

# DOMESTIC ENEMY: POISONING AND RESISTANCE TO THE SLAVE ORDER IN THE 19TH CENTURY FRENCH ANTILLES\*

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**SUMMARY:** I. PREFACE; II. EXTRAORDINARY PENAL JURISDICTIONS; III. UPRISING IN THE CENTRAL AMERICAN COLONIES; IV. THE *COUR PRÉVÔTALE* FOR THE REPRESSION OF POISONING CRIMES; V. FRANÇOIS-ANDRÉ ISAMBERT AND THE ABOLISHING OF EXTRAORDINARY PENAL JURISDICTION IN THE COLONIES; VI. FINAL CONSIDERATIONS

**Abstract:** This article wishes to contribute to the study of disobedience rights, by analyzing instances of resistance against slavery in the French Antilles during the Restoration period. This period was the backdrop for quite a number of significant slave revolts; not just in the French colonies, but also the English and the Spanish ones, such as Jamaica, Cuba, the Barbados islands or the Bermudas. The uprisings occurred coincidentally during a phase of French history that witnessed a booming slave trade, although it had been formally abolished following the congress of Vienna.

**Key Words:** Slavery; Right of Resistance; Colonialism; Poisoning; Extraordinary Penal Jurisdiction

## I. PREFACE

As everybody knows, there are very few direct accounts left by slaves regarding their living and working conditions. However, thanks to sources like manuscripts (legal acts, colonial administrative and judicial documents, official and private correspondence, confidential ministerial dispatches) and printed material (colonial and urban legislation, judicial doctrine, letters and memoirs) at least a partial judicial and political aspect of segregationist ideals has been drafted<sup>1</sup>. Some legal cases played an important role in the greater order of

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<sup>1</sup> Abbreviations: *Archives Nationales* (Paris): AN; *Archives Nationales d’Outre-Mer* (Aix-en-Provence): ANOM; *Archives départementales de la Martinique* (Fort-de-France): ADM; *Bibliothèque Nationale de France* (Paris): BNF; Jourdan, Decrusy, Isambert, Armet, Taillandier

French colonial judiciary and its relations with the motherland<sup>2</sup>. Furthermore, the reaction of intellectuals, politicians and jurists to events in the Caribbean allows to analyze the relation between «us and the others» as well as the perception of the colonial problem as seen by the dominating class in France<sup>3</sup>. Hence, it has been necessary to review judicial history of France – beyond the “national myth” established during the Third Republic – by bearing in mind and including those excluded from citizenship, like the slaves and the free blacks.

Free blacks – who had an intermediate *status* between whites and slaves and were merchants, farmers, landowners, also slave-owners – at the beginning allied themselves with the whites, but later they joined the slaves, both victims of discrimination and prejudice of colour. However, this prejudice was just one of the features of the wider racial issue of modern times: racism continued to cut across barriers of colour<sup>4</sup>.

The forms of resistance observed among slaves, were plenty already in the XVI century, both collective and individual, (sometimes passive forms of resistance), such as: sabotage, fire, theft, suicide<sup>5</sup>, armed uprising, escape, infanticide and denial to respect the colonial laws<sup>6</sup>: *if we must die*, some slaves chose extreme forms of rebellion<sup>7</sup>. The most widespread and hard to repress forms, for the colonial government were *marronage* and poisoning. The former, involving escape from plantations and the creation of hidden, independent communities within forest areas or mountains where fugitives could stay, in some cases for long periods (as in Brasil and Jamaica), was violently stifled by amputating legs, burning bodies alive, severing ears and by cutting the Achilles' heel. The poisoning of men and cattle by slaves, spread especially in the French Antilles was prosecuted by creating special tribunals.

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(éds.), *Recueil général des anciennes lois françaises depuis l'an 420 jusqu'à la Révolution de 1789*, 29 v., Paris 1821-1833: Isambert, *Recueil*; J.-B. Duvergier, *Collection complète des Lois, Décrets, Ordonnances, Réglemens, Avis du Conseil d'État de 1788 à 1824*, Paris 1834-1845: Duvergier, *Collection*; *Code de la Martinique*, 8 v., Saint-Pierre 1767-1822: *Code de la Martinique*.

<sup>2</sup> David B. Davis, *Inhuman Bondage. The Rise and Fall of Slavery in the New World*, Oxford University Press, Oxford, 2006; Seymour Drescher, *Abolition. A History of Slavery and Antislavery*, Cambridge University Press, Cambridge, 2009; Robin Blackburn, *The American Crucible. Slavery, Emancipation and Human Rights*, Verso, London, 2011.

<sup>3</sup> See Tzvetan Todorov, *Nous et les autres. La reflexion française sur la diversité humaine*, Seuil, Paris, 1989; Edward W. Said, *Orientalism*, Pantheon Books, New York, 1978; Id., *Culture and Imperialism*, Vintage Books, New York, 1993).

<sup>4</sup> See “*Constructing Race: Differentiating Peoples in the Early Modern World*”, William and Mary Quarterly, 1997; Miriam Eliav-Feldon, Benjamin Isaac, Joseph Ziegler (eds.), *The Origins of Racism in the West*, Cambridge University Press, Cambridge, 2009.

<sup>5</sup> Richard Bell, “*Slave Suicide, Abolition and the Problem of Resistance*”, *Slavery and Abolition: A Journal of Slave and Post-Slave Studies*, 2012, pp. 1-25.

<sup>6</sup> Gabriel Debien, *Les esclaves aux Antilles françaises (XVII<sup>e</sup>-XVIII<sup>e</sup> siècle)*, Société d'histoire de la Guadeloupe et de la Martinique, Fort-de-France, 1974, pp. 393 ff.

<sup>7</sup> David Richardson, “*Shipboard revolts, african authority, and the atlantic slave trade*”, William and Mary Quarterly, LVIII, 2001, n. 1, pp. 69 ff.; Eric R. Taylor, *If We Must Die. Shipboard Insurrections in the Era of the Atlantic Slave Trade*, Louisiana State University Press, Baton Rouge, 2006.

## II. EXTRAORDINARY PENAL JURISDICTIONS

It is common knowledge that the French *Ancien régime* had some special jurisdictions within its pyramidal court and magistrate structure. Before the French revolution and establishment of the rule of law, special jurisdictions were a series of courts that did not have a general competence but ruled only on specific matters<sup>8</sup>. As far as the *police*<sup>9</sup> was concerned, the task of keeping order and subjects under control was the duty of the *prévôts* – literally «agents of military police»<sup>10</sup> – and the *prévôtés des maréchaux*, who had both, military and judicial authority to make sure that the law was respected in the countryside and could suppress those who committed acts of vagrancy, desertion or incited popular unrest. The *prévôts* did not have jurisdiction over cities where they were present and were responsible only for illegalities committed by vagabonds and soldiers, to the point that the justice they exercised may be defined as “rural”: the *déclaration royale* dated 5<sup>th</sup> of February 1731 excluded the thefts committed in the cities and *faubourgs*<sup>11</sup> from the cases attributed to the *prévôts*. More specifically, the *ordonnance criminelle* of 1670 – that defined matters related to penal procedures of the *Ancien régime*<sup>12</sup> – as well as that of 1731 maintained these jurisdictions as special, with all criminal acts committed by vagabonds and so called *gens sans aveu*<sup>13</sup> being attributed to the competence of the magistrates. The sentences were particularly harsh and no sort of appeal was possible: sentences were carried out without appeal according to Title I, article 14 of the penal order of Colbert.

These tribunals, along with other similar specialized organs were suppressed by the revolutionary regime only to be re-introduced in the napoleonic era. The re-introduction occurred to clamp down on political crimes, including banditry, to be understood as a modern form of the crime committed

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<sup>8</sup> Jean-Marie Carbasse, *Histoire du droit pénal et de la justice criminelle*, Presses Universitaires de France, Paris, 2009, pp. 154 ff.; Benoît Garnot, *Histoire de la justice. France, XVI<sup>e</sup>-XXI<sup>e</sup> siècle*, Gallimard, Paris, 2009, pp. 210 ff.

<sup>9</sup> See Michel Foucault, *Sécurité, territoire, population. Cours au Collège de France (1977-1978)*, Seuil/Gallimard, Paris, 2004), *Leçon du 29 mars 1978*, pp. 319 ff.; cf. P. Napoli, *Naissance de la police moderne. Pouvoir, normes, société*, Découverte, Paris, 2003.

<sup>10</sup> Giovanni Tortora (ed.), *Il dizionario giuridico/Dictionnaire juridique*, Giuffrè, Milano, 1994, *ad vocem*.

<sup>11</sup> Jean-Marie Carbasse, *Histoire du droit pénal*, *op. cit.*, pp. 155; see also Fabien Gaveau, “De la sûreté des campagnes. Police rurale et demandes d’ordre en France dans la première moitié du XIX siècle”, *Crime, Histoire et Sociétés/Crime, History and Societies*, 2000, n. 2, pp. 53-76.

<sup>12</sup> Adhémar Esmein, *Histoire de la procédure criminelle en France et spécialement de la procédure inquisitoire depuis le XIII<sup>e</sup> siècle jusqu’à nos jours*, Larose et Forcel, Paris, 1882, pp. 177 ff.; Denis Salas, *Du procès pénal*, Presses Universitaires de France, Paris, 1992; André Lainqui, *Introduction to Code Louis*, II, *Ordonnance criminelle*, Giuffrè, Milano, 1996; Jean-Marie Carbasse, *Histoire du droit pénal*, *op. cit.*, pp. 208 ff.; Pierluigi Cipolla, *La giustizia della spada. Origini e ideologia dell’Ordonnance criminelle, 1670*, *Prefazione* di Nicola Picardi, Aracne, Roma, 2011.

