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Slavery and Slave Codes in Overseas Empires

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Abstract

The paper proposed aims to analyze the slavery legislation born between the fifteenth and nineteenth centuries, the so-called Black Codes laws—enacted in all the greatest colonial powers of the Old Continent—which regulated life and transportation of slaves in the colonies. Spain, Portugal, England and France, between the sixteenth and seventeenth centuries, created legislative codes dedicated to the slave's management in the colonies, which regulated all aspects of their life: from religion to marriage, from cohabitation to imprisonment, from crimes to corporal punishment. Particularly widespread in the Caribbean colonies of the seventeenth century, these slave laws were soon in force in almost all American colonies of European monarchies, forming the legal basis on which the slave societies of the European empires were founded. In the wake of the Spanish, Portuguese, English and French slave codes, even states that had a marginal role in the process of overseas colonization enacted similar slave codes. It was the case, for example, of Denmark and Sweden that in the management of some of their ultramarine possessions adopted slave codes inspired by those of the greatest colonizing powers.

Keywords: overseas empires, Atlantic slavery, slave laws, colonization process, America, Caribbean

1. Introduction

Between the fifteenth and nineteenth centuries, many European states tried to build their own overseas empire. The political, economic, social and anthropological implications of this long and complex process were innumerable. New lands were discovered and colonized, new systems of government were instituted, and new social models were created. Many of the institutions that had governed the societies of the Old World for centuries experienced substantial transformations, among which was slavery [1].

Before the period of European colonial expansion, it cannot be said that slavery was an unknown phenomenon in European society [2–4]. It was, however, an institution profoundly different from the one that gradually emerged in overseas colonies. Slaves were mainly employed as domestic servants or as laborers in artisan workshops, rarely as workforce in plantations or mines. The reduction to slavery, trafficking and exploitation of slave labor were certainly widespread practices throughout medieval Europe, but their importance—in demographic and socio-economic terms—was marginal when compared to that which Atlantic slavery would have.

Before the period of European colonial expansion, in very few regions throughout the old continent, the number of slaves exceeds 10% of the entire population. Rarely was the employment of slaves crucial in the development of European economy. In other words, keeping in mind the distinction drawn by Moses Finley, we could say that medieval Europe was a mosaic of state entities classifiable as slave-owning societies [5]. In most of these realities, as we said, the institution of slavery was present and tolerated but not totally socially accepted. It was considered as a practice originated and perpetuated by historical contingencies (conflicts, wars of religion, pillages and raids), but it was in opposition to natural law and morally deplorable. Several medieval legislative bodies defined slavery in these very terms. In this Code, inspired by Roman law [4, 6–8], the slave was defined as “res”—an object subject to the will of his master—but his condition was considered unjust, a transitional phase toward the regaining of freedom. Also for this reason, many laws dedicated to the discipline of slavery appeared as veiled with humanity and aimed to protect the slave from masterly abuse. A clear example in this sense is represented by the *Siete partidas* (1265) by Alfonso X, one of the most complete and extensive legislative recompilations conceived in the Middle Ages.

This concept of slavery was going to be completely transformed after the first phases of European expansion, between the fifteenth and sixteenth centuries, when Spain and Portugal crossed the columns of Hercules and began to colonize some islands in the Atlantic (Canary Islands, Madeira, São Tomé) [9–11]. The need to cultivate the conquered lands, together with the constant shortage of work force, made the recourse to slave labor almost indispensable. It was in these islands that the Atlantic plantation economy originated, an economic system that would be adopted by the majority of the European colonies in the New World.

The lucrative speculation arising from extensive agricultural colonization aroused the interest of nobles, bankers, investors, insurers, merchants and craftsmen, each of whom tried to carve out his own percentage of profit. Many invested in transport, others in the purchase of products to resale onto the European market, and some others began to invest in finding the element without which the whole system could hardly survive: the slaves. Within a few decades, the recruitment and exploitation of the slave labor force became a major political and economic question. The more the revenue from this activity increased, the more the number of plantations increased and, consequently, the demand for slaves that was necessary for cultivation. The enormous availability of latifundia in the Americas and the growing European demand for exotic products (sugar, cocoa, coffee, tobacco, indigo, etc.) did the rest. The Atlantic slave trade was in its germination phase, but its profit-oriented and inhuman logic was already a reality.

