, France, and will be designated simply as F/3/90 followed by a folio number. Unless otherwise noted, all translations in this article are by the author.

2. The most extensive treatment of the Lejeune affair is Jacques Thibau, *Le temps de Saint-Domingue: L’esclavage et la Révolution française* (Paris: J.-C. Lattès, 1989), 17–93, an account embellished with various novelistic details that do not seem solidly grounded in the sources. Extended extracts from the F/3/90 manuscripts relating to the case are reproduced in Antoine Gisler, *L’esclavage aux Antilles françaises (XVII^e-XIX^e siècles)*, rev. ed. (Paris: Éditions Karthala, 1981), 117–27. Brief accounts can also be found in Carolyn E. Fick, *The Making of Haiti: The Saint Domingue Revolution from Below* (Knoxville, TN: University of Tennessee Press, 1990), 37–38; idem, “L’Affaire LeJeune,” in *Dictionnaire historique de la Révolution haïtienne*, ed. Claude Moïse (Montreal: Les Éditions du CIDIHCA, 2003), 29–30; Pierre Pluchon, *Vaudou, sorciers, empoisonneurs: De Saint-Domingue à Haïti* (Paris: Éditions Karthala, 1987), 199–204; C.L.R. James, *The Black Jacobins: Toussaint Louverture and the San Domingo Revolution*, rev. ed. (New York: Random House, 1963), 22–24; Pierre de Vaissière, *Saint-Domingue: La société et la vie créole sous l’ancien régime (1629–1789)* (Paris: Perrin et Cie, 1909), 186–88; Laurent Dubois, *Avengers of the New World: The Story of the Haitian Revolution* (Cambridge, MA: Harvard University Press, 2004), 56; and Colin [Joan] Dayan, *Haiti, History, and the Gods* (Berkeley: University of California Press, 1995), 215–18. See also *Le petit juge et le maître cruel ou la question de l’esclavage à Saint-Domingue à la veille de la Révolution* (France Inter radio broadcast, March 2, 2008, rebroadcast July 6, 2008). I have not been able to access a copy of this program.

3. Paul Lachance, “Repercussions of the Haitian Revolution in Louisiana,” in *The Impact of the Haitian Revolution in the Atlantic World*, ed. David P. Geggus (Columbia: University of South Carolina Press, 2001), 209–30; Rebecca J. Scott, “The Atlantic World and the Road to Plessy v. Ferguson,” *Journal of American History* 94 (2007): 726–33; idem, “Public

But violence was unquestionably central to the colony's history, its political culture, and its fate. And one form of slavery's violence occupied a place of special significance in the story of Saint-Domingue: torture. Conventionally defined as the use of coercive means by public or quasi-public actors to induce cooperation or a confession from a criminal suspect, "torture" in colonial Haiti was not always seen as the legally specialized and distinctive form of state-sanctioned violence that features in the historiography of criminal procedure. Rather, torture was identified as part of a continuum of practices that included cognate forms of brutality. Torture nonetheless occupied a prominent niche in the set of techniques by which masters sought to discipline and terrorize their slaves, and this prominence undoubtedly derives in good measure from torture's close relationship to law and the methods of legal inquiry.

To understand torture in Saint-Domingue is to grasp its situation in the larger project of the Code Noir—the 1685 royal edict that established the basic law of slavery in the French Empire—as it was implemented and understood over the course of the eighteenth century by administrators and jurists, by planters, and also by slaves. The Code Noir was the subject of a permanent debate in colonial and revolutionary Haiti over how best to maintain stability in a slave society. The explosive politics of torture were deeply embedded in that debate, such that we can speak of a veritable terror–torture nexus in the colony: a vicious cycle of planter repression and slave resistance that seemed entirely ungovernable by law (even though it was founded at bottom in the basic legal institution of human bondage). At the level of both political theory and colonial administration, slaves figured as "domestic enemies," effectively colluding with the abuses of their masters to threaten what Jean Bodin called the "well-ordered commonwealth."⁴ The Lejeune prosecution crystallizes the competing elements of this legal culture, thereby illuminating the nature of the law of slavery as a set of strategic techniques for mediating the anxious world of masters and their captive "domestic enemies."

Rights, Social Equality, and the Conceptual Roots of the Plessy Challenge," *Michigan Law Review* 106 (2008): 784–85.

4. See Jean Bodin, *The Six Bookes of a Commonweale: A Fascimile 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), 45 (rendering as an "ancient proverb" the phrase "[s]o many slaves, so many enemies in a man's house") (emphasis in the original); and Pierre-Paul Tarin de Cussy, Governor, to Jean-Baptiste Colbert de Seignelay, Naval Minister, October 18, 1685, ANOM, Correspondance générale Saint-Domingue, C/9A/1, fol. 250 ("In our slaves we have domestic enemies.").

In 1788, the slaves on Lejeune's plantation (at least) were finally able to register their resistance to this cycle of violence in the form of law. That they did so is owed, in part, to a seeming anomaly of legal history: the prohibition of torture incorporated into the 1685 Code Noir. As is well known, the legal systems of all of the major continental European states regularly resorted to torture as an official part of the inquisitorial system until the end of the Ancien Régime.⁵ At one level, the Code Noir was entirely consistent with this state of affairs, as the Code prohibited the use of torture by masters vis-à-vis their slaves, not the use of torture by the colonial courts. There was at least some judicial torture of slaves during the colonial period in Saint-Domingue, although it is difficult to tell just how much, given the periodic destruction of slave criminal trial records during the eighteenth century.⁶ But the very definition of torture as a technique of official investigative procedure means that, whereas individual acts of torture outside the judicial system were presumably also illegal on the continent, the phenomenon of extrajudicial torture posed far less of a challenge to sovereignty and stability in France (if indeed it posed any such challenges there at all) than it did in the colonies. The anomaly cannot be resolved simply

5. John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime*, (1977; Chicago: University of Chicago Press, 2006), 3. Moreover, although torture never systematically established itself as an element of English criminal procedure, it played a role in England and other common law jurisdictions as well. *Ibid.*, 73. John H. Langbein, "The Legal History of Torture," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 99–100 (noting that although the system of judicial torture was never institutionalized in English law, English courts experimented with using torture to investigate crime during the Tudor–Stuart period).

6. Criminal procedure in late seventeenth- and eighteenth-century France was governed by a 1670 royal ordinance that provided for the use of judicial torture ("*questions et tortures*") in the trial courts. See *Ordonnance criminelle*, tit. 19 (1670). This ordinance also applied to Saint-Domingue, albeit with complaints on the part of commentators and the colony's high courts that certain provisions were incompatible with local conditions and that trial judges were neglecting to conform their practices to the letter of the law. See "Ordonnance Criminelle," August 1670, in *Loix et constitutions des colonies françaises de l'Amérique sous le vent*, ed. Médéric-Louis-Elie Moreau de Saint-Méry (Paris: published by the author, 1784–90), 1:198 (hereafter cited as *Loix et constitutions*) (noting the colonial high courts' adoption of the 1670 ordinance, "several provisions of which cannot suit the American islands"); Arrêt du Conseil du Port-au-Prince, June 17, 1779, ANOM, Fonds ancien, Série F, Code de Saint-Domingue, F/3/274, fol. 810 (calling for adherence to the 1670 ordinance). The colonial high courts sought to require trial judges to "interrogate" slave defendants within the first twenty-four hours of their imprisonment, in conformity with the 1670 ordinance, but such interrogation did not involve coercive methods. See Arrêt du Conseil du Port-au-Prince, March 7, 1777, ANOM, Fonds ancien, Série F, Code de Saint-Domingue, F/3/274, fols. 257–58. The appellate court records preserved in Moreau de Saint-Méry's collection give no indication one way or the other of the extent of the use of judicial torture of slaves. For further discussion, see text at notes 42–49 below.

by writing the use of torture on the colonial plantations out of the definition of torture. For the Code Noir, which is indisputably a legal or official document even in the conventional sense, uses the technical term “torture” to describe the torture of slaves by their masters, as did the participants in the Lejeune prosecution.⁷ The French colonial prohibition of torture therefore stands as a curious puzzle in the history of Western law, one that has yet to be solved in the disconnected literatures on the laws of torture and slavery.⁸

This should not be entirely surprising, because in all of the eighteenth-century agitation over torture that preceded and accompanied its initial abolition in revolutionary and Napoleonic Europe, the torture of slaves overseas seems to have played no discernible role.⁹ Despite torture’s apparent origins in ancient Greek and Roman law as a practice targeted initially at slaves, the modern scholarship on the law of torture takes as its object of study an institution conventionally defined without reference to the dynamics at play in torture’s Atlantic colonial theatre.¹⁰ This demarcation of the subject points to a limitation inherent in the historiography of torture, which emphasizes its strictly procedural or evidentiary role as an instrument of “state actors” engaged in the investigation of crime.¹¹ The essence

7. For a contemporary variation on this linguistic impasse, see Karima Bennoune, “Terror/Torture,” *Berkeley Journal of International Law* 26 (2008): 46 (arguing that the “terminological quagmire” of human rights jurisprudence “springs from the larger question of whether human rights law can be applied directly to non-governmental entities”).

8. On the legal historiography of torture, see the sources cited in note 11 below; and Langbein, “The Legal History of Torture.”

9. The closest connection I have seen drawn in this respect is Lynn Hunt, *Inventing Human Rights: A History* (New York: W.W. Norton, 2007), 105–6, discussing Jacques-Pierre Brissot de Warville’s career in the 1780s, first as a critic of torture, and then as founder (in 1788) of the French antislavery Society of the Friends of the Blacks. But Hunt suggests only a general association – not a direct connection – between these two aspects of the future revolutionary’s pre-1789 activism. Judicial torture was abolished in two stages in eighteenth-century France. The so-called *question préparatoire*—torture for purposes of securing a suspect’s confession—was abolished by royal decree in 1780. The *question préalable*—torture of a convict just prior to execution for purposes of securing the names of accomplices or information about other crimes—was provisionally abolished by the monarchy on May 1, 1788, then definitively by the National Assembly on October 8, 1789. *Ibid.*, 76, 240 n.4. I have seen no indications that the abolition measures of either 1780 or 1788 were invoked in connection with the Lejeune prosecution, which preceded the 1788 abolition by roughly one month.

10. See, for example, Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1979), 39 (noting that torture “is of ancient origin: it goes back at least as far as the Inquisition . . . and probably to the torture of slaves”).

11. See Edward Peters, *Torture*, exp. ed. (Philadelphia: University of Pennsylvania Press, 1996), 4 (“Torture began as a legal practice and has always had as its essence its public character, whether as an incident in judicial procedure or as a practice of state officials outside the

of torture, in this literature, lies in its functional relationship to the law of evidence.¹² Given that the legal systems of Saint-Domingue and other New World slave societies generally barred the use of slave testimony, a prohibition of torture seems superficially amenable to a functionalist explanation. In principle, there is no need to procure, through the use of torture, evidence that has no legally recognized status. But the exclusion of slave testimony in the French colonial courts, never complete to begin with, was relaxed early in the eighteenth century, so the judicial torture of slaves could thereafter be thought to have a renewed rationale as a means of extracting confessions.¹³ In any case, the Code Noir itself had no bearing on judicial torture *per se*. One might be able to embrace a functional rationale for the prohibition on the torture of slaves by masters if in fact the Code had meaningfully served to deter masters from torturing their slaves. But both common sense and the archival evidence tell us that, absent actual enforcement on the ground of Saint-Domingue, the Code Noir itself neither did nor could play such a role.

This does not mean, however, that the French colonial ban on torture (and kindred provisions of the Code Noir) should be seen as quaint relics or purely phantom efforts to regulate the conduct of masters as well as slaves. According to what is probably the dominant line of interpretation, the antitorture provisions were so rarely enforced that they can only be seen

judiciary proper.”); Lisa Silverman, *Tortured Subjects: Pain, Truth, and the Body in Early Modern France* (Chicago: University of Chicago Press, 2001), x (“When I speak about torture, I am speaking about the legal practice of torture that permitted the infliction of pain by officers of the state on the bodies of suspects in capital cases”); James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between American and Europe* (New York: Oxford University Press, 2003), 20 (torture is “best understood in its technical sense, as harsh treatment intended to coerce persons to cooperate or confess”); Langbein, *Torture and the Law of Proof*, 3 (distinguishing between punishment and torture and defining the latter as “the use of physical coercion by officers of the state in order to gather evidence for judicial proceedings”). The focus on judicial torture *per se* seems unduly narrow, as Peters has acknowledged in the preface to the new edition of his work. See Peters, *Torture*, viii. It is no coincidence that all four of the works cited here, with the partial exception of Whitman’s book, overlook the colonial law of anti-torture and thus are unable to account for the legal politics of torture in the context of Atlantic slavery.

12. Indeed, in the most influential account, by Langbein, this very functionalism accounts for the eventual demise and abolition of torture. According to Langbein, the Roman-canon law of proof—which required that defendants in capital cases be convicted on the strength either of a confession or the testimony of two witnesses—began to dissolve in Europe in the seventeenth century. In its place, there developed a more free-ranging judicial examination of the evidence, of the kind we associate today with the inquisitorial style of criminal procedure, thereby rendering torture obsolete. See Langbein, *Torture and the Law of Proof*, 11–12.

13. See text at notes 55–57, p.1001.

as ideological figments that served to disguise the “true” purpose of the law of slavery, which was to legitimate the sovereignty of masters over slaves.¹⁴ There is some truth to this claim. Indeed, one can hardly avoid looking at Old Regime colonial law with at least some degree of skepticism, given that many nations have continued, well after the late eighteenth-century abolition of torture and even into our own day, to use torture as an instrument of law enforcement, despite contrary international and domestic legal commitments.¹⁵ The story of torture in modern Western legal history is one of continuities as well as rupture. And an important chapter of that story involves the subjection of slaves and their descendants in the Atlantic world to practices that can be described, with greater or lesser precision, as torture.