<sup>13</sup> Law of 5 July 1791 on «police municipale», article III: «Ceux qui, dans la force de l’âge, n’auront ni moyens de subsistance, ni métier, ni répondants, seront inscrits avec la note de gens sans aveu».

by vagabonds during the *Ancien régime*. In fact following the failed attempt on Napoleon's life, with law of 18 *pluviôse* year IX (7 February 1801) he instituted special penal tribunals, composed of three ordinary, three military and two civil magistrates designated by the first Consul. These organs, established in 27 departments by an *arrêté* of the 4th *ventôse* year IX (23 February 1801), decided on all issues in first instance, without a jury or the chance to appeal decisions at the Supreme Court<sup>14</sup>. As we know, slaves could not access the supreme court but only request an act of clemency to the sovereign<sup>15</sup>.

The priority of the Napoleonic regime in the colonies was to re-integrate colons, give them back their property, respecting their property rights, especially versus the slaves who were freed during the revolutionary phase. For example, in the Guadeloupe after reintroduction of slavery in 1802, 22nd of the *fructidor*, year X, the local government emanated strict measures to repress the slave revolts and clamp down on brigands, if captured, they were either shot or burnt alive. On the other hand, Martinique occupied by England between 1794 and 1802 and then again from 1809 to 1814 did not see the abolition of slavery<sup>16</sup>.

Another text issued in Guadeloupe, an *arrêté* regarding the *police rurale* dated 22nd April 1803 (2nd of *floréal*, year XI), in section VI, dedicated to "crime, punishment and recompensation", banned blacks from carrying arms or uniting in groups, both during the day as well as the night and it included harsh punishment for slaves who tried to escape (*individu marron*) as per the typical colonial regime's logic: control and repression towards «les nègres révoltés» and tolerance policy for «les nègres paisibles»<sup>17</sup>.

Later the law passed on the 25th of December 1808 established that crimes perpetrated by vagabonds and social outcasts could be judged by the *cours prévôtales*. In the Napoleonic period a series of extraordinary penal jurisdictions were used, both in France and other European occupied areas, as well as in the colonies, justified in certain cases by the state of seige or war. These jurisdictions were particularly used for political crimes, *cours de justice criminelle spéciale*, a sort of extraordinary military commission, created in the areas occupied by Napoleon's army<sup>18</sup>. The *code d'instruction criminelle* in 1808 introduced articles 553-599, providing another instance, the special courts, jurisdictions composed by civil and military judges with wide capacity, operating without juries, for the repression of crimes committed by vagabonds or beggars, and changing them from being condemned to having to face afflictive or

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<sup>14</sup> Jean-Pierre Royer et Al., *Histoire de la justice en France du XVIII<sup>e</sup> siècle à nos jours*, Presses Universitaires de France, Paris, 2010, pp. 469 ff.

<sup>15</sup> Adrien Lauba, "L'accès à la cour de cassation des esclaves et des libres de couleur: l'élargissement du principe de gratuité de la justice (Monarchie de Juillet)", en Eric Gojosso (éd.), *Les Cahiers poitevins d'Histoire du droit*, III, 2011, pp. 239-257.

<sup>16</sup> Rebecca Hartkopf Schloss, *Sweet Liberty. The Final Days of Slavery in Martinique*, University of Pennsylvania Press, Philadelphia, 2009, pp. 46 ff.; Nelly Schmidt, *La France a-t-elle aboli l'esclavage? Guadeloupe, Martinique, Guyane (1830-1935)*, Perrin, Paris, 2009, pp. 33 ff.

<sup>17</sup> Nelly Schmidt, *La France a-t-elle aboli l'esclavage?*, *op. cit.*, p. 31.

<sup>18</sup> AN, BB/3/169; see also Jean-Marc Lafon, "Justices d'exception napoléoniennes, militaire et civile, dans l'Espagne occupée: l'exemple de l'Andalousie (1810-1812)", *Crime, Histoire et Sociétés/Crime, History and Societies*, XIII, 2009, n. 2, pp. 69-87.

shameful punishments (art. 553). Similar jurisdiction and sentence were applied to the crimes listed under art. 554: smuggling, falsification of money, attacks committed by armed troops, rebellion in the army and murder committed by armed groups.

Following the Congress of Vienna, the chances to opt for special courts was limited with the entry into force of the 1814 *Charte*. Article 62 established that no-one could be taken away from his natural judge and left no space for the creation of special commissions or tribunals. However the constitutional documents still had in them legislation providing for the creation of special jurisdictions, called *cours prévôtales*, composed by civil and military magistrates, to be instituted *post factum*, in violation of the judge's principle of naturalness (article 63)<sup>19</sup>. Later, the *ultra-royaliste* chamber, the so-called *Chambre introuvable*, elected in August 1815 and dissolved in September 1816, voted severe repressive measures with a view to pursue political crimes (rebellion and sedition) as well as social crimes (vagrancy and deviation)<sup>20</sup>.

During the Restoration period, despite the acclaimed intention to get away from the Napoleonic model of special jurisdictions and lack of guarantees, there was a return to legal practices that dispensed with ordinary procedures. More generally, in the eighteenth hundreds, considered by doctrine to be the century of justice by exception and political processes, one notices a considerable mixture and intermingling of law and politics, through the use of constitutional organs and special jurisdictions<sup>21</sup>. There were many cases of political justice during the Restoration phase, but some appear as paradigmatic. Think about the cases of the French Marshal Ney, who had supported the return of Napoleon from Elba, condemned to death by the Chamber of *pairs*, for high treason and attempt against the security of the State, (article 33 of the 1814 *Charte*) or the legal procedure against Charles X's deposed ministers in 1830, accused by the Chamber of deputies and condemned by the *Chambre des pairs*, (article 56 of the *Charte*<sup>22</sup>), based on the Anglo-Saxon model of *impeachment*<sup>23</sup>.

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<sup>19</sup> André Paillet, "Les Cours prévôtales (1816-1818)", *Revue des Deux Mondes*, LXXXI, 1911, t. IV, pp. 123-149; Daniel Philip Resnick, *The White Terror and the Political Reaction after Waterloo*, Harvard University Press, Cambridge, 1966, pp. 83-99; Paolo Alvazzi del Frate, *Il giudice naturale. Prassi e dottrina in Francia dall'Ancien Régime alla Restaurazione*, Viella, Roma, 1999), pp. 187 ff.; Jean-Pierre Royer et Al., *Histoire de la justice*, op. cit., pp. 626 ff.; Pierre Serna, *La République des girouettes. 1789-1815 et au-delà, une anomalie politique: la France de l'extrême centre*, Champ Vallon, Seyssel, 2005, pp. 188 ff.; James M. Donovan, *Juries and the Transformation of Criminal Justice in France in the Nineteenth and Twentieth Centuries*, The University of North Carolina Press, 2010, pp. 55 ff.

<sup>20</sup> See *Cours Prévôtales. Motifs de quelques amendements qu'il paraît utile de proposer au projet de loi présenté*, Paris, 1815.

<sup>21</sup> Jean-Pierre Royer et Al., *Histoire de la justice*, op. cit., pp. 619 ff.

<sup>22</sup> Jean-Marie Le Graverend, *Traité de la législation criminelle*, I, Béchet, Paris, 1830, pp. 480 ff.

<sup>23</sup> Jill Harsin, "The Escape to Vincennes. Public Narratives and Political Meanings in the Ex-Ministers' Trial of 1830", *French Historical Studies*, XXXII, 2009, n. 2, pp. 251-278; Andrea Buratti, "Due momenti del costituzionalismo angloamericano: la progressiva definizione delle sanzioni costituzionali tra strutture intellettuali e lotta politica", *Diritto Pubblico Comparato Europeo*, 2009, n. 2, pp. 981-1001.

Finally, an emblematic example of the management of law during the Restoration period and key to this research was the establishment in France, between 1816 and 1818, of the *cours prévôtales*, created, according to the Colonel Véreux, to «rassurer les bons français», exterminate «l'hydre révolutionnaire» and the «tyrannie napoléonienne»<sup>24</sup> and, less rhetorically, to repress the crimes committed by social outcasts and deviants, last but not least those committed by Napoleon's disbanded troops. Established by the law emanated on the 20th of December 1815, one of the measures that laid the strong base for the so-called, "legal white terror", the courts, starting from their name, recalled those of the *Ancien régime*<sup>25</sup> – *prévôts des maréchaux*, the special jurisdictions abolished in 1790 – and represented a clear violation of the principle of the natural judge<sup>26</sup>.

The *cours prévôtales* were made up of five magistrates from the first instance courts and a military magistrate, called *prévôt*, with the military rank of colonel and the task to investigate. The decision of the legislator not to include high-level magistrates, with wide experience in the new special jurisdiction, did not endow the courts with prestige and created conflicts between the high level military magistrate and the civil judges<sup>27</sup>. The competence of the court was related to armed revolt, seditious meetings, subversive writing but also assassinations and violent thefts on the great country roads (the legal interpretation regarding the definition of *grands chemins* were different)<sup>28</sup>. Besides the crimes included in the Napoleonic penal Code, the legislation instituting the *cours prévôtales* also included crimes of a strictly political nature, such as billsticking, or distributing anti-government pamphlets, displaying of a flag other than the white or hostile shouting in the palace or anywhere the sovereign may pass. These orders made up a system of repression of every political manifestation considered subversive. The crime of conspiracy on the other hand was placed out of the special jurisdictions given that it was not part of the realm of public violence<sup>29</sup>. The decisions of the court could not be appealed at the Supreme court, but intervention of the Justice Minister could be requested in clear cases of incompetence. The court proceedings were quite fast, given that sentences were executed within twenty four hours.