With the experience gained in Madeira, São Tomé and the Canary Islands, when the Europeans crossed the Atlantic Ocean and founded the first exploitation colonies in America, they were well aware that the land could be a source of income of great value, at least as much as gold, silver and gems. In fact, within a short time after their landing in the New World, the Spanish and the Portuguese attempted to replicate in their respective possessions the successful economic model experimented in the islands along the west coast of Africa. As a result, the number of slaves, first native and then African, in the Lusitanian and Spanish colonies grew steadily between the fifteenth and sixteenth centuries [1, 10, 12, 13].

Already during the sixteenth century, in the imperial territories of Spain and Portugal, there were areas where slaves represented the majority of the population. In these settlements, a small number of colonists had to control an increasing number of enslaved people. The numerical disparity between free and subjugated forced the former to use, more and more often, the iron fist to maintain the control of the colonies. In such circumstances, violence and abuse were becoming a daily

occurrence. This worsened the life of the slave, which was already a very painful one. He worked from dawn to dusk, and his daily life was marked by the sound of the scudiscus, which sometimes cut the air and snapped on his fatigued limbs, tearing him apart in body and spirit. This was, in the opinion of the colonists, the most effective way to properly exploit their land and their investments. Such harsh conditions frequently forced the slaves to disobey their masters, by escaping or revolting and killing their harassers [14]. The fear of the slave revolts became, in a short time, a phobia with which the master class had to continuously live [15]. These kinds of situations were uncommon throughout the Old Continent. The rebellions, the runaways, and the heinous crimes committed by the slaves were rare events in modern Europe societies.

In order to regulate this system, which aims to the brutal exploitation of the labor force, the ancient laws on slavery—contemplated in the medieval codes—turned out to be totally inadequate. There was then the need for more stringent provisions to regulate a new type of slavery, which was now emerging in the Atlantic. It was therefore in such contingencies that the need for a special legislation for slaves became more and more evident: a codification conceived to discipline every aspect of their existence: life, death, marriage, religion, movements, food, clothing and all the procedures and practices for the regaining of freedom [16–18]. These normative bodies, also known as Black Codes, would not be adopted exclusively in the colonial possessions of the Iberian powers. Between the sixteenth and seventeenth centuries, when slave trade became a global phenomenon and several European states took part in the colonization of America and Africa, each of these states would promulgate its own slave codes.

2. New slaves, new codes: slavery legislation in the Spanish and Portuguese empires

The Spaniards and the Portuguese were the protagonists of the first phase of the colonization of the New World. When they arrived in America, they immediately realized the potential of the conquered lands. The resources seemed never to end: silver, gold, precious stones, immense latifundia. The native populations were subdued with relative easiness, being enslaved. However, the enslavement of the natives did not bring the desired results to the Europeans. Their frail constitution did not make them a workforce capable of satisfying the conquerors: thousands of them were employed in mines and plantations and soon died of hardship and fatigue. Moreover, the Indians were particularly susceptible to the diseases brought by the Europeans: the smallpox epidemics alone were responsible for several hundred thousand deaths among the natives [12, 19, 20].

The high mortality rates among the Amerindians soon forced the colonists to look for an alternative workforce. The choice fell, after some initial hesitation, on the African slaves who had been employed with good results in the colonies that the Spanish and the Portuguese had created in the Canaries, Madeira and São Tomé.

In the Spanish Empire, the massive import of slaves from the Black Continent began in 1518, when Charles V granted the *asiento de negro* to the Flemish nobleman Laurent de Gouvenot and the Portuguese merchant Jorge de Portugal. As Elliot wrote, the signature of these contracts implied the definitive opening of the Spanish Empire to the Atlantic trade [21]. The possessions of the Spanish Crown were soon filled with African slaves. In his *Historia de las Indias*, Bartolomé de las Casas says that after the year 1520 in the West Indies, about 100,000 slaves landed from the African coast, 30,000 of which landed on the island of Santo Domingo [22]. Probably the number of the imported subjects was lower than the one indicated by the Dominican father [23], but their arrival had a significant impact on the Spanish

colonial society and in particular on the Dominican one. The importation of African slave labor further worsened the already precarious living conditions on the island. Food rations became more scarce and violence perpetrated against slaves became more frequent. The mistreatment and harassment suffered by the latter would soon lead them to turn against their oppressors.