As with other areas of the law of slavery, however, the assumption of a straightforward relationship between torture and colonial administration, or between colonial administration and the demands of planters, can be misleading. The prosecution of torture raised profound issues of individual standing and sovereign immunity in the legal order of Saint-Domingue.¹⁶ The Lejeune affair sheds a rare light on the genealogy of and relationship between these tightly linked concepts, as they crystallized in the distant but nonetheless recognizably modern forms of slave standing to sue and planter immunity from prosecution. The heavy weight of racism and of social hierarchy in the French Caribbean had an enormous impact on the contemporaneous understanding of these legal forms. But ideas about the legitimacy of slave resistance through law and the domestic sovereignty of planters were also filtered through a prudential prism of risk and revolution, which recast those ideas in complicated and surprising ways.

14. See Louis Sala-Molins, *Le Code Noir, ou le calvaire de Canaan* (Paris: Presses Universitaires de France, 1987), viii (describing the Code Noir as an instrument for “the legitimation of a practice . . . of torture” and the regulation of “utilitarian genocide”); Colin [Joan] Dayan, *The Story of Cruel and Unusual* (Cambridge, MA: MIT Press, 2007), 10–11 (characterizing the Code Noir as part of a broader “language” of slave law that “offered protection and normalized abuse”); and Nick Nesbitt, *Universal Emancipation: The Haitian Revolution and the Radical Enlightenment* (Charlottesville: University of Virginia Press, 2008), 30 (“New World slave owners . . . quite actively tortured and bestialized as a colonial power whose actions were defended by the state and rule of law that promulgated the *Code Noir*.”).

15. See Peters, *Torture*, 103–87; Oona A. Hathaway, “The Promise and Limits of the International Law of Torture,” in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 201–4.

16. Cf. Sanford Levinson, “Slavery and the Phenomenology of Torture,” *Social Research* 74 (2007): 150 (“[T]he most fundamental legal and moral issues raised by slavery and torture are astonishingly similar. Both ultimately raise issues of ‘sovereignty’—that is, the possession of absolute unconstrained power—and, therefore, the challenge to ‘sovereignty’ that is implicit in any liberal notion of limited government.”).

The present article is based primarily on an elaborate report (now housed in the French Colonial Archives in Aix-en-Provence) written by the colony's governor and intendant to the French naval minister in August 1788, after the high court in Saint-Domingue had disposed of the matter.¹⁷ (The Naval Ministry had jurisdiction over the French colonies.) This report, with attachments comprising what we would call the case "docket," reveals nearly all of what we today know about the Lejeune affair. In particular, the case file shows clearly that both sides of the argument over Lejeune's fate were pre-occupied with the implications of allowing slaves to press claims against their masters in court for violations of the Code Noir. For Lejeune and his sympathizers, permitting such prosecutions would embolden the slaves of Saint-Domingue to resist the demands of plantation labor and to regard their masters, not as "absolute" authorities, but rather as subjects of a higher law. Leaving planters with an unrestrained hand was the only way to avert "insubordination" on the wider scale of slave revolt. On the other side, the governor and intendant of the colony argued that the real danger lay in *preventing* the claims of slaves against their masters from being heard by the court system. Deprived of access to the legal system, the slaves would turn to a private system of retribution that both paralleled and aimed to eliminate their masters' reliance upon domestic punishment. The result would be the same as the one predicted by the argument of Lejeune and his fellow planters: a slave revolution. Diametrically opposed in one sense, these contrasting arguments were perfectly symmetrical in another. By 1788, the fear of a generalized slave revolt, present in one form or another since the second decade of the eighteenth century, had become such a widespread point of reference that it could be used to powerful effect both by the planters who mobilized around Lejeune and by the administrators who pressed for his conviction and punishment.¹⁸

The Colonial Prohibition of Torture

Even as they terrorized the slaves who far outnumbered them, the planters of eighteenth-century Saint-Domingue felt terrorized *by* their slaves, and specifically by their suspected use of poison to kill blacks and whites, slaves and freepersons alike. As a technique of intimidation and resistance,

17. The report seems to have been prepared in connection with the possibility of further administrative or judicial proceedings in France.

18. For the earlier eighteenth-century background, see Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (New York: Cambridge University Press, 2012), chaps. 1 and 3.

poison was characterized, above all, by its invisibility. Indeed, the hidden nature of poison was the very source of its power to sow fear in the minds of masters and overseers.¹⁹ As the colonial administrators would note in one of their interventions into the Lejeune case, poison was a method of “secret vengeance.”²⁰ A practice of ancient pedigree that was also strikingly modern and disciplinary in its consequences, poison effected violence without resort to conventional methods of violence. Its operation on the body required no overt physical invasion, rendering its effect on the psyche all the more powerful.²¹

The true dimensions of this reputed reign of terror are probably forever lost to history. What we can say is that, in Saint-Domingue, that reign was associated at its origins with a Muslim, Arabic-speaking slave from West Africa named Macandal.²² After eluding capture for many years, Macandal was burned at the stake in 1758 on charges of poisoning whites and spreading knowledge about the use of poison to other slaves in the colony. His name became associated with a specific crime—“Macandalisme”—and was invoked by the colonial courts and by colonists for the duration of the Old Regime in Saint-Domingue as a symbol of the dangers of slave resistance.²³

Macandalisme united in one name the twin planter fears of poisoning and slave marronage (or fugitive slavery). Slaves who fled their plantations were punished the first time by having their ears cut off and a shoulder marked with the fleur-de-lis, the second time by having their hamstrings cut (and the other shoulder marked), and the third time by death.²⁴

19. That poison had such an effect is confirmed, inter alia, by a pair of earlier cases dating to 1770 and 1771. See *ibid.*, chap. 3 (discussing the cases of Cassarouy and Dessources).

20. Letter from François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, to the members of the Cap Français Chamber of Agriculture, April 17, 1788, ANOM, F/3/90, fol. 208.

21. Because it could be placed in food or drink and then left to await consumption, poison had the additional terrifying aspect of being at least partly self-administered. Although poison played a role of special importance in the Caribbean colonies, it was feared by planters throughout the Americas. See James, *The Black Jacobins*, 16–17; and Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage, 1976), 616. For a study of the trial of slaves for poisoning in early nineteenth-century Martinique, see John Savage, “Between Colonial Fact and French Law: Slave Poisoners and the Provostial Court in Restoration-Era Martinique,” *French Historical Studies* 29 (2006): 565–94.

22. Pluchon locates the first official reference to poison as a crime punishable by death in Saint-Domingue in a June 1723 decision of the high court of Le Cap. Pluchon, *Vaudou, sorciers, empoisonneurs*, 152.

23. See Fick, *The Making of Haiti*, 59–73; and Pluchon, *Vaudou, sorciers, empoisonneurs*, 165 ff.

24. Code Noir, art. 38 (1685). Enforcement of these provisions depended heavily upon the fugitive slave police, in which free people of color played a leading role.

Marronage spawned a vigorous culture of slave resistance in Saint-Domingue, and no maroon was more famous in the eighteenth century than Macandal, who organized bands of fellow fugitives from his base in the mountains to execute attacks on plantations throughout the northern province of the colony.²⁵ Slaves identified the culture of maroon resistance with autonomy and release from the rigors of the plantation; masters associated it with brigandage and guerilla-style terrorism.²⁶ It was largely in connection with the dreaded specter of Macandalisme that torture was deployed so pervasively in Saint-Domingue during the second half of the eighteenth century.²⁷

The legacies of Macandalisme would appear and reappear throughout the Lejeune affair. In another respect, however, the case was virtually unprecedented in the annals of Saint-Domingue, because this was one of the very few instances (if not the only one) in which slaves were successful in using the criminal justice system to press charges against their master. The prosecution unquestionably came as a complete surprise to Nicolas Lejeune, whose father had bequeathed to him a coffee plantation earlier in the 1780s, located near Plaisance, in the northern province of Saint-Domingue, some twenty miles southwest of the commercial capital of Cap Français. The Lejeune plantation had been the scene of several previous incidents involving the torture of slaves on suspicion of having administered poison to their master and fellow slaves. None of these previous infractions of the Code Noir had ever resulted in the actual investigation or prosecution of either the elder Lejeune or his son, a situation typical of broader patterns in the colony.

Lejeune's slaves were able to pursue their claims in 1788 because of a mix of very old and very new law: the 1685 Code Noir itself, and a set of royal ordinances promulgated exactly one century later, on the eve of the events in question. Article 26 of the Code allowed slaves to bring a complaint to the royal prosecutor in cases of malnourishment, lack of clothing, or improper "maintenance," and mandated the prosecution of masters for the "barbarous and inhumane treatment" of their slaves.²⁸ Article 42 punished masters who tortured or mutilated their slaves by confiscation of the

25. Saint-Domingue was divided for administrative purposes into northern, western, and southern provinces, the "western" province constituting essentially the middle or central region of the colony.

26. On Macandalisme and maroon resistance in Saint-Domingue, see Fick, *The Making of Haiti*, 59–73.

27. Yvan Debbasch, "Au coeur du 'gouvernement des esclaves': La souveraineté domestique aux Antilles françaises (XVII^e – XVIII^e siècles)," *Revue française d'histoire d'outre-mer* 72 (1985): 31–54 (emphasizing the relationship between poisoning and torture); and Pluchon, *Vaudou, sorciers, empoisonneurs*, 196–97.

28. Code Noir, art. 26 (1685). On the drafting of the Code Noir, see especially Vernon Valentine Palmer, "The Origins and Authors of the Code Noir," *Louisiana Law Review* 56 (1995): 363–407.

injured slave and prosecution of the master (while permitting masters to chain or whip those of their slaves who “deserved” such punishment).²⁹ Finally, article 43 commanded the king’s colonial officers to prosecute masters or overseers who killed slaves “under their power or under their direction” and to “punish the murder according to the atrocity of the circumstances.” But it also permitted the royal officers to “absolve” such masters where appropriate, without the need to obtain a royal pardon.³⁰

Unsurprisingly, these articles were very rarely given force in the eighteenth century.³¹ It was not until the other end of the colonial Old Regime that the monarchy finally found the wherewithal to promulgate an ordinance with the power necessary to begin to effectively regulate and punish the torture of slaves by their masters. In December 1784, Louis XVI enacted 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

29. Code Noir, art. 42 (1685) (“Only masters shall be permitted, when they believe their slaves so deserve, to chain them and beat them with canes or rope. *We forbid masters from applying torture to their slaves* or from inflicting any kind of mutilation, on pain of confiscation of the slaves and special prosecution of the masters.”) (emphasis added). See also Ordonnance du Roi, December 30, 1712, in *Loix et Constitutions*, 2:337. The heading for this 1712 ordinance in Moreau de Saint-Méry’s compilation is worth quoting in full: “Ordinance of the King that prohibits all of his subjects in the American islands from applying torture [*la Question*] to their slaves by their private authority, under whatever pretext.” The ordinance described the King’s distress at being informed that planters in the French Caribbean colonies were using torture in violation of the Code Noir and “with unheard cruelty, even among the most barbarous nations, such that [their] slaves were unable for long periods to render any service.” Meanwhile, other slaves, “intimidated by the example,” were led to desert the plantations for fear of being subjected to “such inhumanity,” all of which caused “great disorder” in the colonies. The ordinance established a fine of 500 livres per violation and called upon slaves who were suspected of committing crimes to be prosecuted by the court system. *Ibid.*

30. Code Noir, art. 43 (1685).

31. In the course of my research I have encountered only the following examples of masters being prosecuted for violations of articles 26, 42, and 43 of the Code Noir: Arrêt du Conseil du Petit Goâve, January 3, 1724, ANOM, F/3/90, fols. 123–25 (convicting a master of burning the feet and legs of a female slave who died from the wounds; the punishment included a fine and three months’ imprisonment); Arrêt du Conseil de Léogane, September 2, 1726, ANOM, F/3/90, fol. 187 (condemning a slave driver to three years of galley labor for killing a slave “in a fit of anger”); Arrêt du Conseil du Port-au-Prince, March 11, 1780, ANOM, F/3/90, fol. 51 (condemning a colonist to be whipped, marked, and sent to the galleys in perpetuity for having “coldly and unnecessarily” slit the throats of two fugitive slaves arrested by him); and the 1788 Maguero case discussed on pages 1002–1003. As early as August 28, 1673, whites in the French islands were freed of any liability for killing fugitive slaves. See Ordonnance du Gouverneur-Général des Isles, August 28, 1673, in *Loix et Constitutions*, 1:268–69. The March 11, 1780 case was a rare exception to that general rule.

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 [1754–1763]). 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.” Plantation overseers and managers who engaged in the radical abuse of their slaves would face potential “revocation,” and 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 colonial governor and intendant.³²

Predictably, the planters' representatives on the northern high court of Cap Français, one of two high courts in the colony, 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 the form of a second royal ordinance issued in Paris in 1785; a reluctant concession intended to pacify the dissenting colonists.³³ 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 most abusive of the planters.³⁴ But 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 tactical anxiety about the consequences of planter brutality, and not the demands of

32. Ordonnance du Roi, concernant les Procureurs et Economes-gérans des habitations situées aux Isles sous le Vent, December 17, 1784, in *Loix et Constitutions*, 6:656–57, 660, 662, 666–67.

33. See Ghachem, *The Old Regime and the Haitian Revolution*, chap. 3. The 1785 law provided an opportunity to appeal the findings of the independent commissioners responsible for investigating violations of plantation management practices. The 1784 regulations were also revised to emphasize the duties of “respect and obedience” that all slaves owed not only to masters but also to agents and overseers, who were “enjoined” to inflict such punishments as the Code Noir and the new law directed for cases of “insubordination, neglect, relaxation of discipline, and disobedience.” Finally, and perhaps most tellingly, the King effectively pardoned all crimes committed against slaves that had occurred prior to the registration and publication of the new regulations and for which legal proceedings were not yet commenced. Ordonnance du Roi, December 23, 1785, in *Loix et Constitutions*, 6:927–28.