Although the main reason for the establishment of the *cours prévôtales* was in order to ensure the repression of political crimes, in reality the large majority of cases they pursued were common crimes<sup>30</sup>. Between 1816 and 1818 about 2280 cases were held, in the majority were criminal acts committed by vagabonds, recurring criminals, military men, while only a few were of a political nature (shouting, writing and seditious talk)<sup>31</sup>. Among the political

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<sup>24</sup> Quoted by Jean-Pierre Royer et Al., *Histoire de la justice*, *op. cit.*, p. 626.

<sup>25</sup> Benoît Garnot, *Histoire de la justice*, *op. cit.*, p. 243.

<sup>26</sup> On extraordinary jurisdictions see AN, BB/3/167 à 177.

<sup>27</sup> André Paillet, "*Les Cours prévôtales*", *op. cit.*, p. 130.

<sup>28</sup> *Ivi*, p. 139.

<sup>29</sup> *Ivi*, pp. 127-128.

<sup>30</sup> Jean-Pierre Royer et Al., *Histoire de la justice*, *op. cit.*, p. 629.

<sup>31</sup> André Paillet, "*Les Cours prévôtales*", *op. cit.*, p. 140 ff.; see the statistics provided by the Ministry of Justice in 1818, AN, BB/3/123-125.

cases, sentences were issued for shouting or confusion, display of the tricoloured flag and armed gatherings. A majority of the courts started operating with a considerable delay starting from April 1816, mainly due to the slow nomination of judges by the government, paradoxically generating a situation of an extraordinary jurisdiction, meant to function quickly, but that began to operate and execute its tasks slowly<sup>32</sup>.

These special jurisdictions, left one of the worst memories in the history of french justice<sup>33</sup> and were suppressed in France, in 1818, with some slightly modified forms remaining in force overseas. Having said that, there is however no holistic study of the extraordinary court system in France, although there are many studies on each single department. The historical memory regarding colonial courts is even worse and the reconstruction of their reality is utterly incomplete<sup>34</sup>. The management of the legal system in the colonies has only recently started showing up in studies by French and AngloSaxon authors, where their local practice is compared with that of the home nation. However, the major focus is still on the years following the conquest of Algeria, given that it was the age which saw the greatest development of French colonialism<sup>35</sup>.

### III. UPRISING IN THE CENTRAL AMERICAN COLONIES

To understand the institution of extraordinary jurisdiction in the French colonies, it is useful to insert it within the social situation in the Antilles during the Restoration period.

Already in 1811, during the English occupation, a conspiracy by free blacks and slaves had been organized in Martinique and put down through the creation of a special tribunal. Particularly significant to our case was a slave revolt – *revolte du Mont Carbet* – that broke out on the 12th of October 1822, when about thirty slaves got together in an attempt to occupy the city of Saint-Pierre in Martinique. The insurgents were captured by the army after a month of clashes, when they had already injured seven owners and killed two of them. This uprising, differed from other contemporary events that occurred in the United States, as the rebel slaves opposed the free Blacks enlisted to clamp down the revolt. The participation of the French army and of “mixed” companies, composed of whites and free blacks, helped to isolate the thirty or forty odd slaves who rebelled. Following the first arrests the governor immediately summoned *Cour royale* to begin procedure. The Sentence dated

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<sup>32</sup> André Paillet, “*Les Cours prévôtales*”, *op. cit.*, pp. 134-135.

<sup>33</sup> According to Jean-Pierre Royer et Al., *Histoire de la justice*, *op. cit.*, p. 628.

<sup>34</sup> No reference to the colonial reality in André Paillet, “*Les cours prévôtales*”, and in Jean-Pierre Royer et Al., *Histoire de la justice*, *op. cit.*, pp. 626 ff.

<sup>35</sup> See the recent work of Séverine Kodjo-Grandvaux, Geneviève Koubi (éds.), *Droit et Colonisation*, Bruylant, Bruxelles, 2005; “*Les colonies, la loi, les juristes*”, *Droits*, 2006, n. 1, pp. 123-219; John Savage, “*Between Colonial Facts and French Law: Slave Poisoners and Provostial Court in Restoration-Era Martinique*”, *French Historical Studies*, XXIX, 2006, n. 4, pp. 565-594; “*L’esclavage: la question de l’homme. Histoire, religion, philosophie, droit*”, *Droits*, v. 50/52, 2009-2010; Olivier Le Cour Grandmaison, *De l’indigénat. Anatomie d’un «monstre juridique»: le droit colonial en Algérie et dans l’Empire français*, Découverte, Paris, 2010.

16th November 1822 condemned the slaves to severe punishment after they had been tortured during the legal procedure including twenty one death sentences and ten life sentences. The sentences were executed on the 19<sup>th</sup> in Saint-Pierre<sup>36</sup>.

The colonial grip over Martinique tightened after the revolt, in order to avoid another uprising, but above all because of the fear of a growing economic and social power of the free Blacks and the possibility of their allying with the slaves. «For many planters, the rising economic and demographic influence of free people of color was a visible challenge to the island's system of racial hierarchy»<sup>37</sup>.

Although many free Blacks had participated in suppressing the revolts, they were still perceived by the white colons as natural allies of the slaves and enemies of the colonial government. An important account of this kind of mindframe and thinking is provided by Pierre Dessalles, an owner of plantations on the island, one of the few educated creoles<sup>38</sup>, who believed that the free Blacks wanted to destroy the social and legal system of Martinique; not just by using their economic power but also through poisoning. Parts of letters written by this colon are exemplary. In a letter he underlined the importance of slavery and why it needed to exist. In another letter he disapproved of an abbot who had administered Communion to six, free Blacks, who were shortly after involved in a case of poisoning<sup>39</sup>: «les gens de couleur, les nègres ne croient aux vérités de la religion, ils n'ont guère qu'une chose en vue et qui fait frémir; c'est la destruction des blancs et le renversement du gouvernement»<sup>40</sup>. A few years later, in 1825, he kept on negatively stigmatizing the alliance between slaves and free Blacks, as being united in committing poisoning crimes: «on croit que le poison actuel vient des gens libres, qui donnent de mauvais conseils aux esclaves»<sup>41</sup>.

Similar problems and significant differences may be noted if we compare

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<sup>36</sup> Françoise Thésée, “*La Révolte des esclaves du Carbet à la Martinique (octobre-novembre 1822)*”, *Revue française d'histoire d'outre-mer*, LXXX, 1993, pp. 551-584; Ead., *Le général Donzelot à la Martinique. Vers la fin de l'ancien Régime colonial (1818-1826)*, Karthala, Paris, 1997; Gilles Manceron, *Marianne et les colonies. Une introduction à l'histoire coloniale de la France*, Découverte, Paris, 2003, pp. 84; Elsa Dorlin, “*Les espaces-temps des résistances esclaves: des suicidés de Saint-Jean aux marrons de Nanny Town (XVII<sup>e</sup>-XVIII<sup>e</sup>)*”, *Tumultes*, 27, 2006, pp. 37-51; Rebecca Hartkopf Schloss, *Sweet Liberty*, 93-99.

<sup>37</sup> John Savage, “*Between Colonial Facts and French Law*”, *op. cit.*, p. 582.

<sup>38</sup> According to Gérard-Gabriel Marion, “*Le Code civil en Martinique: de l'influence du climat*”, in Jean-François Niort (éd.), *Du Code noir au Code civil. Jalons pour l'histoire du droit en Guadeloupe*, L'Harmattan, Paris, 2007, p. 255.

<sup>39</sup> «Les classes qui habitent les colonies ne ressemblent pas à celles de France; avant de commencer ses intentions, avant de s'occuper à ramener la morale, entièrement oubliée par les gens de couleur, il aurait dû consulter les intérêts du système coloniale, il aurait dû consulter, visiter, et se convaincre de la nécessité de conserver l'ordre établi pour le maintien de l'esclavage et du respect dû aux blancs par les gens libres», Pierre Dessalles, *La Vie d'un colon à la Martinique au XIX<sup>e</sup> siècle, Correspondance 1808-1834* (s.l., 1980), p. 91 (4 July 1823).

<sup>40</sup> *Ibidem*.