Between 1519 and 1521, there were several slave revolts on Santo Domingo [13, 15]. One of these occurred in the plantations owned by Viceroy Diego Colombo, the eldest son of the famous explorer, governor of the island. The slaves who rose on Christmas Day 1521 committed all sorts of heinous crimes, assaulting the owners' property and murdering "todos los cristianos que pudiesen" [24]. The rebels were almost immediately defeated and killed by the Spanish armies, but the ferocity with which they acted led Columbus to issue special regulations to control and discipline the black slaves who lived in the Dominican colony.

The ordinance that he promulgated on January 6, 1522, entitled *Provisión del virrey Diego Colon* [23], can be considered one of the first examples of Black Code in colonial America. In the provision, the governor paid attention to the behavior that the slave had to adopt in the public sphere, severely punishing the delinquent actions considered dangerous for the survival of the colony and especially the possession of weapons, rebellion, and the runaway of slaves. In order to prevent any further turmoil, through the ordinance the governor constituted a sort of colonial police force that had the responsibility of constantly monitoring the slave population. With the same aim of enhancing the effectiveness of the control and to maintain public order, the viceroy ruled that the slaves should no longer have the freedom to move within the colony: every movement of the slaves should be approved, with a special permit, by the master. Very harsh were the punishments imposed on the subjects who held weapons: depending on the degree of violation committed, slaves could be punished by public flogging. Equally severe were the punishments of the so-called *cimarrones* [25, 26], the slaves who ran away from their master: those who refused to return to work, within a maximum of 10 or 20 days, could also be sentenced to death by hanging ("incurra el dicho esclavo en pena de muerte, la cual le sea dada de horca") [23].

The *Provisión* can, in a certain sense, be considered the archetype of all the slave legislations that was promulgated between the sixteenth and eighteenth centuries in the Spanish colonies. Some of the principles contained in it (the prohibition to carry weapons, the ferocious persecution of *cimarronaje*, and the establishment of police forces to ensure the monitoring of slaves) were included in each of the subsequent codes. For example, *Las Ordenanzas para la sujeción de los esclavos negros* [27], issued by the Cabildo of Santo Domingo on October 12, 1528, and judged by Marcos Andrade Jaramillo the first black code in America [28], were nothing more than a careful revision and integration of what the Viceroy *Provisión* of 1522 had already established [15, 17, 18, 29–31].

The *Ordenanzas* issued on Santo Domingo constituted the legal basis of the great slave codes that appeared in Spanish America during the eighteenth century [32]. Among these, according to Manuel Lucena Salmoral, the most important were: the *Ordenanzas dirigidas a establecer las más proporcionadas providencias así para ocurrir a la deserción de los negros esclavos como para la sujeción y asistencia de éstos*, better known as *Código de Santo Domingo* (April 25, 1768) [33]; the *Código de legislación para el gobierno moral, político y económico de los negros de la isla española*, also known as *Código Negro Carolino* (December 14, 1784) [34]; and the *Real Cédula Instrucción circular sobre la educación, trato y ocupaciones de los esclavos en todos sus dominios de Indias e islas Filipinas* (May 31, 1789) [35]. Each of the above-mentioned codes, as Sala-Molins has well pointed out, were re-elaborations of the slave laws enacted in the Spanish colonies between the sixteenth and seventeenth centuries [32].

The eighteenth-century codes above mentioned, partly a result of Bourbon reformism [36], had the objective of drawing up a slave laws apparatus that would make it possible to improve the efficiency of the system of exploitation in the overseas colonies, imitating what had been done by another great colonizing power: France. The model was that of the French Black Codes promulgated in 1685 and 1724, which will be better discussed later. The eighteenth-century Iberian Codes tried to regulate slavery by making it “more human” and acceptable: the sovereignty of the master over the slave was largely limited and placed under the supervision of colonial and metropolitan governing bodies. The draconian punishments imparted to the slave were moderated, and some rights were granted to them (they had to be dressed, fed, and educated to the precepts of the Catholic religion and they could denounce any abuses suffered). The enactment of such measures provoked real upheavals in the colonial ruling classes: in the view of the slave owners, grant rights to the slaves could be very dangerous and could led to the destruction of the established system of exploitation, based essentially upon the abuse and social alienation of slave workforce [18, 20, 31, 37, 38].