34. Gabriel Debien, *Les colons de Saint-Domingue et la Révolution: Essai sur le club Massiac (Août 1789 – Août 1792)* (Paris: Armand Colin, 1953), 30–32.

abolitionists, led Louis XVI and the French naval minister to act when they did.³⁵

The significance of these reforms for the Lejeune affair derived as much from memories of the political conflict they triggered—still ripe in the spring and summer of 1788—as from their actual text. Partly in response to northern obstreperousness in the face of the 1784 ordinance, the intendant of Saint-Domingue, François Barbé de Marbois, had suspended the Conseil Supérieur of Cap Français in January 1787 and essentially merged it with its more docile counterpart in Port-au-Prince, where the colony's administrative seat was located.³⁶ The reactions of Lejeune and his neighbors to the 1788 prosecution make clear that they interpreted the case through the lens of this institutional history and the broader pattern of “administrative despotism” that it symbolized for them.³⁷

Torture clearly represented a bone of special contention between planters and administrators in late colonial Saint-Domingue. But what explains the original decision to ban its use by planters? The sources behind the drafting of the Code Noir suggest a general concern with breaking the vicious cycle of slave “crimes” and planter retaliation that administrators and jurists perceived in the French Caribbean world of the mid-to-late seventeenth-century.³⁸ Beyond this, the article 42 prohibition appears to reflect not only the old feudal distinction between *haute* (high) and *basse* (low) justice, but also the principle that “in criminal matters the establishment of truth was the absolute right and the exclusive power of the sovereign and his judges.”³⁹

35. Cf. Philippe Haudrère, “Code Noir,” in *Dictionnaire de l'ancien régime*, ed. Lucien Bély (Paris: Presses Universitaires de France, 1996), 274 (claiming that the 1784 ordinance was issued “at the demand of the abolitionists”). Citing no evidence for this proposition, Haudrère seems to have confused the reaction to the new law with the actual circumstances behind its promulgation.

36. Debién, *Les colons de Saint-Domingue et la Révolution*, 53; and Robin Blackburn, *The Overthrow of Colonial Slavery, 1776–1848* (London: Verso Books, 1988), 166. The suspension lasted until June 1787. The court in Le Cap was replaced by an elected Chamber of Agriculture that served as the northern colonists' only representative institution until the convocation of the Estates General (announced in May 1788 and set for May 1789).

37. For the colonists' grievances against “administrative despotism,” see Jean Tarrade, “Les colonies et les principes de 1789: les Assemblées révolutionnaires face au problème de l'esclavage,” in *La Révolution française et les colonies*, ed. Jean Tarrade (Paris: Librairie l'Harmattan, pour la Société française d'histoire d'outre-mer, 1989), 11–13; and David Patrick Geggus, “Saint-Domingue on the Eve of Revolution,” in *The World of the Haitian Revolution*, ed. David Patrick Geggus and Norman Fiering (Bloomington: University of Indiana Press, 2009), 13.

38. See Ghachem, *The Old Regime and the Haitian Revolution*, chap. 1.

39. On the medieval law background, see Robert Chesnais, introduction to *Le Code Noir*, ed. Robert Chesnais (Paris: L'esprit frappeur, 1998), 11. On the monarchy's inquisitorial

From another point of view, the Code Noir ban on torture might be viewed as a form of exception to the widespread seventeenth-century reliance upon delegated corporate authority. Many New World slave colonies, Saint-Domingue included, were originally administered as royally chartered trading companies, exercising authority delegated to them by European monarchies. And it may be that, in this institutional setting, individual planters were, similarly, seen as possessing certain default powers and privileges that would have otherwise accrued (on the other side of the Atlantic) to the monarchy. Saint-Domingue's corporate phase had ended more than ten years before the Code Noir, in 1674, when the colony was directly absorbed into the royal domain. Even after 1685, however, the individual plantations exercised quasi-public powers delegated by the imperial administration, such as the enforcement of police regulations and court sentences relative to slaves.⁴⁰ Against this backdrop, the administration of colonial criminal justice does not lend itself to any clear public-private distinction, of the kind familiar to modern law. On the other hand, the public-private dichotomy is not entirely anachronistic even in the world of the Code Noir. By 1712, at the latest, it was recognized that masters who engaged in the torture of their slaves were acting in a "private" (and illegal) capacity.⁴¹

Article 42 does not entail that slaves were exempted from the use of judicial torture (*la question*) in Saint-Domingue.⁴² An early draft of the Code Noir implies that torture could lawfully be administered to slaves in the colonial courts.⁴³ Slave criminal trial records were periodically destroyed during the colonial period, making it difficult to tell just how often *la question* may have been used in prosecutions of slaves. But the surviving eighteenth-century appellate records gathered in Moreau de Saint-Méry's voluminous collection give no clear indication one way or the other.⁴⁴ Pierre Pluchon has written of a 1755 case from Martinique

monopoly, see Foucault, *Discipline and Punish*, 35. Foucault is here discussing Old Regime French criminal procedure, including the use of judicial torture, but his point also (and somewhat paradoxically) illuminates the ethos of the Code Noir's ban on the torture of slaves by masters.

40. See Gene E. Ogle, "Policing Saint Domingue: Race, Violence, and Honor in an Old Regime Colony," (PhD Diss., University of Pennsylvania, 2003), 111. I thank Errol Meidinger for his thoughts on this subject.

41. See note 29, p. 995; and Ghachem, *The Old Regime and the Haitian Revolution*, chap. 3.

42. I thank Kenworthy Bilz and Andrew Koppelman for their questions on this point.

43. "Projet de règlement de Mrs. de Blenac et Patoulet sur les Esclaves des Isles de l'Amérique," May 20, 1682, ANOM, F/3/90, fol. 5.

44. Cases involving the death penalty were subject to mandatory appeal to the Conseils Supérieurs. Ogle, "Policing Saint Domingue," 340. Poisoning was a capital offense, and

in which both plantation and judicial torture were used.⁴⁵ Macandal himself, according to a contemporary account, was subjected to a form of judicial torture known as the “*question préalable*,” in the course of which he is said to have confessed the names of a “prodigious” number of coconspirators, who were themselves arrested and questioned under torture.⁴⁶ It seems likely that judicial torture was applied to slaves at other times in Saint-Domingue.⁴⁷

At the same time, however, such cases cannot have been very common, not only because of the limits on the use of slave testimony in court (about which more subsequently), but also given the reality that masters and their representatives rarely found it necessary or proper to avail themselves of the royal tribunals when dealing with slaves accused of poisoning. In these and other situations, slaves were effectively tried and convicted on the plantation, often with the illegal use of “private” torture.⁴⁸ When slaves were brought to trial, it seems they were typically condemned on the basis of mere rumor and the master’s word, rather than on the basis of slave evidence.⁴⁹

it therefore seems significant that no appellate decisions reference the torture of slaves by trial courts. Ogle’s thesis alludes to the role of torture in Old Regime French criminal procedure but does not cite any specific instances of the judicial torture of slaves in eighteenth-century Saint-Domingue. On the periodic destruction of slave criminal trial records pursuant to royal order during the first half of the eighteenth century, see *ibid.*, 92, 308; and Pluchon, *Vaudou, sorciers, empoisonneurs*, 152.

45. The master used torture to elicit an initial confession from a slave whom he suspected of poisoning a fellow slave. At trial, the defendant retracted his confession as having been made under duress, leading the judge to apply two rounds of *la question* before obtaining the desired admission. Pluchon, *Vaudou, sorciers, empoisonneurs*, 160. In a 1712 letter to the Naval Minister, the Intendant of the Windward Islands, Vaucresson, used the term “*la question*” to describe the “private” torture of slaves by masters. *Ibid.*, 207.

46. This account attributed the apprehension of Macandal to the threatened use of torture against a female slave (herself suspect of using poison) in December 1757. *Relation d’une conspiration tramée par les nègres dans l’isle de S. Domingue* (n.p., 1758), 3–4, 6–7. See also Pluchon, *Vaudou, sorciers, empoisonneurs*, 170–76, 238.

47. In the aftermath of the August 1791 slave revolt, slaves believed to have participated in the uprising were tortured on the wheel by officials in Cap Français, for what seem to have been punitive as much as investigative reasons. See Dubois, *Avengers of the New World*, 96.

48. Pluchon, *Vaudou, sorciers, empoisonneurs*, 196–97.

49. *Ibid.*, 162. The difficulty of proving poison cases against slaves prompted a number of extraordinary suggestions for the reform of colonial criminal justice during the eighteenth century. In 1726, the Conseil Supérieur of Martinique proposed a kind of itinerant, emergency form of justice, whereby magistrates would travel immediately to a plantation upon being informed of a poisoning incident. A rapid, on-site criminal trial and sentencing would ensue. In 1749, the administrators of the Windward Islands began requiring autopsies of suspected poison victims, in an apparent effort to introduce some scientific rigor into an otherwise arbitrary system of proof. In 1763, the intendant of Saint-Domingue proposed to

At the end of the day, the Code Noir prohibition on torture seems at least partly inconsistent with the definition of torture as a presumptive monopoly of the state. That inconsistency looms even larger in light of a second axiom in the historiography of criminal law that sharply distinguishes the practice of torture from the administration of painful *punishments*.⁵⁰ The Code Noir, by contrast, links torture (in article 42) to such clearly punitive practices as mutilation, whipping, and chaining.⁵¹ Although directed at masters rather than magistrates, this provision suggests an understanding of torture as comparable to or continuous with the exercise of punishment and the deliberate infliction of suffering.

This understanding reflected the specific circumstances of the slave society that the Code Noir was designed to regulate, but may not have been purely local in nature either. There appears to be a broader etymological dimension to the association between torture and punishment. In the mid-fifteenth century, the French word “torture” signified “a serious penalty, a corporal punishment that could result in death.”⁵² By the late sixteenth century, the term had taken on its modern sense of “intense physical suffering inflicted in order to extract confessions.”⁵³ This linguistic shift, however, did not preclude subsequent connotations of intolerable physical suffering, as reflected first in a 1631 usage, and then reappearing in the mid-seventeenth century.⁵⁴ Therefore, a broader and perhaps more popular meaning of torture both predates and postdates the technical definition of the term. As a historical matter, the jurisprudential effort to segregate these technical and popular meanings has not prevented them from cross-fertilizing each other, even within the domain of law itself.

In any case, for those who found themselves on the receiving end of these practices and understandings, whether in France or its overseas

the Naval Minister that suspected poisoners be deported to France in light of the difficulty of adducing adequate evidence to convict them. Despite such attempted reforms, rumors and presumptions continued to dominate the accusation and conviction of slaves in poison cases, which were disposed of by masters and their agents at the “private” level of the plantation. *Ibid.*, 153–54, 196.

50. See Langbein, *Torture and the Law of Proof*, 3; and note 11 above.

51. See note 29, p. 995. In so doing, the Code Noir evokes the anthropological analysis of Michel Foucault, who argued that torture in Old Regime Europe “functioned in that strange economy in which the ritual that produced the truth went side by side with the ritual that imposed the punishment.” In this interpretation, “the regulated pain involved in judicial torture was a means both of punishment and of investigation.” Foucault, *Discipline and Punish*, 42.

52. Alain Rey, ed., *Dictionnaire historique de la langue française* (Paris: Le Robert, 1998), 3: 3857.

53. *Ibid.*

54. *Ibid.*

territories, torture was no mere semantic exercise. As we will see, whatever the exact relationship between colonial torture and metropolitan (judicial) torture may have been, it is hard to view the use of torture in the Lejeune affair as anything other than a particularly brutal and volatile mix of punitive and investigative practices, operating in that twilight space of sovereignty that was the slave plantation. But the implications of colonial torture were even more complicated and far reaching than this image suggests.

The Deposition of the Slaves

The criminalization of torture was not the only precondition of Lejeune's prosecution. Another was the willingness of Lejeune's slaves to bring charges against their master. In order to do so, they had to be allowed to present their version of the facts to a judicial officer, and their account in turn had to be recognized by a court of law. As slaves were barred under the Code Noir from serving as witnesses in civil and criminal matters alike, and judges could not use a slave's deposition to draw inferences or to establish proof of guilt, the logistical aspect of this dilemma was no mere detail.⁵⁵ Slave depositions could be used, at most, only to assist judges in clarifying the circumstances of a matter.⁵⁶ Even after 1738, when the testimony of an essential slave witness was made admissible into evidence absent any white witnesses, a slave could not testify against his own master.⁵⁷ And the 1784–1785 regulations permitting a slave to denounce the abuses of a master, overseer, or plantation manager did nothing to change the preexisting evidentiary restrictions of the Code Noir. On another day, in another area of the colony, a case such as the one brought against Lejeune

55. Code Noir, art. 30 (1685). Article 31, for its part, prohibited slaves from becoming parties to civil or criminal matters. Only a master could represent the slave's interest in civil matters. Similarly, only the master could pursue criminal remedies to compensate for "outrages and excesses" committed against his slaves. *Ibid.*, art. 31.

56. See Ghachem, *The Old Regime and the Haitian Revolution*, chap. 3 (discussing the 1775 case of a slave named Thomas).

57. Fick, *Making of Haiti*, 283 n.108. Cf. Thomas Jefferson, "Notes on the State of Virginia," in *Thomas Jefferson: Writings*, ed. Merrill Peterson (New York: Library of America, 1984), 268 ("With the Romans, the regular method of taking the evidence of their slaves was under torture. Here it has been thought better never to resort to their evidence."). As Langbein has demonstrated, torture was necessary to continental criminal procedure because the Roman-canon law of proof required either a confession or two witnesses in cases involving blood sanctions (that is, execution or mutilation). Langbein, *Torture and the Law of Proof*, 12. As explained above, however, the law of evidence alone seems unable to explain the status of torture in the Atlantic colonial context.

might well have gone unnoticed, as nearly every such case did. Just as plausibly, it might not have been allowed to proceed all the way to a trial and appeal.