<sup>41</sup> *Ivi*, p. 143 (18 February 1825).



the events in French Caribbean with those in ex-English colonies<sup>42</sup>. Just three months before the Martinique revolt, one of the most intense moments in the fight for abolition occurred in Charleston, South Carolina - where slave trade was one of the main business activities since the birth of the states, formalized in 1690 with the "Slavery Code" and with the Negro Act in 1740<sup>43</sup>. One of the most important slave uprisings occurred with the solidarity and support of the free blacks. The free black community in the district of Charleston had grown considerably since the end of the 1790s and according to a census in 1820 there were approximately three thousand six hundred free blacks, more than fifty thousand slaves and nineteen thousand whites. In America, just as in Martinique, the Free blacks were discriminated against and seen as conspirators. One of the most important slave uprisings of the period, that saw the participation of nine thousand slaves and ended with thirty five executions was led by Denmark Vesey, a free black in 1822<sup>44</sup>. This revol represent «attempts to overthrow the prevailing slave system and to establish black

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<sup>42</sup> Fear of poisoning in Virginia bordering on hysteria. From 1748 the slaves who had prepared poison potions would be condemned to death; see Lawrence M. Friedman, *A History of American Law*, Yale University Press, New York, 1985, pp. 85 ff.; for slaves revolts see Howard Zinn, *A people's history of the United State*, Longman, New York, 1980, Chap. II, *Drawing the Color Line*, pp. 22 ff.; Paul H. Blackman and Vance McLaughlin, "Mass Legal Executions in America up to 1865", *Crime, Histoire et Sociétés/Crime, History and Societies*, VIII, 2004, n. 2, pp. 33-61.

See also William M. Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America", *William and Mary Quarterly*, XXXIV, 1977, pp. 258-280; Linda Kealey, "Patterns of Punishment: Massachusetts in the Eighteenth Century", *American Journal of Legal History*, XXX, 1986, pp. 163-186; Philip D. Morgan, "Slaves and Livestock in Eighteenth-Century Jamaica: Vineyard Pen, 1750-1751", *William and Mary Quarterly*, LII, 1995, n. 1, pp. 47 ff.; Michael Craton, *Empire, enslavement, and freedom in the Caribbean*, James Currey Publishers, Oxford, 1997; Oscar Reiss, *Blacks in colonial America* (1997), McFarland Publishers, Jefferson (NC)-London, 2006; Johannes Postma, *Slave revolts*, Greenwood, Westport (Conn.)-London, 2008.

<sup>43</sup> A. Leon Higginbotham, *In the Matter of Color. Race and the American Legal Process: The colonial period*, Oxford University Press, Oxford, 1980; Paul Finkelman, *American Legal History*, Oxford University Press, Oxford, 1991, pp. 39-40; Herbert A. Johnson, *American legal and constitutional history. Cases and Materials*, University Press of America, San Francisco-London, 2000; Alan Gallay, *The Indian Slave Trade. The Rise of the English Empire in the American South, 1670-1717*, Yale University Press, New Haven, 2002; John H. Elliott, *Empires of the Atlantic World: Britain and Spain in America 1492-1830*, Yale University Press, 2006.

<sup>44</sup> David Robertson, *Denmark Vesey. The buried story of America's largest slave rebellion and the man who led it*, New York, 1999; *Designs against Charleston. The Trial Record of the Denmark Vesey Slave Conspiracy of 1822*, Edited and with an introduction by Edward A. Pearson, Chapel Hill-London, 1999, pp. 40-41; Lois A. Walker, Susan R. Silverman, *A Documented History of Gullah Jack Pritchard and the Denmark Vesey Slave Insurrection of 1822*, E. Mellen Press, New York, 2000, pp. 29 ff.; see also *The Trial Record of Denmark Vesey*, ed. John Oliver Killens, Beacon Press, Boston, 1970; *Denmark Vesey. The Slave Conspiracy of 1822*, ed. Robert S. Starobin, Englewood Cliffs (NJ), Prentice Hall, 1970; George P. Rawick, *From Sundown to Sunup: The Making of the Black Community*, Greenwood Press, 1972; David B. Davis, *Inhuman Bondage, op. cit.*, pp. 221 ff.; Alessandro Portelli, *Spia nel campo nemico: lo schiavo domestico come nemico interno* (with Annalucia Accardo), in Id., *La linea del colore. Saggi sulla cultura afroamericana*, Manifestolibri, Roma, 1994, pp. 59-75; John Thornton, *Africa and Africans in the Formation of the Atlantic World, 1400-1680*, Cambridge University Press, Cambridge, 1998.

states»<sup>45</sup>. In South Carolina, as in all segregationist states<sup>46</sup>, the racial and class hatred of the whites towards the slaves, who were considered as dangerous Jacobins, was also extended to the free blacks. According to an 1822 article in Charleston, slaves and Free Blacks were the same, due to the danger they represented for the order of the land. Both categories were considered:

the greatest and most deplorable evil with which we are unhappily afflicted. [...] Our Negroes are truly the *Jacobins* of the country; that they are the *anarchists* and the *domestic enemy*; the *common enemy of civilized society*, and the barbarians who would, if they could, become the destroyers of our race<sup>47</sup>.

Another example from the United States is in Louisiana, where in 1825 a Civil Code was published wherein distinguished between the status of a free men, freed men and slaves (art. 35). An important attempt at rebellion was organised in Richmond, Virginia, by slave Gabriel, with help of whites and other slaves, but was discovered and his leader was executed with other 26 conspirators in 1800<sup>48</sup>. But the most important slaves revolt in Usa of that period was, as we know, the Nat Turner conspiracy of august 1831, when he and his gang killed 60 white men in Virginia<sup>49</sup>. At the end more than one hundred slaves was killed and Turner was prosecuted and executed. «In the case of slave insurrections, many slaves were killed in putting down some of the larger revolts, particularly those led or inspired by Gabriel in 1800, Denmark Vesey in 1822, and Nat Turner in 1831»<sup>50</sup>.

But the uprising of *Mont Carbet* stood as an example of how frequent slave revolt attempts had become and how the fear of conspiracy and plots had spread across the white colon communities. The widespread fear was present because of the repeated revolts that occurred in that period in the islands nearby and the obsession which was to be found also in American colonial settlements, of a united positioning campaign of whites by the slaves and free Blacks<sup>51</sup>. In Martinique and Guadalupe, white colons came to believe

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<sup>45</sup> Keith R. Bradley, *Slavery and Rebellion in the Roman World, 140 B.C-70 B.C*, Indiana University Press, Bloomington, 1989, p. 13; see also Id., *Spartacus and the Slave Wars*, Bedford, 2001.

<sup>46</sup> It should be remembered that slavery was practiced non only in the South, but was present throughout the Federation; see Lawrence M. Friedman, *A History of American Law*, op. cit., pp. 85 ff.

<sup>47</sup> Quoted by Denmark Vesey. *The Slave Conspiracy*, p. 137.

<sup>48</sup> Douglass R. Egerton, *Gabriel's rebellion. The Virginia slave conspiracies of 1800 and 1802*, University of North Carolina Press, Chapel Hill (N.C.)-London, 1993.

<sup>49</sup> Herbert Aptheker, *Nat Turner's slave rebellion* (1966), International Publishers, New York, 2006.

<sup>50</sup> Paul H. Blackman and Vance McLaughlin, "Mass Legal Executions in America, op. cit., p. 41.

<sup>51</sup> Clarence V.H. Maxwell, "«The Horrid Villainy»: Sarah Bassett and the Poisoning Conspiracies in Bermuda, 1727-30", *Slavery and Abolition: A Journal of Slave and Post-Slave*

in a “theory” that the slaves and the free Blacks were constantly plotting against them and ready at any point to rise and end the colonial order: this was functional to the maintenance of a system of segregation<sup>52</sup> and the creation of a “domestic enemy”.<sup>53</sup>

#### IV. THE *COUR PRÉVÔTALE* FOR THE REPRESSION OF POISONING CRIMES

Poisoning as a crime was already regulated in Martinique by local decree, dated, 3rd of February 1724 as well as by colonial orders dated 4<sup>th</sup> October 1749 and 12 November 1757. The local ordinance applied the death penalty for alleged guilty individuals and any accomplice<sup>54</sup>. Furthermore in 1803 (24 *vendémiaire*, year XII, in revolutionary calendar) a *prévôtale* jurisdiction was introduced by General captain, Louis Thomas Villaret de Joyeuse, because the colony was under state of seige due to the war. The jurisdiction simply ended at the end of the war, after having emitted more than a hundred capital punishment sentences.

However, only the ordinance dated 12 august 1822 formally instituted a *cour prévôtale* for the repression of poisoning crimes, which according to colonial administrators had shown a spiralling rise<sup>55</sup>. General François-Xavier Donzelot<sup>56</sup>, the governor of the island and the judges, along with the Director of public prosecutions (Attorney General) General Pierre-François-Honoré Richard de Lucy believed that the ordinary legal system was unable to meet the need to pursue and punish the perpetrators of such a serious crime, like poisoning. Despite the request from the Ministry of Justice to ensure legal procedure

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Studies, XXI, 2000, n. 3, pp. 48-74; John Savage, “*Between Colonial Facts and French Law*”, *op. cit.*, pp. 565-594; Id., “*«Black Magic» and White Terror: Slave Poisoning and Colonial Society in Early 19th Century Martinique*”, *Journal of Social History*, XL, 2007, n. 3, pp. 635-662; Geneviève Leti, “*L’empoisonnement aux Antilles françaises à l’époque de l’esclavage (1724-1848)*”, en Philippe Hrodej (éd.), *L’esclave et les plantations. De l’établissement de la servitude à son abolition. Un hommage à Pierre Pluchon*, Presses Universitaires de Rennes, Rennes, 2008, pp. 209-227.

<sup>52</sup> Jean-François Niort, “*La condition des libres de couleur aux Iles du Vent (XVIII<sup>e</sup>-XIX<sup>e</sup> siècle): ressources et limites d’un système ségrégationniste*”, *Cahiers aixois d’histoire des droits de l’outre-mer français*, 2004, n. 2, pp. 61-119.