An exception to this general trend is the *Código de Luisiana* (1769) [39], issued by the Spanish Governor Alejandro O'Reilly after the sale of the colony from France to Spain, which took place with the secret Treaty of Fontainebleau (1762). The text was essentially identical to the French Black Code issued in Louisiana in 1724. O'Reilly decided to adopt this code because it was considered more efficient than the Spanish one, in terms of perpetuation of the slave system born in the former French colony. During his mandate, the governor decided to include only few measures to implement the old code, one of which concerned the right granted to slaves to buy their freedom, the so-called *derecho de coartación*, which was not contemplated in the 1724 Code Noir [40–42]. This concession alarmed the colonial ruling class, which tried in every way to obtain the revocation of this privilege. The protests, raised by the owners of the plantations, led to a new reformulation of the slave legislation in the colony. In 1777, King Charles III, who was quite disappointed by the discontent of the slave masters, agreed that the laws on slavery should be rewritten. Hence, the King charged the Governor Bernardo de Gálvez to proceed with the drafting of a new code. Gálvez commissioned Francisco María de Reggio and Joseph Ducros, both high-ranking officials of the New Orleans Cabildo and owners of large plantations within the colony, to draw up the legislative body. After a few months of study and research, the two officials presented to the Cabildo a text entitled *Code noir ou Loi municipale, servant de règlement pour le gouvernement & l'administration de la justice, police, discipline & le commerce des esclaves négres, dans la province de la Louisianne* [43]. In this text, de Reggio and Ducros affirmed the need to leave all questions concerning the management of slaves to the will of the master. In order to protect the interests of the ruling class, the code legitimized all sorts of abuses and oppressions: the master could torture, humiliate and hunger his slaves without suffering any consequences in the courts of law. In other words, the master's will was above the law [44].

The precepts contained in the *Code noir ou Loi municipale* represented a fundamental legal source for all the other slave laws that were adopted in Louisiana between the eighteenth and nineteenth centuries. When this possession was acquired by the United States, in fact, the regulations of de Reggio and Ducros, together with the 1724 *Code Noir*, were the models for the first United States Black Codes issued in the colony [45]. Even in this, the ruling class had a sort of “absolute power” over the slave workforce.

The question of the master's sovereignty is an important element to keep in mind in order to understand the phenomenon of slave legislation in European colonial possessions. Even if in some cases the authorities tried to interfere with

the authority of the *dominus*, to moderate the mistreatment and to make the slave's condition more acceptable, the master's will remains the only true code actually in force. Within his plantations, in his farms, the slave owner had no superior authority. The experience of slavery in the ultramarine empires was therefore, according to the contexts examined, even significantly harder than the one prescribed and contemplated by the law. Any slave owner, facing the possibility of losing his/her life or seeing his/her interests being severely damaged, would have no hesitation in violating or circumventing the existing laws. Although this fact was well known to colonial and metropolitan administrations, none of the states that took part in the colonial expansion renounced to the attempt to regulate the newborn overseas slave societies.

When the slave trade, between the sixteenth and seventeenth centuries, became a global phenomenon, almost all states with colonies in the New World adopted slave codes. Several of these were inspired by those already enacted in Spanish possessions during the sixteenth century. Portugal, for instance, during the period in which the Portuguese and Spanish crowns were united (1580–1640), adopted Spain laws into its own legislation [45].

The *Ordenações Filipinas* [46], promulgated by Philip I in 1603, were the most important demonstration of the process described above. This body of laws is the most organic and structured example of the slave code in force in Portuguese possessions until the nineteenth century. In Brazil, where the use of slave labor was fundamental for the maintenance of the colony, the code remained in force until 1822, when the Brazilian possession gained independence from the mother country. Even after independence, many of the precepts contained in the Philippine corpus continued to represent the legal basis for regulating the relations between slave and master within the country, at least until 1888, when the slave system was definitively abolished [46, 47].

The principles on slavery stated in the Philippine ordinances were very similar to those contained in the Spanish Codes issued between the sixteenth and seventeenth centuries: there were numerous articles aiming at sanctioning the prohibition of the possession of weapons, the restrictions on freedom of movement and, more generally, the absolute social alienation of the slave. In exchange of the full control on his own workforce, the Philippine ordinances required from the master a certain moderation in his behavior: he should not punish the slave in an unmotivated way, and he should not either torture or physically abuse him. Even if in the Code the slave was not considered as a human being but as a good, and as such had to be inventoried, the *Ordenações Filipinas* tried to preserve his safety, by limiting the violence that he was often forced to suffer. Such conduct may perhaps have been useful in avoiding the outbreak of riots and unrest, but it was more likely to be conceived as a way to impose a limit on the sovereignty of the ruling class: through the law the state and its organs had to supervise and stop episodes of uncontrolled violence.