We can get some sense of the fragility and contingency of the slaves' success in pressing charges from the account of an analogous case that came to a head in Saint-Domingue just as the Lejeune prosecution was beginning. On March 25, 1788, the colony's intendant (Marbois) and governor (Alexandre de Vincent de Mazarade) reported to Naval Minister César-Henri de la Luzerne on the "barbarities committed by" a planter named Maguero against the slaves of his plantation. The report was based on the letter of a commander named Coutard, who was present in Port-au-Prince to receive the news while the administrators were away on a trip to Gonaïves, a town on the western coast roughly sixty miles north of the capital. Coutard reported that "the tribunals were finding it impossible to take cognizance of this case, because the law rejects the depositions of slaves and there was no other available proof." When the administrators returned to Port-au-Prince, they summoned Maguero and his slaves to present their respective accounts of the incident. In the course of this interrogation Maguero confessed to wounding one of his male slaves with a gunshot and mutilating a female slave.⁵⁸

"The courts of justice having unfortunately no hold over this guilty person," Vincent and Marbois wrote, "it has seemed to us necessary to deal severely with him by way of an administrative proceeding." Maguero was ordered deported to France on the next available passage, where he would undergo "several months of detention" and be barred from ever returning to the colony. The administrators acknowledged the "inconveniences" of removing a slaveholder from his plantation, in consideration of which they appointed the royal prosecutor to make arrangements for the supervision of Maguero's property. They then concluded their letter by emphasizing that Maguero's crime was "not the only one of this nature. There have been crimes committed on other plantations that are even more serious." But these other cases lacked the "clarity" of proof afforded by a planter's own confession. Vincent and Marbois promised to take steps to "stop the course of these cruelties" by making an "example" of their punishment, as in the case of the deportation meted out to Maguero. But the

58. The administrators allowed other charges made against Maguero, including the suggestion that the number of slaves on his plantation had somehow "diminished" over time from twenty-five to three, to go unexplored. Letter from François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, to César-Henri de la Luzerne, Naval Minister, March 25, 1788, ANOM, Fonds ancien, Série C Colonies, Correspondance générale Saint-Domingue, C/9A/160, fols. 78–79.

underlying problem of the court system's rejection of slave testimony remained.⁵⁹

Whether the administrators had in mind the Lejeune case with their reference to other crimes yet "more serious" than those committed by Maguero is unclear. Vincent and Marbois wrote their first letter commenting on Lejeune's prosecution four days after reporting on the Maguero case. But there would have been no shortage of other incidents upon which to base this claim about the severity and extent of planter brutality in Saint-Domingue. Far more than the question of severity, what distinguished the Lejeune case from its counterparts was the decision of the court of first instance (*sénéchaussée*) to order and accept the deposition of Lejeune's slaves. This decision not only prevented the case from joining the vast number of incidents that were never reported in the first place, but also kept the determination of Lejeune's fate out of the discretionary jurisdiction of the administrators, a fact that had a considerable impact on the ultimate resolution of the affair.

By the time Vincent and Marbois first learned of what had transpired on Lejeune's plantation, in fact, the judicial process was already well under way. On March 13, 1788, a magistrate (*sénéchal*) and the royal prosecutor of Cap Français, Buffon⁶⁰ and Jean-Baptiste Suarez d'Almeida, wrote a letter to the administrators reporting that fourteen slaves had arrived at the town prison from Plaisance the previous Sunday evening to ask for "the protection of the judicial system" from the "cruelties of their master's son." The slaves charged that on two separate occasions Nicolas Lejeune had used a torch to burn his slaves. The first of these incidents came the year before and involved two slaves, one female and one male. The second incident had occurred only the previous Friday when Lejeune used a torch to burn the legs of two female slaves, Zabeth and Marie-Rose.⁶¹ Since that time, he had kept the two women locked up in a cell. The fourteen slaves reported that "the fear of undergoing similar treatment, with which they had been threatened, forced them to flee" the plantation.⁶² In this instance,

59. *Ibid.*, fol. 79.

60. Buffon's full name is not revealed in the standard biographical references.

61. Relying on Thibau, Joan Dayan's account of the case notes that Marie-Rose was a slave from the Congo and Zabeth an Ibo from the Niger delta. Dayan, *Haiti, History, and the Gods*, 321 n.73. I have no reason to question this information but have not seen it confirmed in the primary sources, and Thibau's narrative makes somewhat imaginative use of secondary background literature on the slave trade in seeking to reconstruct the African background of both women.

62. Letter from Buffon, Sénéchal, and Jean-Baptiste Suarez d'Almeida, Royal Prosecutor, to François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, March 13, 1788, ANOM, F/3/90, fol. 200.

as in a mere handful of other eighteenth-century cases that led to the prosecution of masters under articles 26 and 42 of the Code Noir, a group of slaves who took the risk of trying to establish that their master had violated the Code Noir's prohibition on torture could only succeed in doing so by violating another provision of the same code.

For this particular group of slaves, however, the initial risk paid off. The *sénéchal* Buffon agreed to pursue the complaint by means of a special investigation that would seek to establish the dimensions of the alleged crime "with the least amount of scandal possible."⁶³ This was the first indication of an official nature that the prosecution of Lejeune would require treading on highly sensitive territory. Buffon entrusted Couët de Montarand, one of the other judges of the *sénéchaussée*, with the task of traveling to the Lejeune plantation and taking the depositions of all those involved in the incident.⁶⁴ Montarand arrived at the plantation to discover Zabeth and Marie-Rose locked up in a *cachot* (cell of solitary confinement) with burns to their feet, legs, and thighs. Asked to provide his version of the events, Lejeune declared that he suspected the two slaves of having used poison to murder another female slave, Julie, who had died suddenly in her sleep. Lejeune further stated that an autopsy of Julie undertaken by his "surgeon" had revealed the presence of undigested food in her intestines and "stains" in other parts. Lejeune also alleged that he himself had survived an attempt at poisoning by Zabeth and Marie-Rose, in proof of which he offered a container of powder to the clerk who accompanied Montarand on his investigation.⁶⁵ We learn from subsequent accounts of the case that Zabeth and Marie-Rose would eventually die of the wounds they had received from Lejeune, only a matter of days after they were found locked up in the *cachot*.⁶⁶ Before their deaths, however, both were able to testify that it was only the physical torment they experienced that had forced them to confess to anything Lejeune wanted them to admit. In confirmation of this claim, an analysis of the powder Lejeune had submitted by a doctor and surgeon appointed by Montarand had revealed evidence of nothing more than common smoking tobacco interspersed with

63. *Ibid.*

64. It seems likely, but is not certain, that this is Jean-Baptiste Louis-Augustin Couët de Montarand, who owned four coffee plantations and two houses in Cap Français, and eventually served as a judge on the Conseil Supérieur of Le Cap. See *Généalogie et Histoire de la Caraïbe* 30 (1999): 399 <http://www.ghcaraibe.org/bul/ghc030/p0399.html> (May 7, 2010).

65. Letter from Buffon and Almeida to Marbois and Vincent, March 13, 1788, fol. 200.

66. Letter from François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, to the *Commandants* and *officiers d'administration*, March 27, 1788, ANOM, F/3/90, fol. 198; Letter from Vincent and Marbois to La Luzerne, August 29, 1788, fol. 263.

five bits of rat stool. "That is . . . the exact account of this scene of atrocity, of which unfortunately there are only too many examples," Buffon and Almeida concluded.⁶⁷

But there was more to this initial report by the two judicial officers than a factual account of the case as they had come to understand it from Montarand's investigation. The two incidents of torture of which Nicolas Lejeune stood accused were not the first such instances on this particular plantation. "Similar cruelties" had been inflicted by the senior Lejeune back in 1781 and 1782, for which he had been reprimanded by the government "without a scandal" (*sans éclat*).⁶⁸ Moreover, Lejeune *père's* nephew (Nicolas Lejeune's cousin) had followed the "same principles" in applying discipline to his slaves, as a result of which he eventually became the "victim of [their] vengeance, or of [their] desperation."⁶⁹ Nicolas Lejeune's atrocities were therefore only the latest installment in a longstanding pattern of events. In all three cases, Buffon and Almeida implied, the perpetrators had rationalized the use of torture as a response to the suspected use of poison by slaves.⁷⁰

Despite this history of brutality, there were countervailing considerations. Perhaps the most revealing passage in the March 13 report came near its end, where the *sénéchal* and royal prosecutor warned the administrators of the risks associated with any serious effort to bring Nicolas Lejeune to justice: "[Y]ou are aware of the danger that such an affair, if allowed to explode, could pose to the regime of the colonies. It is greatly to be feared that the Negroes would confuse the right of complaint with insubordination, which would become difficult to put down if they believed themselves to be backed up by the laws."⁷¹ This argument would become the keystone of Lejeune's defense. It is therefore all the more significant that it was first articulated by the officials responsible for bringing the case to light. Having acknowledged the "danger" that might result from their interventions, Buffon and Almeida then ended their report with an ambiguous promise to continue the prosecution until and unless they receive orders from the colonial governor and intendant to stop.⁷² Whether this was an invitation to Vincent and Marbois to take

67. Letter from Buffon and Almeida to Marbois and Vincent, March 13, 1788, fol. 200.

68. The implication here is that the administrators or their subordinates, rather than the colonial judicial system, had been responsible for taking action against Lejeune in these earlier cases.

69. The slaves judged responsible for killing the senior Lejeune's nephew were all subsequently executed on the wheel.

70. Letter from Buffon and Almeida to Marbois and Vincent, March 13, 1788, fols. 200–201.

71. *Ibid.*, fol. 201.

72. *Ibid.*

the matter out of the lower court's hands, or a mere question of formality and deference, it was clear that the *sénéchal* and prosecutor were not accustomed to dealing with complaints of the sort they now found themselves in charge of adjudicating.

“The Feeling of Absolute Power”

Over the next two weeks, calls to end the prosecution of Lejeune were sounded in other, more predictable corners of the colony. The first came on March 23, in the form of a letter to Vincent and Marbois from Lejeune's fellow planters in the district of Plaisance. They urged the administrators to dissolve the proceedings on the grounds that “already, the plantations adjacent to Lejeune's are murmuring, and it is possible that this event will become the signal of a general revolt.” No credibility could be given to the claims of a slave community that was guilty not only of the attempted assassination of Lejeune's manager ten years before and the successful assassination of his nephew, but also of no fewer than ten attempted uprisings. Moreover, the planters asserted, the “execrable Mme. Rose” had administered fatal doses of poison to twenty victims “of her own color” in previous years, and had even tried to do the same to her master. Stopping the prosecution of Lejeune was the only way to “assure public tranquility and the common good.”⁷³

The reference to the “execrable Mme. Rose” points to an inescapable undercurrent of gendered anxiety that informed planter reactions to the case, beginning with Nicolas Lejeune's use of torture in retaliation for the perceived crimes of Zabeth and Marie-Rose. A putative association between the subtle, noninvasive violence of poison and the sinister machinations of women slaves seems to pervade much of the affair, possibly overlaid with similarly gendered stereotypes of *vodou* as a magical, pagan practice akin to sorcery.⁷⁴ Indeed Nicolas's torture of Zabeth and Marie-Rose might even be compared to some of the witchcraft trials of the sixteenth and seventeenth centuries.⁷⁵ However far that analogy may

73. Letter from Residents of the *quartier* of Plaisance to François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, March 23, 1788, ANOM, F/3/90, fol. 197.

74. On the colonists' association of poison with sorcery and *vodou*, see Pluchon, *Vaudou, sorciers, empoisonneurs*, 169–72; Madison Smartt Bell, *Toussaint Louverture: A Biography* (New York: Pantheon, 2007), 68.

75. On the use of torture against witches in early modern England and Scotland, see Hunt, *Inventing Human Rights*, 77. I thank Susan Slymovics for suggesting this line of comparison.

extend, the nexus between poison and torture in late eighteenth-century Saint-Domingue was powerfully reinforced by the distinctive anxieties that feminized resistance to slavery evoked in the French colony. And it seems equally likely that Nicolas Lejeune's indignation at having to defend himself from the likes of Buffon and Almeida was heightened by the thought that his prosecution stemmed from an (alleged) act of female slave insubordination in its most quintessential and dangerous form.

Whatever its deeper psychosocial sources, Nicolas Lejeune's reaction to the affair reflected a quite deliberate elevation of the stakes. A week later, he came forth with a defense of his own that echoed his fellow planters' allusion to the possibility of a slave revolution if steps were not taken to halt the prosecution. Of all the unfortunate things that could happen to a colonist, he wrote the administrators on March 27, "the most terrible and the most dangerous to public tranquility" is the "humiliating necessity" of having to defend oneself against one's own slaves. It was only "the spirit of rebellion and, even more, the fear of being declared accomplices to all the crimes committed on [a] plantation" that had turned his slaves "into the accusers." Rather than complain, the slaves ought to realize that nothing prevented them from being "incomparably happier" than the peasants of France, who were responsible for supporting entire families on the basis of little more than a cottage and the fruit of their labors.⁷⁶

In support of his claim that there was now a real and pressing danger of an outright slave revolt, Lejeune enlisted the support of the colony's favorite philosophe and legal theorist, Montesquieu. In a controversial and ambiguous passage of *The Spirit of the Laws*, Montesquieu had written that only the "fear of punishment" could inspire the slave to perform "onerous duties" in lands where extreme heat enervated both the body and the will.⁷⁷ Lejeune took this formulation and gave it an even more Machiavellian twist, arguing that if one destroyed that "salutary fear of punishment" that induced slaves to show obedience toward their masters, what hope of security would three or four whites have in the midst of one or two hundred whose willingness to rebel had been sanctioned by the colonial legal system? No real distinction could be made, he added, between the conduct of his slaves

76. Statement (*mémoire*) of Nicolas Lejeune to François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, March 27, 1788, ANOM, F/3/90, fols. 202–03 bis. A *mémoire* has the sense of a party's statement of a legal case. A *mémoire judiciaire* is what we would call a legal brief. This statement was signed by Nicolas's father, Lejeune père, "in the absence of his son." *Ibid.*, fol. 205.