<sup>53</sup> Alessandro Portelli (with Annalucia Accardo), *Spia nel campo nemico*, *op. cit.*, pp. 59-75; see also Yvan Debbasch, “*Opinion et droit. Le crime d’empoisonnement aux îles pendant la période esclavagiste*”, *Revue française d’histoire d’outre-mer*, LI, 1963, pp. 143 ff.; Geneviève Leti, “*L’empoisonnement aux Antilles*”, *op. cit.*, p. 211.

<sup>54</sup> *Ordonnance du Roi, sur les vénéfices et poison, Code de la Martinique*, I, pp. 215-222.

<sup>55</sup> *Ordonnance du Gouverneur administrateur portant création d’une cour prévôtale pour la répression des crimes d’empoisonnement, Code de la Martinique*, VIII, pp. 356-363; handwritten text is also found in ADM, *Cour royale de la Martinique*, 10 Septembre 1820 - 30 Novembre 1825, ff. 99-106.

<sup>56</sup> See ANOM, Fonds ministériels, EE. 722/46, *Dossier François-Xavier Donzelot*; see also Donzelot (François-Xavier, comte), in *Dictionnaire biographique des Généraux et amiraux français de la Révolution et de l’Empire (1792-1814)* (Paris, 1934), I, p. 366; Françoise Thésée, *Le général Donzelot à la Martinique*, *op. cit.*

guaranteed and the individual rights laid out in French law, the extraordinary jurisdiction, composed of military and civil judges – recruited from among the elite plantation owners – without a permanent office, was operative until the end of 1826. A handwritten note from the Ministry of Naval and colonial affairs specified that, despite the similarities, the courts in Martinique were not comparable with those in France.

La Cour prévôtale créée à la Martinique ne ressemble aux Cours prévôtales de France, ni par la composition, ni par la manière dont se règle la compétence, ni pour les garanties accordées à l'accusé. Il est vrai que la justice ordinaire rendue, conformément à l'ordonnance de 1670, a été, jusqu'ici, insuffisante pour réprimer les crimes d'empisonnements<sup>57</sup>.

The court model introduced in Martinique by the colons had more in common with the special tribunals for the repression of vagabonds, instituted in France in 1803 than that of the *prévôt de maréchaussée*, which operated in the days of the *Ancien régime* as an extraordinary jurisdiction. However, the colonial court differently from the martial court of the cities was not made up of professional judges<sup>58</sup>.

The legal model in the colonies was inquisitory to a great extent, in the sense that they used secrecy during legal court procedures, by keeping a secret system of legal evidence and written documents, while in the motherland this practice was gradually set aside in favour of the principle for free conviction of the judge and an oral hearing with cross-examination by the public. For example, the eyewitness account of a slave, was not valid as proof in a court hearing, but considered as a clue<sup>59</sup>. Hence, inside the legal proof system, the entire procedure remained secretive and torture during legal proceedings, that had come to an end in France in the eighteenth century, given the abolition in 1780, was still used<sup>60</sup>.

Furthermore, in Martinique and other central-american colonies like Jamaica<sup>61</sup>, slave owners participated as non-professional judges in the hearings against slaves. Owners exercised their own private justice, based on the european *Ancien régime* method<sup>62</sup> or rather a domestic justice that displaced

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<sup>57</sup> ANOM, Fonds ministériels, Série géographique, Martinique, Carton 52, dossier 430 and 431.

<sup>58</sup> John Savage, “*Between Colonial Facts and French Law*”, *op. cit.*, p. 576.

<sup>59</sup> *Ibidem*.

<sup>60</sup> In 1780 was abolished the *question préparatoire*, and in 1788 the *question préalable*.

<sup>61</sup> Diana Paton, “*Punishment, Crime, and the Bodies of Slaves in Eighteenth-Century Jamaica*”, *Journal of Social History*, XXXIV, 2001, p. 936; see also Ead., “*Witchcraft, Poison, Law, and Atlantic Slavery*”, *William and Mary Quarterly*, LXIX, 2012, pp. 235 ff.

<sup>62</sup> See Luciano Martone, *Arbiter-Arbitrator. Forme di giustizia privata nell'età del diritto comune*, Jovene, Napoli, 1984; Diego Quaglioni, *La giustizia nel medioevo e nella prima età moderna*, Il Mulino, Bologna, 2004; about the paradigmatic case of the Papal States, see Maria Rosa Di Simone (ed.), *La giustizia dello Stato pontificio in età moderna*, Viella, Roma, 2011.

state justice<sup>63</sup>. Inside the plantations owners dictated the law for their slaves, it was a “disciplinary regime” that did not require the presence of a judge or procedures: «c’est le maître seul qui, lorsqu’il estime que son esclave a commis une faute, ordonne qu’il soit châtié, et fait exécuter le châtiment»<sup>64</sup>. The power exercised by the owners over the slaves was practically absolute – «la loi s’arrête au seuil de l’habitation»<sup>65</sup> – hence it being defined as domestic sovereignty<sup>66</sup>. As Frederick Douglass, the slave who fled in 1837 from his master and that would be fought for women’s rights, related in his *Autobiography*, the plantation was a little State in itself, with its laws and rules<sup>67</sup>.

Thus, the administration of law in the colonies was to an extent subject to the will of the owners who had the power to decide the charges to be applied along with the punishment and the limited norms that regulated the latter, were not applied. It was only towards the end of the July Monarchy that judges – by a decree dated 25<sup>th</sup> January 1840 – were ordered to inspect how slaves were being treated in the plantations and how owners were applying their disciplinary powers<sup>68</sup>. However in these years, even those who were careful and supportive of the abolition cause, such as Tocqueville, defended this form of justice, a residue of the feudal age, as necessary to maintain order<sup>69</sup>.

According to Victor Schœlcher, the most important abolitionist of the XIX century in Martinique:

le planteur, maître souverain sur son habitation, est là, tout à la fois, accusateur, juge et bourreau. Personne n’a le droit de lui demander compte, il est tout puissant; l’administration elle-même, imbue des préjugés coloniaux, ne veille pas à l’exécution du peu de lois faites en faveur des esclaves; et celui d’entre eux qui aurait le malheur de porter plainte, pauvre, isolé, faible et méprisé, serait sûr d’avance de succomber en justice devant son redoutable adversaire, et d’expier bientôt sous un joug rendu plus cruel de

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<sup>63</sup> Yvan Debbasch, “Opinion et droit”, *op. cit.*, pp. 153 ff.; John Savage, “Between Colonial Facts and French Law”, *op. cit.*, p. 570; Carine Jallamion, “Le justicier domestique: le droit du patron sur les esclaves”, en Bernard Durand, Martine Fabre, Mamadou Badji (éds.), *Le juge et l’outre-mer*, V, Publications du Centre d’Histoire Judiciaire, Lille, 2010, pp. 217-229.

<sup>64</sup> Carine Jallamion, “Le justicier domestique”, *op. cit.*, p. 217.

<sup>65</sup> Félix Chauleau, *Etude sur la condition servile à la Martinique (1635-1848). Contribution à l’étude de l’ineffectivité juridique*, Thèse Droit, Paris, 1964, p. 178.

<sup>66</sup> See Yvan Debbasch, “Au cœur du «gouvernement des esclaves»: la souveraineté domestique aux Antilles françaises (XVII<sup>e</sup> - XVIII<sup>e</sup> siècles)”, *Revue française d’histoire d’outre-mer*, LXXII, 1985, n. 266, pp. 31-53.

<sup>67</sup> First version of his *Autobiography* was *Narrative of the Life of Frederick Douglass. An American Slave* (1845), Oxford, 2006; the second *My Bondage and My Freedom* (1855) and the last *Life and Times of Frederick Douglass* (1881).

<sup>68</sup> Carine Jallamion, “Le justicier domestique”, *op. cit.*, pp. 217 ff.

<sup>69</sup> Alexis de Tocqueville, *Sur l’esclavage*, Actes Sud, Arles, 2008, p. 41.

l'insolence de son inutile tentative<sup>70</sup>.

One of the main reasons why the owners exercised their right to punish slaves was the poisoning of men and animals<sup>71</sup>. Poisoning was a political crime and the confirmation of its nature can be derived from the fact that all those guilty of the crime belonged to the slave community on the island, so much so, that it was defined as a «class crime»<sup>72</sup>. The colons, on the other hand, considered it to be a revolutionary act to that point that one plantation owner, on the 4th of September 1823 claimed that blacks, both slaves and free, who committed such crimes were comparable to the *Carbonari* in Europe, as they conspired by meeting secretly against the order of all things<sup>73</sup>.

This crime was perceived to be so dangerous for society that extraordinary measures were required to repress it, as the ordinary legal system according to widespread opinion, with its slow bureaucracy could not guarantee safety or suppression of the same:

il est donc nécessaire – we read on the preface of the law – de les poursuivre avec une célérité qui, en assurant leur punition, puisse frapper d'une terreur salutaire ceux qui seraient tentés de les imiter; Que la mesure la plus prompte et la plus efficace à employer pour parvenir à ce but est l'établissement d'une cour prévôtale<sup>74</sup>.

The laws which regulated the attribution of poisoning cases to common courts for sentencing were suspended and a special court took the place of the ordinary courts, with a jurisdiction that encompassed the entire territory of the Martinique colony. Court members were to travel to the place of crime as "itinerant" judges. The composition of the court included a *prévôt*, as president, a lieutenant of the Gendarmerie, a local neighbourhood police chief, a lieutenant commissioner and two well-known inhabitants of the same neighbourhood, nominated by the President of the court, and by the king's prosecutor in addition to a chancellor (article 3).