These attempts to delimit the power of the masters had very little impact on overseas slave societies. As Batista and Zaffaroni wrote, reflecting on the Brazilian colonial reality, at a local level, there was a sort of “*poder punitivo doméstico*” [48, 49], essentially based upon the master's arbitrariness. Batista and Zaffaroni's consideration can be judged suitable not only for Brazil but also for all Lusitanian domains and, more generally, for all European ultramarine possessions where an economic system based upon the exploitation of slavery was created.

This failure to delimit the master's arbitrariness had repercussions on the real effectiveness of the slave laws, which were—according to necessity—ignored, reinterpreted or deceived. For this reason, for example, the authorities—both metropolitan and colonial—were often forced to reaffirm, remodel and strengthen through specific measures some precepts that had already been widely stated in the

issued Codes. Regarding the Portuguese colonial experience, this operation was carried out through the so-called *Legislação Extravagante*, that is, series of ordinances, provisions and decrees enacted in order to intervene on particular issues that arose in a particular possession [46, 50, 51].

The provisions on slavery contained in the *Legislação Extravagante* tried to intervene on the most disparate aspects of the slave's life: from his treatment to his nourishment, from his transport to his employment within the colonial realities. Reading these ordinances, it is easy to understand how almost all the royal laws or provisions, promulgated with the intention of restraining abuse, did not find any acceptance in the daily life of colonial life. Merely as an example, we can mention the royal provisions issued by Afonso VI (September 23, 1664) [52] and Pedro II (March 18, 1684) [53] in order to regulate the transport of slaves taken from the African coasts. In these documents, attention was paid to the measures to be taken in order to ensure that navigation was not fatal for the slaves on board; in particular, the sovereigns established the minimum quantities of water and food that should be available on the slave ships in order to avoid the numerous deaths—due to hunger and dehydration—that sadly characterized the so-called middle passage. The royal prescriptions, as already mentioned, had a very modest impact on what were the behaviors of the Portuguese slave traders. Indeed, between the seventeenth and eighteenth centuries, due to the growing demand for workforce from the New World, the number of slaves deported increased significantly and the conditions in which they were transported worsened. Despite the provisions, it rarely happened that more than two-thirds of the slaves loaded on the slave ships could see the colony of destination. Many of these deaths, recorded during the crossing, continued to be attributable to a lack of water [54, 55].

What was said about the measures concerning the slave trade and transport can be extended to any other aspect that the slave legislation tried to regulate. Although the Philippine ordinances and the instructions given through the *Legislação Extravagante* categorically prohibited harassment and abuse, even in the nineteenth century (in the wake of the abolitionist era), the colonial ruling class continued to torture, mutilate, brand and whip its slaves even for apparently futile reasons, acting in total impunity [56].

3. The slave codes in British and French ultramarine possessions

Also other states that were involved in the colonization adopted, as anticipated, special codes for slavery. At first, this need became particularly urgent in the Caribbean colonies owned by England and France, where the sugar revolution—which took place in the mid-seventeenth century—brought a significant increase of the number of slaves deported in these domains [18, 57–59].

Regarding the British colonial experience, the creation of a large system of sugarcane plantations proved to be crucial for the emanation of the first exemplars of Black Codes [57]. The circumstances in which English colonial authorities enacted the *Act for the better ordering and governing of Negroes* (1661) [60, 61], better known in historiography as *Barbadian Code* or *Barbados Slave Code*, are indicative in this sense.

When the colonization of Barbados began in the second decade of the seventeenth century, the economic system of the estate was based upon the cultivation and commercialization of tobacco, trying to emulate the economic model born in Virginia. In these early stages, the core of the workforce on the island was made up of indentured workers who were mainly recruited from the mother country [61]. However, this plan of development failed to produce the expected results.

The tobacco produced in Barbados could not compete in price and quality with the abundant Virginian production that already at the end of the 1630s had exhausted the demand of the London markets.