77. Charles-Louis de Secondat, baron de Montesquieu, *The Spirit of the Laws*, ed. and trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge, UK: Cambridge University Press, 1989), 251. I have modified the translation of this passage to more accurately reflect the original.

and the slave population of Saint-Domingue generally, as a revolt on one plantation would spark revolts on all the others. For that reason, Lejeune wrote, “my cause in this case becomes the cause of every colonist: it must interest all men reduced to living among beings in whom one can assume the existence of neither character (*moeurs*) nor moral principles.”⁷⁸ The assumption of the Code Noir, and of colonial administrators and judges more generally, that the planter community could be safely and legitimately divided into “responsible” and “irresponsible” factions was no more valid than the idea that one group of slaves could be distinguished from another.

The accused planter’s debt to Montesquieu was more than implicit. Lejeune went on to cite “the celebrated author of *The Spirit of the Laws*” for the principle that in all countries where slavery was founded on the use of force and violence, it could only be maintained by “the same means.” It is not the “fear . . . of the law that prevents the negro from stabbing his master,” but rather “the feeling of absolute power that [the master] exercises over [his slave’s] person.” Remove this restraint, Lejeune remarked, and the slave would dare anything to improve his condition. Not surprisingly, the decision of the lower court to go ahead with the prosecution was portrayed in just that light, as a victory for the subversive principle that the master–slave relationship was one of relative rather than “absolute” domination. “What a triumph for my negroes; and what a revolution it has effected in the spirit of these men accustomed to servitude! This is new for them.”⁷⁹

Had Lejeune been interested in exploring the full range of Montesquieu’s observations about slavery, he might have come across the philosophe’s argument that men will accustom themselves to anything, including slavery, “provided that the master is not harsher than the servitude.”⁸⁰ As it was, Lejeune was far more preoccupied with what he described as the heavy costs of leniency. Some of the most distinguished residents of the colony, he wrote, had paid with their lives for exercising “complacency” toward their slaves. For Lejeune, this price was best measured in the “incredible number” of slaves who, between 1769 and 1771, had been executed on charges of having murdered their masters.⁸¹

78. Statement of Nicolas Lejeune to Vincent and Marbois, March 27, 1788, fol. 204.

79. *Ibid.*, fols. 204–5. Lejeune’s argument about the need for absolute power over the slave can be compared to the famous 1830 opinion of the North Carolina Supreme Court in *State v. Mann*, 2 Devereux (13 N.C.) 263 (1830). On *State v. Mann*, which held that masters could not be prosecuted for assaults on their slaves, see Mark Tushnet, *Slave Law in the American South: State v. Mann in History and Literature* (Lawrence: University of Kansas Press, 2003).

80. Montesquieu, *Spirit of the Laws*, 502.

81. Statement of Nicolas Lejeune to Vincent and Marbois, March 27, 1788, fol. 205. A marginal note at the end of Lejeune’s statement reads: “In 1754, at the time of Mr. le

A Fugitive from Justice

Sometime between March 13, when Buffon and Almeida sent their initial report to Vincent and Marbois, and March 27, when the two administrators made their initial intervention in the affair, two important events transpired: the *sénéchaussée* of Cap Français issued a warrant for the arrest of Nicolas Lejeune, and Lejeune became a fugitive from justice.⁸² Whether he was the first white planter in the colony's history to attain this status is not clear, but this development was certainly a tremendous anomaly against the long eighteenth-century backdrop of planter preoccupation with the problem of fugitive slaves (*marrons*).⁸³ Over the next few weeks, Lejeune's escape would transform his case into a colonial cause célèbre, with the administrators and the fugitive's fellow planters lined up on opposite sides of the debate over whether the "public interest" militated for or against his arrest and conviction.

By March 18, though still pending before the trial court in Cap Français, the case had been brought to the attention of Guillaume-Pierre-François de la Mardelle, the royal prosecutor attached to the (now merged) Conseil Supérieur of Saint-Domingue in Port-au-Prince. In a remarkable letter that he addressed directly to Montarand, de la Mardelle urged the magistrate to stick to his guns in the face of planter opposition. "Principles of humanity" and "*raison d'état*" together argued in favor of protecting the "population of Africa [which] diminishes appreciably each day . . . [I]t is necessary to support, defend, and encourage that of Saint-Domingue, otherwise in fifty years the sugar colonies will be only imaginary entities for the European powers who have them." As for the suggestion

Courtin, it was a veritable slaughterhouse (*boucherie*). From morning til evening executions were carried out." Ibid. It is not entirely clear that Lejeune himself inserted this final note; it is possible that the remark was added by one of the administrators who received the *mémoire*, but there is nothing in the text itself to suggest that the addition was not by Lejeune. "Mr. Le Courtin" was probably Sebastien Jacques Courtin, who served during the period of the Macandal affair in various positions including royal prosecutor before the high court in Cap Français, notary general, and *sénéchal* (trial judge). The investigation and trial of Macandal and his accomplices were presided over by Courtin as judge. Pluchon, *Vaudou, sorciers, empoisonneurs*, 174–75, 208.

82. Letter from Vincent and Marbois to the *Commandants* and *officiers d'administration*, March 27, 1788, fol. 198.

83. In a 1774 case involving a white plantation manager accused of ordering a slave to assault a white peddler in the marketplace of Petite Rivière, the plantation manager failed to appear for a second round of questioning when required by the trial judge. As Ogle writes, the plantation manager "had taken what was often a quite effective route to avoid the law's rigor in Old Regime France and its colonies—he ran away." Ogle, "Policing Saint Domingue," 331.

“constantly put forward” that slave insubordination would ensue from the prosecution of Lejeune, de la Mardelle concluded, the only real risk of revolt stemmed from “extreme injustice and barbarism.”⁸⁴

In this same spirit, on March 27, Vincent and Marbois issued a directive to the commanders and administrative officers in all three provinces of the colony. By this time Lejeune stood accused not merely of torture but also of murder, as Zabeth and Marie-Rose had both died of their wounds in the days after the initial investigation of the case was conducted. The administrators insisted that Lejeune was undoubtedly “guilty of this atrocity”: his flight from Plaisance, and from the “just punishments with which he was threatened,” merely served to confirm that culpability. The directive ordered the commanders and administrative officers to make every effort to arrest Lejeune at the earliest moment, including taking steps to prevent him from escaping abroad via one of the ports of Saint-Domingue. At stake was a combination of strategic and humanitarian interests that the colony could not afford to ignore: “The peace of the colony depends upon the exemplary punishment of crimes of this nature; humanity begs it, and all of the planters, with only a very few exceptions, eagerly wish that a curb be placed on all these barbarities.”⁸⁵ The planters of Plaisance having made known their opposition to Lejeune’s prosecution in their letter of March 23, it is not difficult to imagine what Vincent and Marbois meant by the phrase “very few exceptions.” It is far less clear on what basis the administrators purported to have the support of the near totality of the colony’s planters, but this assertion nonetheless makes sense as an effort to counter Lejeune’s argument that his cause was also “the cause of every colonist.”⁸⁶

By way of supplementing their March 27 directive, Vincent and Marbois wrote that same day to the officers of the *sénéchaussée* of Le Cap, asking them to exercise “the most particular care” to prevent Lejeune’s escape from the colony. “We would greatly regret to see a crime this big remain unpunished,” they noted with a hint of resignation at the unlikelihood of

84. This March 18, 1788 letter is reproduced in full in Charles Edmond Regnault de Beaucaron, *Souvenirs de famille; voyages, agriculture, précédés d'une Causerie sur le passé* (Paris: Plon-Nourrit et cie, 1912), 99–100, where de la Mardelle is incorrectly identified as La Luzerne’s successor as Governor-General of Saint-Domingue. I thank Rebecca Scott for cueing me to this correspondence. On de la Mardelle’s career in Saint-Domingue, see Jean-André Tournier, “Un projet d’école royale des colonies en Touraine au XVIII siècle,” *Annales de Bretagne et des pays de l’Ouest* 99, no.1 (1992): 33–60.

85. Letter from Vincent and Marbois to the *Commandants* and *officiers d’administration*, March 27, 1788.

86. Statement of Nicolas Lejeune to Vincent and Marbois, March 27, 1788, fol. 204.

actually bringing the infamous planter to trial. The administrators also enjoined the lower court magistrates to treat Lejeune's surgeon, Magre, as a codefendant in the case and to arrange for his arrest. It was Magre and not Lejeune, the administrators alleged, who had actually used the pinewood torch to burn Zabeth and Marie-Rose. Magre's role in the affair was therefore "doubly criminal," as it would have belonged to him before anyone else either to "moderate the violence of [his] master" or to come to the aid of "the objects of [Lejeune's] fury."⁸⁷

The administration's determination not to allow Lejeune's escape to stand in the way of his prosecution seems to have registered with those in the slaveholding community who sympathized with Lejeune. Among the voices raised in defense of the fugitive planter was that of the recently created Chamber of Agriculture of Cap Français, the successor institution to the Conseil Supérieur, which had been suppressed and merged with the high court in Port-au-Prince in early 1787. Although endowed with fewer prerogatives than its predecessor, the Chamber of Agriculture was nonetheless encouraged to act as a conduit for the grievances of planters in the northern province. On April 4, the Chamber's secretary, a Cap Français attorney by the name of Pierre-Joseph de Laborie, submitted a petition to Vincent and Marbois emphasizing "the dangers the colony would face from giving publicity to the punishments inflicted on masters who might have misused their authority over their slaves in committing acts of barbarism."⁸⁸ Unlike Lejeune's own brief, which denied the possibility that a master could "misuse" an authority that by definition was "absolute," the Chamber's petition acknowledged that Lejeune had violated the Code Noir in committing an "act of barbarism." But despite the protection accorded slaves by the laws of Saint-Domingue, and despite the Chamber's disavowal of any intention to ignore the "severity" of those laws, the reality was that a public sanctioning of Lejeune would do more to undermine than stabilize the plantation regime. The only risk-free solution was to expel Lejeune from the colony.⁸⁹

A similar line of reasoning featured in another petition signed six days later by approximately seventy residents of the northern department.⁹⁰ Far be it from them to "justify the cruelties" that Lejeune inflicted on his

87. Letter from François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, to the *officiers* of the *Sénéchaussée* of Cap Français, March 27, 1788, ANOM, F/3/90, fol. 207.

88. Letter from Pierre-Joseph de Laborie, Secretary of the Cap Français Chamber of Agriculture, to François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, April 4, 1788, ANOM, F/3/90, fol. 199.

89. *Ibid.*

90. The number of signatories is given in Gisler, *L'esclavage aux Antilles françaises*, 118.

slaves, the colonists wrote to Vincent and Marbois; “we cherish the sentiments of humanity that dictated your rigorous orders” of March 27. But the planters also asked for the administrators’ “help” and “prudence” in a matter on which depended “the peace, good order, [and] even the possession of a colony precious to the State. Our fortunes, your life (*vie*), ours, the existence of ten thousand families in France all depend on the subordination of the slaves, and on the results of their labor. Humanity may be revolted by the rules that ancient and modern policies have adopted; [but these] conventions have been made and slaves exist!”⁹¹ That Lejeune was not being prosecuted for following the “conventions” of either “ancient” Roman or “modern” French slave law did not trouble these petitioners. His conviction would also be an indictment of the institution of slavery itself, which the colonists had merely inherited from an earlier age. And the administrators themselves—many of whom acquired plantations during their tenure in Saint-Domingue, although they were barred by royal decree from doing so⁹²—had a quite personal stake in the immunity of Lejeune from all further prosecution, as the reference to “your life” tried to suggest.

Therefore, even though it was important for reasons of humanity and justice to prevent “cruel men from giving themselves over to violent outbursts,” it was no less important to avoid the “humiliation” of the colony’s “privileged sorts” for reasons of “sound government” (“*la saine politique*”). Lejeune’s *mémoire* had identified the experience of “humiliation” in the eyes of his own slaves as the most damaging aspect of the proceedings.⁹³ In this April 10 petition that experience is characterized as one Lejeune would share with his fellow planters. “Sound public policy,” a phrase that had appeared in a number of earlier eighteenth-century legislative and judicial efforts to counteract planter brutality in Saint-Domingue,⁹⁴ is here invoked not in tandem with but rather in opposition to the counsels of “humanity and justice.” For the northern residents, the choice between the two presented a set of clear alternatives, one that the administrators could resolve by transferring the case to their special jurisdiction. “You owe it to the good of the State [and] to the preservation of this Colony to use your private authority to pass sentence on him.” If the judicial system were allowed to proceed with the case and hand down an “authentic judgment,” that would only legitimate Lejeune’s

91. Letter from residents of the northern part to François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, April 10, 1788, ANOM, F/3/90, fol. 209.

92. Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492–1800* (New York: Verso, 1997), 298.

93. Letter from residents of the northern part to Vincent and Marbois, April 10, 1788, fol. 209.

94. See Ghachem, *The Old Regime and the Haitian Revolution*, chap. 3.

“rebellious” work force. Every slave would then feel justified in his “insubordination” and would refuse to accept any more discipline. All orders to labor in the coffee and sugar fields would be “a vexation, all punishment a crime.” Sooner rather than later the colonists would find that “we are all lost; all is overturned and we touch on a coming revolution in the colony, a revolution the horrors of which we leave you to contemplate.”⁹⁵ To judge from this kind of rhetoric, the Chamber of Agriculture’s April 4 petition would appear to have struck at least some planters of the northern department as overly passive and insufficiently alarmist.