The governor of the island nominated the King's prosecutor and the *prévôt*. The latter, chosen among army officers had the Gendarmerie at his disposition and authority to arrest the accused in case serious proof existed. Article 17 established that witnesses and charged individuals were to be interrogated separately, in conformity with the 1670 ordinance. In case the

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<sup>70</sup> Victor Schœlcher, *De l'esclavage des noirs et de la législation coloniale*, Paulin, Paris, 1833, p. 22; see Nelly Schmidt, *Victor Schœlcher et l'abolition de l'esclavage*, Fayard, Paris, 1994.

<sup>71</sup> Pierre Pluchon, *Vaudou, sorciers, empoisonneurs. De Saint-Domingue à Haïti*, Karthala, Paris, 1987, pp. 143 ff.

<sup>72</sup> Yvan Debbasch, "Opinion et droit", *op. cit.*, p. 152.

<sup>73</sup> See Diana Paton, "Punishment", *op. cit.*

<sup>74</sup> *Ordonnance du Gouverneur administrateur portant création d'une cour prévôtale pour la répression des crimes d'empoisonnement*, *Code de la Martinique*, VII, 356.

witnesses were slaves, summons were sent to their owners, who were responsible if the slaves did not appear in court for the hearing. Based on the ordinance dated 11 April 1807<sup>75</sup>, if a slave was unable to serve the master for the rest of his days due to the permanent sentence of a court, the owner had right to compensation. An important related decree, was the colonial ordinance issued by the Governor of Martinique, François-Marie-Michel de Bouillé, on the 14th of December 1827, regarding to fiscal norms, wherein required the payment of compensation to owners whose slaves were put to death (art. 4)<sup>76</sup>.

According to Joseph-Elzéar Morenas – envoy in Senegal as a botanist, a knowledgeable man regarding life in the French Antilles and a defender of the rights of blacks and slaves – the compensation owners got represented an aberrant rule of law, as sentences of the special court were often directed towards older slaves, who, once condemned, would guarantee their owners a higher sum than their real value<sup>77</sup>.

In the opinion of Morenas

on se tromperait fort, si l'on croyait que ces cruautés reposent sur quelque principe de justice ou sur quelque raison d'utilité générale; elles sont commandées par l'intérêt particulier des principaux colons, qui savent très-bien soustraire leurs esclaves coupables au pouvoir de la justice quand cela leur convient, et qui du reste s'inquiètent fort peu qu'un innocent périsse ou qu'un coupable échappe<sup>78</sup>.

Article 21, conformant with the penal law of the *Ancien régime*, specifically with the ordinance of February 1724, required that both, the crime and the attempt to poison were to be punished with the death sentence. Accomplices – including the providers of toxic substances – were to be judged without appeal and condemned to death or afflictive punishment within twenty four hours. The court exercise its functions as long as required and thus it operated for five years.

According to recent studies, more than a hundred people were sentenced to decapitation and about the same number was given a life sentence after being whipped and branded<sup>79</sup>. The use of the guillotine was not

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<sup>75</sup> Even in the English colonies of America, like North Carolina, the master of a slave accused was compensated through a public fund; see Lawrence M. Friedman, *A History of American Law*, *op. cit.*, pp. 85 ff.

<sup>76</sup> *Ordonnance de M. le Gouverneur du 14 Décembre 1827, relative aux Impositions*, ADM, *Cour royale de la Martinique*, Novembre 1825 - Septembre 1832, f. 71.

<sup>77</sup> Joseph-Elzéar Morenas, *Précis historique de la traite des noirs et de l'esclavage colonial, contenant l'origine de la traite, son progrès, son état actuel*, Firmin Didot, Paris, 1828, p. 323.

<sup>78</sup> *Ivi*, 329.

<sup>79</sup> According to Joseph-Elzéar Morenas, *Précis historique*, *op. cit.*, p. 324, the death sentences issued by the *cour prévôtale* were six hundred, and according to the recent reconstruction of Geneviève Leti, *"L'empoisonnement aux Antilles"*, *op. cit.*, p. 224, the death sentences were 118 and the sentenced to life imprisonment were 90; about the criticism that occurred in France, see John Savage, *"Between Colonial Facts and French Law"*, *op. cit.*, pp. 582 ff.

part of the practice, but as in the days of the *Ancien régime*, an axe was used by a slave, who himself was condemned to death and in this way avoided the execution of the sentence. Furthermore, with the ordinance dated 9 February 1827, the colons obsessed by the insurrection of the blacks, obtained the right to demand, for dangerous slaves, an order of expulsion from the island. Such a decision, in the form of an administrative act was used by the colonial government on numerous occasions as a sort of manner in which public order could be defended and preserved<sup>80</sup>. In final analysis, the entire colonial, legal order used racial pretexts for political ends and reasons of State: «la hiérarchie des castes et la séparation radicale entre blancs et noirs est jugée indispensable au maintien de l'ordre public colonial»<sup>81</sup>.

## V. FRANÇOIS-ANDRÉ ISAMBERT AND THE ABOLISHING OF EXTRAORDINARY PENAL JURISDICTION IN THE COLONIES

Isambert, one of the main representatives of the liberal judicial culture in the mid eighteenth hundreds, a lawyer within the King's council and the Supreme Court, contributed with other jurists and politicians to abolish the extraordinary penal jurisdiction in the colonies<sup>82</sup>. Among the innumerable cases he assisted in favour of the black populations, his defense of a free Black woman, Marie-Louise Lambert was of particular significance. The lady was condemned by the special court for having committed poisoning<sup>83</sup>. The importance of this case, compared to the hundreds of other poisoning cases that occurred in the twenties of the eighteenth century in Martinique is the exposure it received among jurists, politicians and journalists given the notoriety and ability of Isambert. The case echoed across the public opinion to such an extent that it actually contributed in abolishing the *cour prévôtale*, generating loud protests of the Creole community who viewed the act as a limitation of their power.

The case in 1823 was for attempted poisoning of a slave owner, *madame* Buée by one of her slave women, Marie-Claire together with Joseph, a slave of

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<sup>80</sup> Yvan Debbasch, “*Opinion et droit*”, *op. cit.*, p. 184.

<sup>81</sup> Jean-François Niort, “*La condition des libres de couleur*”, *op. cit.*, p. 85.

<sup>82</sup> See the manuscript sources in AN, Lh 1336/16; AN, BB/1/144 à 147; BB/33/3 avril 1836; BNF *Département des manuscrits*, NAF, 13239 and NAF 23769-23772; see also *La littérature française contemporaine: XIX<sup>e</sup> siècle*, IV, Daguin, Paris, 1852, pp. 359-360; Alphonse Taillandier, “*Isambert (François-André)*”, en *Nouvelle biographie générale depuis le temps plus reculés jusqu'à nos jours*, XXVI, Firmin-Didot, Paris, 1858, pp. 42-46; “*Isambert (François-André)*”, en *Dictionnaire des parlementaires français*, III, Bourloton, Paris, 1890, p. 384; C. Meyer, “*Isambert (François-André)*”, en *Dictionnaire de biographie française*, XVIII., Letouzey, Paris, 1989, col. 206-207; Jean-Louis Halpérin, “*Isambert François-André*”, en Patrick Arabeyre, Jean-Louis Halpérin, Jacques Krynen (éds.), *Dictionnaire historique des juristes français XII<sup>e</sup>-XX<sup>e</sup> siècles*, Presses Universitaires de France, Paris, 2007, p. 418; Marco Fioravanti, “*Le préjugé de la couleur. François-André Isambert et l'administration de la justice aux Antilles françaises pendant la Restauration*”, en Eric Gojosso (éd.), *Les Cahiers poitevins d'Histoire du droit*, IV, 2012, pp. 113-152.

<sup>83</sup> ADM, Série U, *Justice*, 7U, *Cour prévôtale, 1822-1826*; see also François-André Isambert, *Au roi en son Conseil. Requête pour Marie-Louise Lambert, négresse libre de la Martinique, détenue dans la maison centrale de Rennes*, Duverger, Paris, 1827.



*monsieur* La Tuilleire<sup>84</sup>. Marie-Claire was accused of poisoning Buée, her maid, other people and cattle. The slave confessed her crime but affirmed that she had been advised by a friend, a free black woman, Marie-Louise Lambert. The latter, asked to appear in front of extraordinary jurisdiction court claimed that she had no relation with Marie-Claire, the slave and that she had never bought the poison used in the criminal act, but the pharmacist summoned to the hearing was never heard. The special tribunal sentenced the female slave to death – *le poingé droit et la tête tranchée* – while the male slave Joseph, was viewed as a passive figure in the hands of Marie-Claire and was acquitted, given his young age, and given to his owner for disciplinary action, re-evoking yet again a form of private justice. On the other hand, Marie-Louise was condemned to be branded, whipped and life imprisonment as presumed accomplice<sup>85</sup>.