In these conditions, a large part of the plantations on the Caribbean island were then converted to cotton and indigo but without obtaining better results [62]. In order to overcome a growing economic recession, several landowners in Barbados then decided to experiment the extensive culture of sugarcane. As the cultivation of sugarcane spread over the island, white workers were more frequently replaced by African slaves, considered more suitable to support the hard work necessary to exploit the “white gold” plantations. The censuses of Barbados in the 1650s were the last in which the white population was larger than the black population. Between 1652 and 1661, when the number of black slaves grew significantly within the colony, the African subjugates began to be perceived as a threat by the governing bodies of the island: because of the harsh conditions in which they lived, riots and disorders were feared. The creation of special rules for slavery, designed with the aim of maintaining public order in the colony, became a necessity at this point [61]. It was for these reasons that the Barbadian Code was created [63]. In the preamble of the Code, this latter need was clearly expressed by the legislators.

The authors of the legislative body pointed out that the various colonial governments that followed over the years had produced some good laws on slavery, but these regulations proved to be incomplete and incapable to deal with the new social conditions of the island. The ancient laws could not be applied to Atlantic slavery.

Like the other states that have been mentioned until now, England, at the time of the establishment of its ultramarine possessions, did not have a legal tradition in slave legislation. Notwithstanding this, the English who established in the first Atlantic colonies had within their legal background some jurisprudential categories that allowed them to organize the slave institution. Among these categories was the principle of absolute property. According to the Common Law, for the English colonizers, the slave was, to all intents and purposes, a patrimonial property and therefore could be used by their master as he or she wished [64–66].

The classification of the slave as a patrimonial good was in fact sanctioned in the first lines of the preamble of the *Barbadian Code* together with the desire to protect, as property, the work force from any violence committed by its owners (“protect them as we do many other goods and chattels”) [61]. Beyond the statements in the prolog, the *Barbadian Code* was a very rigorous slave code, which was not intended to protect slave labor. It focused, instead, on the punishment of the slaves, considered as a threat for the safety of the white population of the island. Reading the articles of the Code emerges that the British colonists considered the Africans as barbaric people (“brutish”) [61]. “The barbarism of Africans”—as Rugemer stated—“precluded them from the possession of rights as the English understood them. Unlike contemporaneous Spanish American and Brazilian legislation based on the medieval *Siete Partidas*, or the French *Code Noir* that would follow in 1680, the 1661 Slave Act did not attribute any positive rights to slaves whatsoever” [64].

In short, the regulation of 1661 sanctioned almost all the prohibitions already present in the slave legislation discussed until now (prohibition to carry weapons, restrictions regarding the freedom of movement, etc.). However, unlike many of the slave codes promulgated by the other European powers, it did not provide any measure for the possible integration of the subjects within the society. There was a lack of clear regulations on slave liberation and religious life. With the exception of the master’s obligation to provide clothing to the slaves at least once a year, some of the fundamental rights of the slave that were recognized, at least formally, in the Spanish *Ordenanzas* and, as we will see, in the 1685 French *Code Noir* were not enshrined in the 1661 text: that is to say, the right to be freed and to be fed.

What emerged from the articles of the *Barbadian Code* was, in conclusion, a system of regulation of slavery designed to control the entire workforce, built on the conviction that primitives and barbarian Africans were naturally destined to be slaves because of their inferiority from a cultural and racial point of view.

The political and economic model established on Barbados was very successful, and the profits made from the sugar trade during the seventeenth century were enormous [67]. In part, this exploit was attributed to the effectiveness of the slave legislation in force on the island [65, 66]. As a result, the *Barbadian Code* was rapidly exported both to the other colonies owned by the British in the Caribbean and to those located in North America. The principles in this statute, a bit like the provision of Columbus in the Spanish domains, will be a fundamental reference for every slave code born in the colonies of England and in the United States [65, 68, 69].

More than 20 years after the promulgation of the *Barbadian Code*, one of the best-known and most studied slave codes, the so-called *Code noir Louis* was issued in France (1685) [70]. The legislative body was drawn up at the behest of King Louis XIV and Jean-Baptiste Colbert, minister of the King of France and strong supporter of the importance of the colonies as an economic resource for continental France. In order to fully exploit the potentialities of the conquered territories, both the sovereign and the minister considered it fundamental to rationalize the employment of the slave workforce. That rationalization was crucial to support the economic system of some of the richest and most productive colonies of the French Empire. The creation of a regulation that intervened in an exhaustive way on these aspects became soon a diriment political issue [16, 70, 71]. The complex and articulated slave code issued in 1685 was the result of this no longer delayable necessity. Its 60 articles examined in depth all practical aspects of the slave's life within the colonies: from religion to marriage, from concubinage to imprisonment, from crimes to corporal punishment and pecuniary sanctions, and even the ways in which the slave achieved freedom.