Realizing they had a dilemma on their hands, Vincent and Marbois took the highly unusual step of responding directly to the concerns of the northern planters, in the form of a letter dated April 17 and addressed to the Chamber of Agriculture. (There is no evidence of a separate response to the “private” April 10 letter, but that may be because the administrators felt it more appropriate to channel their comments through an officially sanctioned institution. In any event, the letter reads as a response to both petitions.) There seemed to be a consensus for the idea that masters must be prevented from committing “barbarities of the sort that are being prosecuted at this moment” by the *sénéchaussée* of Le Cap, Vincent and Marbois noted. But the administration and the Chamber differed as to the nature of the punishment to be imposed, a disagreement that centered on the question of whether that punishment ought to be made public or kept secret. The northern planters were justified in expressing concern about their personal safety and the security of the colony as a whole, but they were mistaken about the real threat to their self-interest. The danger emanated not from the likes of Buffon and Almeida, but rather from Lejeune himself. “No planter (*habitant*) would feel secure in his home if the negroes were not assured of the protection of the tribunals.” Absent any sense of the rule of law, the slaves would give themselves over to “acts of retribution,” ignoring that both the Code Noir and the colonial administration tended to their welfare. “They would avail themselves of a way of justice that they believe society refuses them, and we know how many means domestic enemies can use to carry out their acts of secret vengeance.”⁹⁶

The reference to methods of “secret vengeance” can hardly have missed its mark, given the pervasive anxiety among planters about the use of poison by slaves, an anxiety present since the late 1750s and of which Lejeune

95. Letter from residents of the northern part to Vincent and Marbois, April 10, 1788, fol. 209.

96. Letter from Marbois and Vincent to the Chamber of Agriculture, April 17, 1788, fol. 208.

was merely the latest example.⁹⁷ Whether or not they intended it as such, the administrators' invocation of the risks of poison was precisely the inverse of Lejeune's in his March 27 *mémoire*. Lejeune had argued that the crime of poisoning had always eluded the eye of the judicial system and thereby demonstrated the necessity of leaving unlimited disciplinary power in the hands of the master. In their April 17 response to the Chamber of Agriculture, the administrators stood this assumption on its head with the argument that unrestrained plantation justice was the very reason slaves felt it necessary to use poisoning in the first place. By relying on the court system to prosecute planters such as Lejeune, the colonists might one day no longer have to run the risk of this undetectable method of retaliation. The "peace of the colony" required that whites be punished no less publicly for their crimes than slaves.⁹⁸

Paternal Intervention

More than a month passed before the next major development in the case. On May 21, 1788, with his son still at large and in contempt of the law, Lejeune *père* intervened in the proceedings with a petition to the *sénéchaussée* of Cap Français urging the court to dismiss all charges against Nicolas Lejeune and instead prosecute Montarand, the magistrate who had been dispatched to Plaisance back in early March to investigate the allegations of Nicolas's fourteen slaves.⁹⁹ Montarand's depositions of Zabeth, Marie-Rose, and other slaves had led to the issuance of a

97. For more on the relationship between the "epidemic of poisoning" and the rule of law in Saint-Domingue, see Debbasch, "Au coeur du 'gouvernement des esclaves'," 38.

98. If any uncertainty existed about the propriety of this policy, the administrators concluded, the monarchy's plantation management regulations of December 1785 would suffice to remove all doubts. Letter from Vincent and Marbois to the Chamber of Agriculture, April 17, 1788, fol. 208. The final line of the manuscript is partly illegible here, but it can be established that Vincent and Marbois were referring to one of the articles in Title 11 of the December 23, 1785 royal ordinance. On the threat that planter brutality posed to colonial stability, see also the March 18, 1788 letter from de la Mardelle to Couët de Montarand, published in Regnault de Beaucaron, *Souvenirs de famille*, 99–100.

99. Minutes of the Clerk of the *Sénéchaussée* of Cap Français, May 21, 1788, ANOM, F/3/90, fol. 250. The technical term for such a petition was a *requête d'intervention*, so named because it constituted a request on the part of a third party to be received judicially on behalf of an absent plaintiff or defendant. At the end of his petition Lejeune père cited a criminal law treatise by the jurist Daniel Jousse for the proposition that a parent or other close relative of a defendant held in contempt of the law had a right to be received judicially on the defendant's behalf. The treatise is probably Daniel Jousse, *Traité de la justice criminelle de France: où l'on examine tout ce qui concerne les crimes & les peines en général & en particulier* (Paris: Debure Père, 1771).

warrant for Nicolas's arrest, and Lejeune *père* believed the taking of those depositions to be itself a criminal act.¹⁰⁰

The petition of Lejeune *père* is a rambling diatribe, embittered and paranoid even by the standards of eighteenth-century Saint-Domingue. Nonetheless, two overarching themes are apparent throughout. The first was the need to safeguard the planter's familial and racial honor.¹⁰¹ "Here is a father defending the honor of his own blood," Lejeune *père* wrote.¹⁰² Charging that Nicolas's slaves had gathered together beforehand to orchestrate their story, Lejeune *père* insisted that no colonist could consider his "honor" to be secure if he was at the mercy of his slaves' testimony.¹⁰³ Lejeune *père's* petition to intervene, then, similarly to Nicolas's claim that his cause "was the cause of every colonist," was put forth as an act of public service no less than of self-interest. The principle of honor united the two causes.¹⁰⁴

Second, Lejeune *père* argued that the prosecution of a master for torture necessarily entailed the risk of a slave revolution, and that the only way to avert this prospect was to endorse a rule of private plantation law unconstrained by outside authority. Lejeune *père* thus essentially reprised his son's thesis that masters should be given discretion to use torture in light of the systematic failure of the legal system to deter the crime of poisoning. In Lejeune *père's* view, the trial of Nicolas was the result of a uniquely sinister plot formed "in the very shadow of the laws." If the court were to allow even one of these cases to succeed, it would open the door to a thousand other similar conspiracies. An outbreak of "individual revolts" would pave the way for a "general revolt on the part of our slaves [and then for] the disastrous revolution that [those little revolts] will have brought about."¹⁰⁵ Here again was the image of the slippery slope that Nicolas and the colonial administrators had used to opposite effect in their earlier interventions. According to this logic, the only way to prevent the colony from slipping down the slope of revolution was effectively to disregard any sharp distinctions between "public" and "domestic" justice.

The heart of the petition was an extended disquisition elaborating on the relationship between the use of poison by slaves and the necessity of

100. Lejeune *père's* first name is not given in any of the sources, primary or secondary, bearing on this case.

101. This theme will be particularly familiar to students of the United States antebellum law of slavery. See Tushnet, *Slave Law in the American South*, 50–52.

102. Minutes of the Clerk of the *Sénéchaussée*, May 21, 1788, fol. 234.

103. *Ibid.*, fol. 244.

104. On the racialization of honor in Saint-Domingue, see Ogle, "Policing Saint Domingue."

105. Minutes of the Clerk of the *Sénéchaussée*, May 21, 1788, fol. 213.

“private justice.” The impunity with which slaves were able to administer poison underlined a fundamental reality of the colonial legal system: there are truths no laws can suppress, truths different from “those that are recognized as such by the courts.” Somewhat ironically, this was also an argument that could have been applied to the phenomenon of planter brutality: if poison remained beyond the purview of the court system, so, too, did planter violations of the Code Noir provision prohibiting the use of torture. In fact, these two “truths” were intimately linked to each other, as the administrators’ April 17 letter to the Chamber of Agriculture had argued. In Lejeune *père’s* view, however, the conclusion to be drawn from these “truths” was that “[o]ne must indeed permit private persons to render justice themselves, at least when the crimes are such as to become easily contagious, and when [those crimes] can lead to the ruin, overthrow, and destruction of an entire class of the society at the heart of which they are committed. For such is [the crime of] poison on the part of the slaves.”¹⁰⁶ Invoking a well-worn creole theme of “local knowledge,” Lejeune *père* argued that in Europe it was simply not essential to discover and punish the “hidden and tenebrous” crime of poisoning. In the metropole, poisoning was not “the ordinary crime of one class against another class of men.” In Saint-Domingue, on the other hand, whoever was not a master was a slave, according to Lejeune *père*, and there were many more of the latter than of the former. Moreover, the two “classes” were necessarily enemies of each other. In such a state of war, the slave “class” could be contained only by means of “despotism,” which is to say by means of “a power that [was], so to speak, absolute.”¹⁰⁷ Like his son’s, the father’s portrait of the power dynamics at work in this slave society reflected an unmistakable (but incomplete) borrowing from Montesquieu.

The primary restraint on the legitimate absolutism of the master “class,” in Lejeune *père’s* view, was the 1685 Code Noir, and in particular articles 26 and 42 (banning the practice of torture and mutilation and authorizing prosecution of masters who engaged in those practices).¹⁰⁸ In order to demonstrate the nefariousness of these provisions, however, he was forced to argue that planters had frequent resort to torture and mutilation as disciplinary tools, but should not be punished for so doing. This concession Lejeune *père* was more than willing to make. The problem was not that

106. *Ibid.*, fol. 217 (underlined in the original).

107. *Ibid.*

108. Lejeune *père* does not identify the two provisions by article number, but it is clear from his discussion that he is referencing articles 26 and 42.

such violations of the Code Noir were deeply rooted in plantation culture, he argued, but rather that they could only be suppressed by means of the “the greatest inconveniences.” The Code Noir—“the law that prohibits masters from torturing their slaves”¹⁰⁹—had been promulgated at a time when the colonists were still “ferocious,” having barely begun to leave behind their origins as “barbaric” pirates and buccaneers. Moreover, there had been many fewer slaves in 1685 than there were now; the prohibition on torture might have made sense as a way of preventing the strongest from oppressing the weakest in an earlier time, but now the scale had tipped in the opposite direction.¹¹⁰ It was the masters who needed protection from their slaves.

More than simply unwarranted, the antitorture provisions of the Code Noir were also unnecessary given the master’s self-interest in the welfare of his slaves, argued Lejeune père. Since the time of the Code Noir’s promulgation, “the enlightenment (*les lumières*) that has penetrated even as far as this colony has civilized minds and demonstrated above all the accord of humanity with the interest of property.” Once strangers to an insignificant slave population, whites had become “so familiar to the slaves” as to no longer require any constraints on their actions other than a concern for the value of one’s property and the dictates of humanity. It stood to reason, then, that articles 26 and 42 were rarely if ever enforced in the colony, despite a history of brazenly repeated acts of torture and mutilation. Paradoxically and incoherently, Lejeune père also argued that the antitorture laws signaled to slaves who poisoned their masters that the King’s men would protect them from the physical retaliation of their overlords. Nonetheless, Lejeune père insisted that the Code Noir, an “antique law” that “seems to have been made for another colony,” had simply “fallen into desuetude.”¹¹¹ By implication, what made his son’s prosecution so objectionable and arbitrary was precisely the defunct nature of the Code’s prohibition on torture.

All of these points contributed to a portrait of slave society as a place of incipient anarchy, ready to be overturned at the tip of a law. For any law that impinged on “a system of domestic justice enclosed within rightful limits” brought with it the prospect of slave insubordination.¹¹² The slaves who gave testimony against Nicolas, argued Lejeune père, were guilty of

109. Minutes of the Clerk of the *Sénéchaussée*, May 21, 1788, fol. 219 (underlined in the original).

110. *Ibid.*

111. *Ibid.*, fols. 219–20.

112. *Ibid.*, fol. 220.

manipulating the December 1785 royal ordinance—a law that had caused “a lot of noise among the slaves.” Although it had served to mollify planter opposition to the reforms passed the previous year, even the modified ordinance was a means by which slaves could “vex” their masters at will. The prosecution of Nicolas proved that his slaves were aware they could use the colonial legal system to stir up trouble on the plantation. And the quashed prosecution of a planter named Cassarouy in 1770, a year “remarkable” for the “revolution” it witnessed in the “character of our slaves,” was said to confirm the same point. Two prosecutions in twenty years sufficed, in this view, to establish that slaves could threaten the racial hierarchy of Saint-Domingue merely by availing themselves of the colony’s legal system.¹¹³

Lejeune père conceded that his son had used “a bit of violence,” but only in order to get to the bottom of a secret that threatened the safety of his plantation. Nicolas’s crime was therefore attenuated by necessity. By contrast, the plantation on which Zabeth and Marie-Rose labored had always been one of the most “villainous” in the entire colony. The Lejeune slaves had simply failed to “learn” the lesson taught them earlier in the decade, after they had been punished on suspicion of repeatedly using poison against fellow slaves, their master, and his animals.¹¹⁴ It was also significant for Lejeune père that Julie, the slave whom Nicolas had accused Zabeth and Marie-Rose of poisoning, was “one of the most beautiful negresses of the plantation.” And notwithstanding the testimony of Pierre Darius, the plantation cook, that Nicolas had used torture on them, Marie-Rose and Zabeth could not have had the “freedom of mind” to make up a “lie” while a flaming pinewood torch was being pressed to their skin.¹¹⁵

It remained only for Lejeune père to condemn a character even more “villainous” than the slaves themselves: the investigating magistrate who had taken the initial depositions. Lejeune père accused Montarand of a range of evidentiary and procedural violations in his handling of the case, from failing to ask a single question of either Zabeth or Marie-Rose, to dispensing with the need to seal the container in which the alleged poison was stored. Most seriously of all, upon discovering Marie-Rose and Zabeth on the Lejeune plantation, Montarand had failed to release them from the stone cell to which they were confined, thereby depriving them of urgently needed medical care. Montarand’s delayed

113. *Ibid.*, fols. 222–25. As Lejeune père described it, the high court in Le Cap, by deciding (on appeal) to nullify the proceedings against the defendant in this case, had left no room for a similar “uprising” of slaves against their masters until the post-1785 period. On the Cassarouy case, see Ghachem, *The Old Regime and the Haitian Revolution*, chap. 3.