According to colonial order Lambert had no right of defence, however Isambert wrote a defensive memoir that was sent to the King's council<sup>86</sup>. According to him the colonial *constitution*, based mainly on the *Code noir* of 1685 and the following regulatory measures<sup>87</sup>, had been misapplied (*mis hors la loi*<sup>88</sup>) by the local legislation. Furthermore, the rapid judgment without guarantees, as issued by the law instituted by the *cour prévôtale*, did not allow defenders or any sort of advertising. The lawyer's written document underlined that the allegations towards the accused were not confirmed in the case, but the court had not expressed itself regarding the innocence or responsibility and had opted for a mid-way settlement, «qui ne pouvait satisfaire ni la société, ni la justice», declaring the woman «fortement soupçonnée d'avoir conseillé l'empoisonnement et fourni le poison»<sup>89</sup>. Isambert reminded in his written piece that the sentence was based on multiple sources of law, typical of the French

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<sup>84</sup> See Bernard Moitt, *Women and Slavery in the French Antilles, 1635-1848*, Indiana University Press, Bloomington and Indianapolis, 2001: «Besides armed revolt and *marronage*, women also engaged in poisoning as a form of resistance», p. 139.

<sup>85</sup> *Séance tenue au bourg du Lamentin le 20 août 1823*, ADM, Série U, *Justice*, 7U, *Cour prévôtale, 1822-1826*.

<sup>86</sup> Besides the judgment of Marie-Louise Lambert, see the many other judgments of the *cour prévôtale* for the crime of poisoning reported in *ivi* (for example: 27 November 1822; 1 July 1823; 9 April 1823).

<sup>87</sup> See Lucien Peytraud, *L'esclavage aux Antilles françaises avant 1789. D'après des documents inédits des archives coloniales* (first edition Paris, 1897), Cambridge University Press, Cambridge, 2010, pp. 143 ff.; Arthur Girault, *Principes de colonisation et de législation coloniale*, I, Larose, Paris, 1927, pp. 222-224; Philippe Haudrière, "Code noir", en Lucien Bély (éd.), *Dictionnaire de l'Ancien régime. Royaume de France XVI<sup>e</sup>-XVIII<sup>e</sup> siècle*, Presses Universitaires de France, Paris, 1996, pp. 274-275; Vernon Valentine Palmer, "Essai sur les origines et les auteurs du Code noir", *Revue internationale de droit comparé*, L, 1998, n. 1, pp. 111-140; Grégoire Bigot, "Esclavage", en D. Alland, S. Rials (éds.), *Dictionnaire de la culture juridique*, Presses Universitaires de France, Paris, 2003, pp. 638-642; Louis Sala-Molins, *Le Code noir ou le calvaire de Canaan*, Presses Universitaires de France, Paris, 1987, n.e. 2007; Jean-François Niort, "Homo servilis. Essai sur l'anthropologie et le statut juridique de l'esclave dans le Code noir de 1685", *Droits*, L, 2009, pp. 120-141; Id., "Code noir", en Olivier Pétré-Grenouilleau (éd.), *Dictionnaire des esclavages*, Paris, Larousse, 2010, pp. 155 ff.

<sup>88</sup> *Séance tenue au bourg du Lamentin le 20 août 1823*, ADM, Série U, *Justice*, 7U, *Cour prévôtale, 1822-1826*; but also François-André Isambert, *Au roi en son Conseil*, *op. cit.*, p. 3.

<sup>89</sup> ADM, Série U, *Justice*, 7U, *Cour prévôtale, 1822-1826*.

*Ancien régime* judicial regime – that maintained certain features of the traditional order – still applied in the colonies, specifically on the 3<sup>rd</sup> February 1724 proclamation, that applied the death penalty for taking part in poisoning crimes. The court however, opted for life imprisonment, as underlined by Isambert, due to the doubts regarding the guilt of the accused. Based on article 21, Title XXV of the *ordonnance criminelle*, 1670 as inserted into the establishment proclamation of the *cour prévôtale* in 1822, the sentence had to be carried out on the same day of its issue. The 20 August 1823 the court said:

Quant à la négresse libre Marie-Louise Lambert, d'après les violens soupçons qui pèsent sur elle, la cour la condamne à être conduite par l'exécuteur au pied de l'échafaud pour y être fouettée et marquée, et être ensuite conduite sur le continent de la France, pour y être enfermé à perpétuité dans une maison de réclusion<sup>90</sup>.

Although the condemned slave withdrew the accusations of complicity, the sentence was executed, with Lambert being whipped and transferred to the prison of Rennes, in France. After that, Isambert presented an appeal on the 25th of August 1826, at the supreme court which was not accepted, given that sentences of the *cour prévôtale* were not subject to appeal: «d'après l'établissement des cours prévôtales sous l'empire de la Charte, la voie de cassation n'était ouverte aux termes de la loi du 20 décembre 1815»<sup>91</sup>. However, regardless of the inadmissibility of the appeal, the colonial legal order based on the *Ancien régime* legislation, allowed direct appeals to the sovereign for revision or repeal of sentences. According to Isambert:

dans l'ancienne procédure criminelle, le débat n'est ni oral, ni public; point de jury qui prononce sur l'impression résultant des débats; les juges souverains se décident d'après des preuves écrites et muettes; l'erreur sur le fond aussi bien que sur la forme est facile à reconnaître aujourd'hui comme à l'époque du jugement<sup>92</sup>.

In his document, Isambert evoked, as he had done in other writings, the figure of Jean Calas as an example of an innocent who was condemned by Parliamentary justice based on contemporary prejudice of the times and faced with incompetent judges in the colonies. Isambert sung the praise and superior equality of the sovereign legal system, reminding that «la justice est la première dette de la souveraineté»<sup>93</sup>. He presented to the King's prosecutor and the island governor examples of legal violation that had occurred during the hearings: the court did not have competence over free men; the sentence was null and void because it had not been sustained by debate and because simple

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<sup>90</sup> *Ivi*.

<sup>91</sup> François-André Isambert, *Au roi en son Conseil*, *op. cit.*, p. 36.

<sup>92</sup> *Ivi*, pp. 9-10.

<sup>93</sup> *Ivi*, p. 10.

suspicion could not be the basis for an afflictive or notorious sentence; the sentence could not be executed immediately; and finally the whipping was illegal. He also recalled that the *conseil supérieur* had been established in Martinique to control the military's might and the special jurisdiction.

Before the French revolution there had been no special jurisdiction on the island. They were viewed as unnecessary given that the penal procedure based on the 1670 text worked using the *prévôtale* methods (*prévôtalement*). The only difference was that the Louis XIV ordinance included two degrees of judgement, while the *prévôtale* jurisdiction only had one. According to Isambert, the law required its own time and its formalities which the extraordinary jurisdictions did not allow. «Mieux vaudrait – he continued laconically – exécuter militairement le coupable, sur le lieu du délit, sans forme de procès; du moins on ne profanerait pas la justice»<sup>94</sup>. According to the lawyer the ignorance of the colonial legislator, specifically the governor, arose due to his lack of understanding of the possibility to legally clamp down on the crime of poisoning based on the ordinance of 1670, which itself provided limited guarantees, and other old penal laws still present in the colonies:

Si le gouverneur avait été éclairé, il aurait vu qu'il n'y avait d'autre différence que la voie d'appel; mais quand on réfléchit que la cour royale ne recommence pas l'instruction et n'entend pas les témoins, qu'elle ne procède qu'à un nouvel interrogatoire, et peut prononcer un arrêt de mort en trois jours; était-ce la peine de déroger à l'ordre des juridictions?<sup>95</sup>

The 1670 ordinance, the *lettre patente* dated 3 November 1789 registered in the colonies and a sentence dated 7 December 1822, required the accused to have the right to a proper defence. It was obvious for Isambert that had the accused had access to a defence lawyer she would not have been condemned. As far as the lack of advertising of the debate was concerned, as the first and main guarantee for the accused, appealing was not enough as per the 1670 text, because it had been modified in the colonies by an *arrêté special*, dated 9<sup>th</sup> *vendémiaire*, year XII (1st November 1803)<sup>96</sup>.

According to the defence, if the debate had been public, probably the accused would have been acquitted, given that the accusation was based on the sole statement of the co-accused. Furthermore, the woman had to be freed because her sentence was given entirely based on suspect – *véhétement soupçonnée*, according to the definition of the court.

Si ces juges ne pouvaient acquérir la conviction de la culpabilité de Marie-Louise Lambert, ils devaient la mettre en liberté et ne pas rétablir, sous une autre forme, l'abominable torture si justement abolie par Louis

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<sup>94</sup> *Ivi*, p. 14.

<sup>95</sup> *Ivi*, p. 18.

<sup>96</sup> *Arrêté du Grand-Juge, supplémentaire au mode de procédure à suivre par le tribunal spécial (9 brumaire an XII- 1<sup>er</sup> novembre 1803), Code de la Martinique, IV, pp. 637-638.*

XVI en 1779, après avoir été introduite dans la colonie, le 20 décembre 1674, par un arrêté du conseil supérieur<sup>97</sup>.

As far as the immediate execution of the sentence was concerned, Isambert stated a guiding statement dated, 5th May 1750, of an interpretative nature, that ordered officials of the Parliament of Rouen not to execute sentences immediately as that deprived the sovereign the faculty to concede clemency. Once the appeal was pushed back at the supreme court level, in September 1826 Isambert got his assistant to present a request to the King's council asking for a review of the case judged in Martinique by the extraordinary jurisdiction: «ce faisant, que la sentence rendue le 20 août 1823, et l'exécution qui s'en est suivie seront et demeureront rétractées»<sup>98</sup>, but such a request only achieved a partial response as the sentence was reduced to twenty years of imprisonment.