Most of its provisions focused, as in the other examples of slave codes already mentioned, on questions of public order. To ensure security, the Louis regulation roughly imposed the well-known bans on the possession of weapons and on freedom of movement, which had already been widely discussed. Although punishments and deprivations are a fundamental part of the legislative body, this seems to open—more than other previous and contemporary exemplars—to the integration of African slaves in the French colonial society. The baptism and conversion of slaves to Catholicism, their participation in religious celebrations and their abstinence from work on feast days were all measures conceived, maybe, with the intention of building a more cohesive and less conflictual colonial community.

One of the most innovative aspects of the Code was undoubtedly the various regulations protecting the slave workforce. The legislator seemed to have a clear idea of the poor condition in which the slaves lived: submitted to the master's will, they could be killed, tortured or left to die of hunger and thirst. Being aware of what was happening in the colonies, the editors of the Edict tried to impose a limit on the authority of the masters, by placing it under the control of the state. For the Code, slaves were movable good, an extension of the legal personality of its owner, but the supreme government over them was a prerogative of the state authority.

The Louis regulations also contain provisions obliging the master to provide food and clothing for his slave workforce. By imposing such obligation, the legislators believed to reduce the percentage of slaves who die for hunger or who escape because of the lack of supplies.

Many of the measures enshrined in the 1685 *Code Noir*, like that issued in other slave code already mentioned, remained almost a dead letter. The paternalistic view of slavery that characterized several of its dispositions never rooted in French

ultramarine possessions. The concessions made by the Code to slaves were considered by the ruling class to be too damaging for their own interests.

The reasons behind the non-application of many of the precepts contained in the Edict were not only economic. There were also racial prejudices: the conviction that blacks were inferior to whites was quite widespread in the colonies. There is no law that had the power to change that belief [72]. Hence, despite the expressed prohibition imposed by the royal legislation, the slaves continued to be mutilated, massacred, killed or left to starve. Their lives in the colonies continued for many decades to be marked by abuse and masterly arbitrariness, most frequently in the substantial indifference of the authorities. This situation will not change in a tangible way until the great revolution of Haiti [73, 74].

Despite resistance displayed by the ruling class and its limited application, the Code was nevertheless a fundamental model for all the French slave legislation enacted between the seventeenth and eighteenth centuries. Although it was created to regulate slavery in the Caribbean possessions of France, the *Code noir Louis* became the main legal reference in the field of slavery also in other French domains, in North America (Louisiana) and in Africa (Mascarene), where the plantation economy was experimented. In these colonies, the precepts of the regulation issued in 1685 continued to exert their influence even when specific legislative bodies were promulgated for each of these colonial realities. The Codes issued in Louisiana (1724) and in the Mascarene Islands (1723) were, in fact, nothing more than a revision, or rather an adaptation to the characteristics of each colony, of the famous *Code Noir* promulgated at the end of the seventeenth century [75].

4. The slave codes in Denmark and Sweden

When the colonization process undertaken by European states was on the edge and involved a great number of actors, it was a common belief that adopting special slave codes would help to have more control over possessions, avoiding revolts in them. The prescriptions of the Codes, in the eyes of the colonial administrators, were useful to reduce the conflict between the slaves and the masters. At the same time, slave laws linked the slave to his condition of slavery almost in an inextricable way.

These provisions aimed to preserve public order, and therefore the system of exploitation built by the colonists, not only by disposing the deprivations of the liberties of enslaved individuals but also by justifying these deprivations on the pretext of the ethnic and cultural inferiority of the slaves. The clear purpose of the Codes was to protect small white communities from possible assaults by black multitudes. However, in order to do this, it was not enough to prohibit the use of weapons, but it was necessary to instill the principle of superiority of the white race. The whites were to be considered by Africans as untouchable individuals whose bodies and physical integrity could not be violated by a black hand. For this reason, in many Codes, even the intention to strike a white man could be punished severely. For the same reason, unions or marriages between whites and blacks, when not expressly forbidden, were seen as a contamination, a sort of perversion of the natural order of things [75].

The provisions concerning the physical protection of whites were often accompanied by precepts that tended to discourage or prohibit manifestations of the slave culture. Religious rites, dances and African customs were considered dangerous in the Codes, because they could upset white people and be a bond between the ranks of slaves present in the colonies. The subjugated could not have their own culture because it constituted a manifestation of human nature and the slaves were not

considered men. Their role was to work, to serve the master and to submissively follow his orders. He existed in function of his master and for nothing else.