114. Minutes of the Clerk of the *Sénéchaussée*, May 21, 1788, fols. 213–15.

115. *Ibid.*, fols. 222–23, 226.

decision to transport the two women to a different plantation in conditions of rain and cold, Lejeune *père* charged, was responsible for their eventual demise (Marie-Rose on March 12, Zabeth on March 14): “One can truthfully state that Couët [de Montarand] himself is the murderer of these two negresses.”¹¹⁶ Lejeune *père* concluded by demanding that Montarand be tried for the murder of Marie-Rose and Zabeth, the charges against Nicolas be dismissed, and the testimony of the fourteen slaves be rejected and condemned as seditious, calumnious, and a threat to the security of the colony.¹¹⁷

Although clearly rooted in a kind of desperation, these demands at least had the virtue of being consistent with the rest of the elder Lejeune’s reasoning, and they must not have sounded as preposterous to contemporary ears as they seem to ours. Montarand himself certainly took the accusations in all seriousness. Three days later (May 24), he replied with a formal declaration maintaining that Lejeune *père*’s petition provided no evidence of a “design” to “get rid of” (*perdre*) Nicolas, and further failed to establish any of the grounds required by law for the recusal of an investigating magistrate.¹¹⁸ Ever the dutiful civil servant, Montarand protested that he had fulfilled “in my soul and conscience” the commission charged to him by the lower court of Cap Français.¹¹⁹ Nonetheless, the lower court judges, after a long series of delays, returned a decision nullifying Montarand’s findings of fact (*procès-verbaux*) and dismissing all charges against Nicolas and Magre.¹²⁰ We cannot say for certain that Lejeune *père*’s intervention was the pivotal factor, but the holding conformed to his most important demands.

Appellate Intrigue

Were it not for the efforts of the royal prosecutor in Cap Français, Almeida, the Lejeune affair might have ended then and there with the lower court’s

116. *Ibid.*, fols. 227–34. Before accusing Montarand of the murder of Zabeth and Marie-Rose, Lejeune *père* sought to minimize the extent of their burns. Zabeth and Marie-Rose, he wrote, had attributed these burns to Nicolas and Magre “because their master was accusing them of being Macandals.” *Ibid.*, fol. 230.

117. *Ibid.*, fol. 250.

118. Montarand alludes to the “grounds for recusal [that are] authorized by the ordinance.” *Ibid.*, fol. 251. It is unclear whether this refers to the December 1785 plantation management ordinance or to another law.

119. *Ibid.*, fol. 251.

120. Letter from Vincent and Marbois to La Luzerne, August 29, 1788, fol. 265; James, *The Black Jacobins*, 23.

dismissal. Aware that he enjoyed the support of Vincent and Marbois, however, Almeida succeeded in securing an appeal to the Conseil Supérieur in Port-au-Prince (known since January 1787 as the Conseil Supérieur de Saint-Domingue), a move that stirred outrage among the colony's planters.¹²¹

By right of their respective offices, Vincent and Marbois both held seats on the Conseil Supérieur, which added yet another layer of political controversy to this final stage of the proceedings. For it was clear to all involved, and especially to Lejeune père, that the two administrators had already arrived at an understanding of Nicolas's culpability and of the need for a public punishment. On June 26, with the appellate decision still pending, Lejeune père wrote again to Vincent and Marbois, imploring the two administrators to abstain from participating in the hearing of the case, and to discontinue their practice of referring to Nicolas in their official correspondence as "guilty," rather than merely "accused."¹²²

At some point between this June 26 letter and August 29, when Vincent and Marbois submitted their report to Naval Minister La Luzerne summarizing the entire history of the case, the prosecution of Nicolas Lejeune came to a head. In recognition of the special sensitivity and importance of the case, Marbois had appointed the senior member (*doyen*) of the Conseil Supérieur in Port-au-Prince to serve as *rapporteur* (judge-advocate) in the appellate trial.¹²³ On the day of the hearing, however, the *doyen* decided not to show up at the courthouse. C.L.R. James suggests the *doyen*'s nonappearance was prompted by a concern that he would be unable to find enough votes to convict Nicolas.¹²⁴ If so motivated, the strategy proved especially counterproductive: by what appears to have been a single vote, the court proceeded to absolve Nicolas once again of all charges. Thus ended the long and hotly contested legal trail of a case unlike any the colony had ever witnessed.

It is difficult to know exactly what happened at the appellate stage of the case to produce this result. As best we can tell, the decision was a

121. James, *The Black Jacobins*, 23; and Médéric Louis-Élie Moreau de Saint-Méry, *Description topographique, physique, civile, politique, et historique de la partie française de l'isle Saint-Domingue* (Philadelphia: Dupont, 1797–1798), 1:103.

122. Letter from Lejeune père to François Barbé de Marbois, Intendant, and Alexandre de Vincent de Mazarade, Governor, June 26, 1788, ANOM, F/3/90, fol. 255. The precise phrase Lejeune père uses here is "l'accusé coupable." In their March 27, 1788 directive to the commanders and administrative officers of the colony, Vincent and Marbois had described Nicolas as "guilty of this atrocity." Letter from Vincent and Marbois to the *commandants* and *officiers d'administration*, March 27, 1788, fol. 198. See also Letter from Vincent and Marbois to the *officiers* of the *Sénéchaussée* of Cap Français, March 27, 1788, fol. 207 (describing Nicolas as "not the only guilty one").

123. Letter from Vincent and Marbois to La Luzerne, August 29, 1788, fol. 264.

124. James, *The Black Jacobins*, 23.

dramatically close one: a rare opportunity to affirm the antitorture provisions of the Code Noir had indeed slipped away. On a fourteen-judge court, eight votes were necessary to convict Nicolas, and either seven or eight had made known their sympathy for the prosecution's position in advance of the hearing. One of these belonged to Marbois, who presided over the proceedings as intendant, and another to Vincent. Assuming that six of the remaining judges voted for acquittal, therefore, the administrators' two votes would have sufficed to convict. But after considering Lejeune *père's* objections, the Conseil decided to require Marbois to abstain, thereby allowing the decision to go in Nicolas's favor.¹²⁵

As Vincent and Marbois later argued to the naval minister, this result could only be explained as the result of a concerted effort at public intimidation of the judiciary that ran the gamut of the entire litigation. Appending and referencing the various letters and petitions from the planters of Plaisance and the northern department in their report to La Luzerne, the administrators sought, in part, to demonstrate just how many colonists had a perceived investment in seeing Nicolas Lejeune avoid a conviction.¹²⁶ The hostile "agitation" in Cap Français on the eve of the trial, which culminated in the *sénéchaussée's* decision to nullify Montarands' findings of fact, made it further "obvious that the public had intimidated the judges."¹²⁷ In short, as a result of a failure of judicial backbone, the only punishment this "murderer of four slaves" received consisted of an order to "produce" the rest of his surviving slaves upon request and "other provisions no less frivolous in a matter involving human life."¹²⁸ The end result, although a clear corruption of legal justice from one point of view, was perfectly consistent with the Code Noir, which authorized the king's colonial officers, where appropriate, to "absolve" masters

125. Letter from Vincent and Marbois to La Luzerne, August 29, 1788, fols. 264–265. The report is somewhat ambiguous on the headcount issue, indicating that seven to eight judges were "favorable" but without specifying the position to which they were sympathetic. I have imputed that Vincent and Marbois meant "favorable to the prosecution's case" based on a subsequent passage referring to the likelihood that the intendant would have been the eighth and decisive vote in favor of Nicolas's conviction.

126. *Ibid.*, fol. 264. According to Vincent and Marbois, this orchestrated opposition accounted, in the first instance, for the failure of the local authorities to arrange for his capture following the taking of the slaves' deposition. The administrators also professed "profound sorrow" at having to then stand by and watch their own subordinates frustrate "the efforts of justice and of the administration." *Ibid.*

127. *Ibid.*, fol. 265. The report's voluminous attachments and point-by-point refutation of Lejeune *père's* protestations suggest that a further appeal to the Conseil d'État in Versailles, or perhaps even a post-appellate ministerial fix, might still have been within reach.

128. *Ibid.*, fol. 266.

found guilty of murdering their slaves, without the need for a royal pardon.¹²⁹

In their final summation to the naval minister, the administrators endeavored to impress upon the metropole the depths of the administrative dilemma in which the colony now found itself. The gaping holes in colonial law enforcement, in effect, created a void that could only be filled by the ancient state of war between masters and slaves. Treating whites dramatically different from blacks when it came to the punishment of crime was not a reliable formula for achieving stability in Saint-Domingue, the administrators argued. In fact, it tended to produce just the opposite effect: “[I]t does not seem that the judicial system has at any time reprimanded the inhumanity of the masters, and this erroneous policy that leads to punishing blacks severely [while] pardoning whites for everything they do has not produced the anticipated effect.”¹³⁰ The slaves simply continued with their “insubordination” and the masters “with their cruelties.” It was for this reason that Lejeune *père*, no longer feeling himself safe on his own plantation, had decided to abandon it to his son in the first place. And Nicolas’ pathological mismanagement ended up reproducing the same cycle of violence and retribution that the authors of the Code Noir had sought to foreclose back in 1685.¹³¹

None of Lejeune *père*’s conspiratorial ramblings and denunciations could alter this reality, said the administrators, and the evidentiary basis for the case was unimpeachable in any event. The deposition of the fourteen slaves was entirely consistent with their initial declaration before the *sénéchal* in the Cap Français prison. And it was no accident that the seven witnesses who testified in Nicolas’s favor were all white.¹³² The evidence provided by Nicolas’s cook, Darius, also confirmed the allegations of the fourteen slaves, who could not have coordinated their story with his while imprisoned far away from the location of the Lejeune plantation in Plaisance. Moreover, the elder Lejeune had neglected to mention that Julie—the slave alleged to have been poisoned—had fallen ill two months before her death as a result of complications arising from childbirth.¹³³

For his offense in manifesting “zeal for humanity,” meanwhile, the hapless Montarand had been punished with a humiliating injunction.¹³⁴ The investigating magistrate had earned this dishonor not because of mishandled evidence or irregular interrogations, wrote Vincent and Marbois,

129. Code Noir, art. 43 (1685).

130. Letter from Vincent and Marbois to La Luzerne, August 29, 1788, fol. 258.

131. *Ibid.*

132. *Ibid.*, fols. 261–62.

133. *Ibid.*, fols. 262–63.

134. *Ibid.*, fol. 266.

but rather because of his “humanity and zeal.”¹³⁵ The campaign to discredit and vilify Montarand, the “first officer of justice who dared to raise his voice in favor of the negroes” in order to protest “one of the greatest outrages done to humanity,” was yet another example of the role of public intimidation in the proceedings. The “vehemence” and “vigor of the attack” directed against him were clearly intended “to discourage . . . all those who might be tempted in the future to lend their hand to this unfortunate class.”¹³⁶

The failure to lend such a hand spoke to the inherent limits of judicial institutions in slave societies (although perhaps not only in such societies). “How many secret evils the eye of the courts is incapable of penetrating!” Vincent and Marbois exclaimed. Each new case that “publicly demonstrate[d]” the “impotence” of the colonial administration and legal system made it increasingly harder to set any effective limits on the autonomy of the planters and on their potential for causing unintended social upheavals. The Lejeune scandal involved not just any form of administrative “impotence,” however, but a particularly insidious kind that resulted from the “courts join[ing] forces with barbarous colonists in the oppression of [their] unfortunate [slaves].” For a century such oppression had been allowed to go unpunished. Finally, after so many atrocities that the judiciary was unable to reach, an ideal case for conviction had presented itself. And yet “the judicial system chooses to let slip this unique opportunity to arrest, by means of a single example, the course of so many cruelties.”¹³⁷

We do not know how the naval minister may have reacted to this report, but its casting of moral issues in a prudential framework both reflected and appealed to the complex motives of an imperial administration deeply concerned with the reform of slavery. Vincent and Marbois did not shy away from speaking directly to the “considerations of humanity” that figured in the case, and to what they regarded as La Luzerne’s own concerns in this regard. “You are privy to all the misfortune of [the slaves’] condition, whatever pains are taken to hide a part of it from the administrators,” they respectfully (if self-servingly) noted. “And we know how much you would like to be able to ease the wretchedness of this class of men.”¹³⁸ At the same time, the pragmatic consequences of the Lejeune case were unavoidable. From this perspective, judicial integrity and courage were intimately linked to the colony’s security. If they were to sustain the rule

135. *Ibid.*, fols. 261–62.

136. *Ibid.*, fols. 264–65.

137. *Ibid.*, fol. 266.

138. *Ibid.*

of law within the political constraints of a plantation society, judges required incentives and assurances. The outcome of the Lejeune affair, however, made it highly improbable that other magistrates would follow Montarand's precedent and risk public defamation in order to pursue investigations of planters and their agents. Terrorized slaves would be left with "no other resource than vengeance and no other feeling than desperation." And whereas the prospect of "general revolts strike[s] us as little to be feared," the report continued, individual revolts must be averted "in order to prevent [the need for] punishments."¹³⁹

This fusion of moral and precautionary considerations itself had a very practical and immediate purpose: to persuade the naval minister "not to let the transgressions of Lejeune go entirely unpunished."¹⁴⁰ Vincent and Marbois requested that the King declare Nicolas incapable of owning slaves in the future and order him deported to France if the fugitive planter ever dared to reappear on his father's plantation. And by giving "publicity" to such orders, the damage caused by Nicolas's acquittal might still be undone.¹⁴¹

If Vincent and Marbois believed that all hope for the colony was not yet lost, it was in part because their critique of the Lejeune dynasty served also to defend the non-refractory planter population. The majority of colonists adhered to a "moderate regime" on their plantations, claimed the administrators, and by 1788 the "rigors of slavery" had become less pronounced than they were twenty years ago. But there remained "entire areas [of the colony] where the old barbarism still exists in all of its force."¹⁴²

Conclusion

How best to make sense of this ambiguous opposition between "barbarism" and "moderation" is a complicated matter. That it had a distinctly apologetic, preservationist thrust seems indisputable.¹⁴³ The Lejeune

139. *Ibid.*, fol. 267. The royal prosecutor de la Mardelle's March 1788 letter to Couët de Montarand struck a very similar mix of humanitarian and tactical notes. See Regnault de Beaucaron, *Souvenirs de famille*, 99–100.