However, as has been observed, «this defeat was also in some ways a victory»<sup>99</sup>, as it got the attention of legal experts and intellectuals. The special jurisdictions introduced in Martinique had already generated perplexity among the liberal and radical thinkers and after the Lambert case, the criticism grew, especially through numerous written pieces in the news papers and parliamentary question sessions. Following the protests in France and the doctrinal opposition against this kind of an exceptional legal system, Minister Christophe Chabrol issued a decree dated 10 November 1826 (absorbed in Martinique on the 28<sup>th</sup> of February 1827)<sup>100</sup> putting an end to the *cour prévôtale*. A second ordinance dated 4 July 1827 gave accused slaves in the French Antilles the right to have a defence lawyer provided by the state and exceptional publicity of debates<sup>101</sup>. Sometime later, during the moderate government of Jean-Baptiste de Martignac, the new Minister for the navy and colonies, the liberal Jean-Guillaume Hyde de Neuville, with an ordinance dated 24 September 1828, forbade the re-introduction of extraordinary tribunals or marshal law jurisdictions except in cases of state of siege. As a matter of fact, article 297 title IV, *De la cour prévôtale*, stated that «Lorsque la colonie aura été déclarée en état de siège, ou lorsque sa sûreté intérieure sera menacée, il pourra être établi une cour prévôtale»<sup>102</sup>, but the court would be operative for a

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<sup>97</sup> François-André Isambert, *Au roi en son Conseil*, *op. cit.*, p. 29.

<sup>98</sup> *Ivi*, 34.

<sup>99</sup> John Savage, "Between Colonial Facts and French Law", *op. cit.*, p. 589.

<sup>100</sup> *Ordonnance portant suppression de la Cour prévôtale, du 28 février 1827*: «art. 1<sup>er</sup>. La cour prévôtale créée par ordonnance en date de 12 août 1822 est et demeure supprimée; art. 2. Les tribunaux et la cour de cette colonie continueront de connaître des crimes d'empoisonnement comme ils en connoissoient avant l'institution de la cour prévôtale. Art. 3. Le procureur général du roi est chargé de l'exécution de la présente ordonnance qui sera enregistrée à la diligence tant au greffe de la cour royale qu'à ceux des tribunaux de première instance, publiée et affichée partout», ADM, Série U, *Justice*, 7U, *Cour prévôtale, 1822-1826*; see also ADM, *Cour royale de la Martinique*, Novembre 1825 - Septembre 1832, ff. 48-49.

<sup>101</sup> *Ordonnance du 4 Juillet 1828, Code de la Martinique*, VIII, 391.

<sup>102</sup> *Ordonnance du Roi concernant l'organisation de l'ordre judiciaire et l'administration de la justice à l'île de la Martinique et à l'île de la Guadeloupe et ses dépendances*, en Duvergier, *Collection complète*, XXVIII, p. 375.

period not longer than six months. Another guiding ordinance dated 29th October 1828 introduced the metropolitan penal code in Martinique and in Guadalupe (art. 5)<sup>103</sup>. An ordinance was issued the same year, on the 21<sup>st</sup> of December in Guyana introducing guarantees regarding the organization of the legal order and legal administrative procedures. More specifically the article 3 introduced the principle of the natural judge: «nul ne pourra être distrait de ses juges naturels. Il ne sera, en conséquence, crée aucune commission extraordinaire. Toutefois, une cour prévôtale pourra être établi dans les cas et suivant les formes déterminés par la présente ordonnance». Article 7 provided for the introduction of the five Napoleonic codes<sup>104</sup>. Nevertheless, the large majority of cases that involved accused slaves, remained regulated by the 1670 *ordonnance criminelle*<sup>105</sup> and plantation owners, represented in the *Conseil privé*, kept on demanding the reintroduction of the *cour prévôtale* for the repression of poisoning crimes<sup>106</sup>.

The case examined underlines how through the Restoration period, in the face of the growing establishment of a rule of law in France - despite its many contradictions - and of a basically liberal system, an exceptional system of penal law persisted in the colonies and more in general a situation of judicial and political discretion, based on the suspension of constitutional freedoms, comparable to a state of siege, the prototype of “state of exception”<sup>107</sup>.

## VI. FINAL CONSIDERATIONS

Although historiography has had difficulty in detecting the reasons that moved slaves and free blacks to rebel against colonial and racial domination, one can claim that the revolts in the early days of the XIX century took on a different dimension compared to those of the past centuries, equally great in number. In fact the riots throughout the XVII et XVIII century in the Antilles – like the ones that characterized the ancient Mediterranean region – saw to the past, idealizing a balanced archaic world without excesses where slavery was essentially domestic and did not include the atrocity of mass scale slave trade. Viceversa with the end of the XVIII century and after the traumatic events of the

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<sup>103</sup> ADM, *Cour royale de la Martinique*, Novembre 1825 - Septembre 1832, f. 110v.-111

<sup>104</sup> *Recueil de lois, décrets et arrêtés concernant les colonies publié par le ministère de la marine et des colonies*, Paris, 1881, p. 2.

<sup>105</sup> John Savage, “*Between Colonial Facts and French Law*”, *op. cit.*, pp. 590 ff.

<sup>106</sup> ADM, Série K, *Conseil privé*, 5K 6, f. 100, *Mémoire de M. Rivière dans lequel il demande la création d’un tribunal spécial pour la répression du crime d’empoisonnement*, 5 Octobre 1829.

<sup>107</sup> See *The Rule of Law. History, Theory and Criticism*, eds. Pietro Costa, Danilo Zolo, Springer, 2007; Luigi Ferrajoli, *Diritto e ragione. Teoria del garantismo penale*, Prefazione di Norberto Bobbio, Laterza, Roma-Bari, 2008, pp. 844 ff.; Pietro Costa, *Diritti e democrazia*, in *La democrazia di fronte allo Stato. Una discussione sulle difficoltà della politica moderna*, ed. Alessandro Pizzorno, Feltrinelli, Milano, 2010, pp. 8 ff.; about the role played by the rule of law on the legitimation of colonial looting, see the important work of Ugo Mattei, Laura Nader, *Plunder. When the Rule of Law is Illegal*, Wiley-Blackwell, Malden-Oxford-Victoria, 2008; Michael Hardt, Antonio Negri, *Commonwealth*, Belknap Press of Harvard University Press, Cambridge (Mass.), 2009.

revolution in Haiti, a greater conscience arose in and among the slaves as well as free blacks<sup>108</sup>.

In particular, faced by the threat of revolts and united resistance of slaves and free blacks, the French government, with its early July Monarchy reforms, defended the union between free classes, strongly opposed by the white colons of the French Antilles. The “specter of Haiti” pushed the colonial governments to avoid in every way solidarity between slaves and free men<sup>109</sup>. Nevertheless the position of the free blacks remained ambivalent: on the one hand they followed a policy of equality, without prejudice against the colonial order, on the other hand they adhered to the antislavery cause. But the temporary union between white colons and free blacks – as a demonstration of how the “line of colour” also divided the blacks among themselves – based on interests of a strictly bourgeois nature, did not have the effect that had been hoped for, and exacerbated the enmity between white colons and blacks. This tension however, besides in certain cases, did not lead to an alliance between slaves and free blacks, some of whom kept, for a long time, a “white mask”.

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<sup>108</sup> Keith R. Bradley, *Slavery and Rebellion, op. cit.*, pp. 12-13: «On the one hand, it has been proposed that before St. Domingue, slave revolts were essentially “restorationist” in character, as rebels attempted to extricate themselves from slavery first and then subsequently to create an autonomous existence based on African patterns and ideals. After St. Domingue, by contrast, slaves aimed through rebellion to destroy and to [fine p. 12] transform existing society and then to participate fully and equally in a new system founded on the democratic ideals of the Age of Revolution. On this view, the effect of the events in St. Domingue was a revolution of black consciousness and a contribution to the progressive “democratization of the modern world”. On the other hand, such posited wider ramifications of the Haitian Revolution have been denied, at least as far as the British Caribbean is concerned, and the whole notion of progressive revolt has been rejected. Rather, slaves’ reasons for revolt continued to be “internal, intrinsic and traditional”, this ideology being “freedom to make found themselves”, even as revolts tended to be led in the later era by elite Creole slaves».

<sup>109</sup> In addition to the classic Cyril Lionel Robert James, *The Black Jacobins. Toussaint Louverture and the San Domingo Revolution* (1937), Vintage Books, New York, 1989, see Laurent Dubois, *Avengers of the New World. The Story of the Haitian Revolution*, Harvard University Press, Cambridge, 2004; Sibylle Fischer, *Modernity Disavowed. Haiti and the Cultures of Slavery in the Age of Revolution*, Duke University Press, Durham-London, 2004; Robin Blackburn, “Haiti, Slavery, and the Age of the Democratic Revolution”, *William and Mary Quarterly*, LXIII, 2006, n. 4, pp. 643-674; Jeremy D. Popkin, *Facing Racial Revolution. Eyewitness Accounts of the Haitian Insurrection*, University of Chicago Press, Chicago-London, 2007; Nick Nesbitt, *Universal Emancipation. The Haitian Revolution and the Radical Enlightenment*, University of Virginia Press, Charlottesville-London, 2008; Susan Buck-Morss, *Hegel, Haiti, and Universal History*, University of Pittsburgh Press, Pittsburgh, 2009; Malick W. Ghachem, *The Old Regime and the Haitian Revolution*, Cambridge University Press, Cambridge, 2012.