140. Letter from Vincent and Marbois to La Luzerne, August 29, 1788, fol. 266.

141. *Ibid.*

142. *Ibid.*, fols. 267–68. Further details of the aftermath of the Lejeune affair can be found in Ghachem, *The Old Regime and the Haitian Revolution*, chap. 4.

143. See Gordon K. Lewis, *Main Currents in Caribbean Thought: The Historical Evolution of Caribbean Society in its Ideological Aspects, 1492–1900* (Lincoln: University of Nebraska Press, 2004), 165–68. Lewis argues that a "policy of prudence" informed attitudes toward plantation slavery in the French colonies and elsewhere, but he connects this policy to proslavery ideology rather than to the critique of slavery, and

prosecution undoubtedly points backwards to the colonial past of Saint-Domingue, because it is in one sense the culmination of a tug-of-war over planter brutality going back at least to the 1760s, a contest in which the torture of slaves by their actual and putative masters repeatedly figured.¹⁴⁴ There are no actual human rights victories for slaves to be found in the Lejeune case itself. The affair serves instead as a micro-historical archive of that quintessentially juristic, administrative spirit that was so characteristic of the colonial Enlightenment, with its ambiguous convergence of strategic and humanitarian ethics. If this worldview sought to appeal to the interests of masters, however, it was not by trying to appease the plantation owner's pursuit of short-term profits at any expense (even though the planter and legal elites overlapped considerably in Saint-Domingue as elsewhere in the Atlantic world). Rather, it was by evoking a vision of colonial stability that unfolded in the longer stream of time. The power of this broader temporal vision—its ability to discipline the conduct of masters and their representatives—seemed to derive not primarily from traditional absolutist claims of authority or the call of benevolence, but from its incorporation of a futuristic scenario of “catastrophic” slave revolt. In 1788, the materialization of that scenario still lay in the future, but it was beginning to require less imagination than ever before.

We can acknowledge the preservationist side of this commonwealth ethic and nonetheless recognize that the administrators' report also encompassed a robustly critical dimension, perhaps even an element of emancipatory potential. In this sense, the Lejeune case also points forward in time, suggesting the pragmatic, administrative wellsprings of what would very soon emerge as certain key streams of antislavery thought and, ultimately, abolitionist practice in the period of the Haitian Revolution

emphasizes its limitations in the face of a “policy of terror” to which prudence was opposed. According to Lewis, “[t]he arguments of the reformers in favor of better treatment of the slaves—more protection, for example, in the courts—were in themselves proslavery, as better treatment was seen as weakening the case for early emancipation” (168). See also Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro, 1550–1812* (Baltimore, MD: Penguin Books, 1969), 368. Jordan sketches the rise of a humanitarian reform movement in the late eighteenth-century United States South that sought, among other things, to alleviate brutality in the management of slave plantations. But Jordan notes a “supreme irony” in this development: “[a]s slavery became less brutal there was less reason why it should be abolished.” The critique of planter brutality, in other words, made slavery “more tolerable for the slaveowner and even for the abolitionist.” There is some validity to this arresting insight even as parallel developments in the French and British Caribbean are concerned. Jordan does not comment in this passage on the French slave colonies or their impact on the United States but observes that in the British Caribbean, unlike in the mainland, “slavery . . . helped doom itself by its notorious cruelty.”

144. See Ghachem, *The Old Regime and the Haitian Revolution*, chap. 3.

(1789–1804).¹⁴⁵ Seen in this light, the condition of Code Noir at the very end of the Old Regime reveals a much messier, less coherent relationship between proplanter ideology and the preemptive ethics of slavery than the preservationist thesis would suggest. That part of the story I can only develop elsewhere, as it necessarily takes us beyond the realm of the Lejeune affair proper.¹⁴⁶

But the point is one that equally relates to the history and historiography of torture, and not just to the origins and unfolding of the Haitian Revolution. This aspect of my story involves the frontier that slavery and torture share with the concept of sovereignty.¹⁴⁷ Certainly the outcome of the Lejeune case seems to support what many scholars have long argued, namely, that the Atlantic slave societies were committed to “a space of sovereignty beyond law.”¹⁴⁸ That space was, of course, the plantation, ruled over by a most unruly sovereign who was not quite “public” in the modern sense, but not nearly a “private” subject either, at least insofar as he was capable of inflicting a form of violence over slaves that was recognized at the time as “torture.”¹⁴⁹

145. This is not to say that the revolutionary period is a simple story of emancipation. Quite the contrary: it was an era of continued contestation between preservationist and emancipatory visions of colonial law. For an example of the former, see the November 1790 observation of Nicolas Robert, Marquis de Cocherel, a white deputy from Saint-Domingue to the National Assembly. Seeking to justify a constitution for Saint-Domingue based on local customs, Cocherel argued that the planters could be counted on to take benevolent care of the slaves for reasons of “humanity, interest, and the law.” Quoted in Florence Gauthier, *L'aristocratie de l'épiderme: Le combat de la Société des Citoyens de Couleur 1789–1791* (Paris: CNRS Éditions, 2007), 51.

146. Ghachem, *The Old Regime and the Haitian Revolution*, chaps. 5 and 6. Christopher Brown's distinction between antislavery thought, abolitionist programs of reform, and the actual achievement of abolition and emancipation is particularly useful in this context. Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill: University of North Carolina Press, 2006), 17–18.

147. Cf. Levinson, “Slavery and the Phenomenology of Torture,” 150.

148. Paul Kahn, *Sacred Violence: Torture, Terror, and Sovereignty* (Ann Arbor: University of Michigan Press, 2008), 2. Cf. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey, “At the Limits of Law: An Introduction,” in *The Limits of Law*, ed. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Stanford, CA: Stanford University Press, 2005), 3 (discussing the “most common focus of studies of law's limits,” namely its practical or empirical limits, as in the inability of a law to eliminate racism or of a constitution to remake a political culture).

149. I do not mean to suggest that torture is the only context in which colonial planters can be understood as “sovereigns.” In the United States South and elsewhere, as Genovese demonstrated, slave law “came to accept an implicit duality: a recognition of the rights of the state over individuals, slave or free, and a recognition of the rights of the slaveholders over their slaves.” Genovese, *Roll, Jordan, Roll*, 45–46.

That planters were deemed capable of torture per se suggests that we must look beyond the narrow province of the courts and of judicial torture if we are to understand how torture worked in the wider Atlantic world, and particularly in the domains of plantation slavery. The story of colonial slave law suggests the limits of a functional, evidentiary, or instrumental approach to torture: the emphasis on torture as a strictly investigative and “official” technique for the securing of confessions or cooperation, an understanding that pervades the legal scholarship on this subject. That approach tends to downplay the performative and ritualistic aspects of torture, whether as a means of inflicting humiliation upon the body of the suspect or enacting the sovereignty of the torturer.¹⁵⁰ Above all, however, the theater of Atlantic colonial slavery reveals torture’s character as a process rather a status or institution—a process which, once set in motion, seems to partake inevitably of punitive dynamics and to generate meanings transcending the definitional assertion that torture involves the state’s investigation of crime.¹⁵¹

At the same time, the notion of “sovereignty beyond law,” which informs not only much of the literature on the Code Noir but also some important new theoretical work on the problem of torture, tells only part of the story.¹⁵² It is only the beginning, and not the end, of what we can learn from the Lejeune prosecution and the law of slavery more generally. The salience of that space of extralegal sovereignty is not fully realized unless the domestic sovereignty of the plantation is situated in relation to, and therefore in tension with, imperial administrative sovereignty. Although colonial slavery was indeed committed to “a political practice

150. See Joshua Cole, “Intimate Acts and Unspeakable Relations: Remembering Torture and the War for Algerian Independence,” in *Memory, Empire, and Postcolonialism: Legacies of French Colonialism*, ed. Alec G. Hargreaves (Lanham, MD: Lexington Books, 2005), 125–37; and Foucault, *Discipline and Punish*, 32–69.

151. These issues of meaning and definition remain alive (and contested) today. The United Nations Convention Against Torture (UNCAT), which came into force on June 26, 1987, defines “torture” broadly so as to include the infliction of “punishment” by way of severe pain or suffering. “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” June 26, 1987, art. 1, *United Nations Treaty Series* 1465: 85 <http://www.hrweb.org/legal/cat.html> (May 11, 2010). The UNCAT also subjects states to liability for acts of “cruel, inhuman, or other degrading treatment or punishment” when committed by private persons with the acquiescence of government officials. *Ibid.*, art. 16. See also *Hudson v. McMillian*, 503 U.S. 1, 18 (1992) (Thomas, J. dissenting) (arguing that the Eighth Amendment was traditionally thought to ban only “torturous punishments meted out by statutes or sentencing judges”).

152. See, inter alia, the sources cited in note 14; and Kahn, *Sacred Violence*, passim. For a useful review of the scholarship on the limits of law, as well as a cogent critique of the notion that law’s limits are merely empirical or normative in nature, see Sarat, Douglas, and Umphrey, “At the Limits of Law,” 1–11.

of violence beyond the reach of the law,¹⁵³ the consequences of that commitment were neither foreordained nor always intended.

Put differently, the law of slavery was far more generative than the “extra-legal sovereignty” thesis (and the scholarship that shares its orientation) suggests. For the consequences of colonial torture and violence were shaped by the very limits of slave law themselves. The Lejeune case reveals a nearly paradoxical portrait of the Code Noir—the basic law of slavery in the French colonies, often violated and rarely enforced—as an important *source* of human rights law and ideology.¹⁵⁴ It was, after all, the antitorture provisions of articles 26 and 42 of the Code Noir, as refracted through the 1784–1785 reforms, which initially authorized the prosecution of Lejeune. (The article 43 requirement that masters who kill their slaves be prosecuted also applied once the torture of Zabeth and Marie-Rose was found to have resulted in their deaths.) In this context, the law of slavery was interpreted to signify the role of the King, not as oppressor-in-chief, but as protector of all persons residing within the royal dominions, including slaves.

This is not to say that the slave enjoyed the status of royal subject in any technical or even vernacular sense under Old Regime law.¹⁵⁵ But it does suggest the more general point that, on occasion, law is not only “stretched and frayed, but also reconstituted and reinvigorated by contact with its own limiting condition.”¹⁵⁶ And it goes some way toward explaining why the protective mandate of the Code Noir—understood not in a narrowly textual sense, but as an expression of the idea that king had limited the master’s sovereignty over the slave—turns out to have been such a pronounced feature of the political culture of the slave insurgency that dominated the course of events in Haiti as of late 1791.¹⁵⁷

153. Kahn, *Sacred Violence*, 4.

154. Cf. Sala-Molins, *Le Code Noir*, viii. Whatever else may be said of Sala-Molins’s interpretation, the Code Noir did not legitimate the torture of slaves by their masters.

155. The Code Noir seems fairly clearly (albeit by implication) to distinguish between subjects and slaves in article 5 (forbidding Protestants from interfering with the exercise of Catholicism in the colonies), and articles 57 and 59 (on manumission) refer to the status of freed persons as equal to that of “natural subjects” of the French king, which confirms the slave/subject distinction. Code Noir, arts. 5, 57, and 59 (1685).

156. Sarat, Douglas, and Umphrey, “At the Limits of Law,” 2.

157. See, for example, David Geggus, “The Caribbean in the Age of Revolution,” in *The Age of Revolutions in Global Context, ca. 1760–1840*, ed. David Armitage and Sanjay Subrahmanyam (New York: Palgrave Macmillan, 2010), 96; and Bell, *Toussaint Louverture*, 33 (noting that the slaves who participated in the 1791 slave revolt “were given to understand that King Louis XVI wished them well and had created the Code Noir for their benefit”). For an interpretation that emphasizes the fusion of royalist and republican ideologies in the politics of the insurgents, see Laurent Dubois, “Our Three Colors: The King, the Republic and the Political Culture of Slave Revolution in Saint-Domingue,” *Historical Reflections* 29 (2003): 83.

Historians of the Haitian Revolution have tended to subsume this phenomenon under the rubric of “royalism,” but it is more accurately described as an extension and transformation of the permanent debate over the Code Noir that constituted the legal culture of Saint-Domingue. A concern with planter brutality shaped the early dialogue between certain key leaders of the slave insurgency and the representatives of the French revolutionary state. Although generally consistent with the broad outlines of a monarchical worldview, the insurgents’ demands drew more directly upon the power of a specific legal tradition: the Code Noir’s provisions concerning the torture and mutilation of slaves and their proper nourishment and maintenance by planters, as well as the 1784–1875 regulations prohibiting overseers and managers from overworking and abusing their slaves. This was the foundation upon which at least some of the insurgent leaders built their increasingly assertive demands for relief from the oppressions and indignities of the Old Regime.¹⁵⁸

In this way, and in others, the Code Noir cast its long shadow over the Haitian Revolution. Such continuities suggest that we should be cautious before dismissing the preemptive calculus of Old Regime slave law as a mere form of proslavery agitation, a revanchist program that pointed only backwards, to the colonial past. It is easy, in retrospect, for us to look back upon the social ethics of prudence that impelled the regime of the Code Noir as amoral or insipid, lacking in the clear-cut, principled, and robust qualities that we associate with a modern, rights-based opposition to slavery and racism. Given the many forms of injustice in today’s world that do not lend themselves to such a straightforward normative approach, can we be so certain that our own answers to questions of social justice in the contemporary era are morally superior to those of the past?¹⁵⁹

158. See Ghachem, *The Old Regime and the Haitian Revolution*, chap. 6.

159. Cf. Amartya Sen’s discussion of the “plural grounding” of ethical argument in *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009), 2.