These were the key concepts that were laid down in all the major slave codes issued in the overseas colonies during the seventeenth century. These legal precepts were considered as the substratum necessary to ensure the functioning of an exploitation colony. Whatever was the size of its slave population, a slave society had to have laws that specifically dealt with slavery. This may help to understand why the instrument of the slave code was adopted even in small realities and by states that played a very marginal role in the process of colonization of the Americas.

Denmark, for example, after taking possession of the Virgin Islands (between the end of the seventeenth century and the beginning of the eighteenth), adopted the so-called *Gardelin Code* (1733) in its colonies. The legal text, named after its editor—Philip Gardelin, governor of the island of Saint-Thomas—was one of the most rigid slave codes in the European colonial panorama [76]. With its adoption, the Danish administrators hoped to keep under control the huge mass of slaves employed in the sugarcane plantations born in their domains. However, as the slave revolt on Saint-John (1733) demonstrated, deprivation and oppression were not always a valid solution to the problems of public order within the colonies.

Sweden too, in the colony of Saint-Barthélemy—bought by the French at the end of the eighteenth century in exchange of some commercial privileges in the port of Gothenburg—adopted its own slave code: the *Code von Rosenstein* (1787). Like the Danish one, the Swedish text was thus named because of its editor, Pehr Herman Von Rosenstein, governor of the island from 1787 to 1790 [76]. It was a code inspired by French slave legislation, in particular by an ordinance on the treatment of slaves issued in Martinique in 1783. The legislative body was a kind of summary in which the tradition of European Slave laws was collected. In the norms established by Rosenstein, the African slaves were considered as treacherous and evil, not deserving to be considered human. They were not allowed to gather, to profess their beliefs, or even to ride a horse. The normative text configured itself as an instrument for the control of the entire black population: in fact, numerous articles were dedicated exclusively to the regulation of the life of the freed slaves. It was in this regard that we noted the only real innovation of the von Rosenstein Code compared to the French legislation to which, as we said, it is inspired.

5. Conclusions

The political and economic reasons that led to the creation of the slave codes are very clear. They were considered necessary to maintain public order in the colonies, avoiding the outbreak of riots and thus allowing the slave exploitation system to function more efficiently. In order to achieve these objectives, the codes could provide both strictly punitive rules, designed to create terror in the slave labor force, and paternalistic rules, designed to make the bitter life of the slave more bearable. The last-mentioned rules, however, should not be understood as a partial recognition of the slave's rights: they represented only concessions made in order to prevent the inevitable outbreak of riots and unrest. In fact, very few masters were tried for breaking the rules laid down in the codes: the mistreatment and abuse committed against slaves remained a constant and the authorities did not show a marked perseverance in prosecuting these crimes. This indicates that, apart from formal recognition, the rights granted to slaves, except in rare cases, remained a political expedient rather than a reality. The aforementioned helps to understand why in the colonial daily life many of the prescriptions contained in the codes remained substantially inapplicable. The ruling class often judged the norms of the

codes to be too permissive and paternalistic: they appreciated their punitive and persecutory measures, circumventing most of the laws that attempted to limit their sovereignty. Analyzing all these elements, it seems evident that the impact of slave codification on the administration of slave workforce was relatively marginal: the will of the master remained the only true law to which slaves should have obeyed. No law, in fact, would have succeeded in undermining, containing or reducing the master's sovereignty. But the codes were not only a political instrument but also a cultural product of the slave society and are important because by studying them it is possible to analyze the characteristics of the discriminatory and segregationist system constituted in the European colonies of exploitation. One of the fundamental tasks of the codes was to try to eternalize the existing slave system, not only from an administrative and legal point of view but also from a cultural and moral point of view. It was above all in this latter perspective that the impact of the codes was significant: not only did the slave codes try to discipline the many aspects of the life of the slaves in the colonies but also contributed to further dehumanizing the African workforce. The whips, the mutilations and the draconian punishments contributed to invalidating in some way all the regulatory instruments that the same codes provided for the slave's protection. Slaves had no human dignity according to the law and therefore, in the eyes of the landowner class—who was already not very disposed to tolerate external intrusions—they did not deserve to be safeguarded.


While the application of the codes was therefore sporadic and arbitrary, much more important was the cultural impact that the slavery laws had on the societies in which they were adopted. This impact conditioned the perception of the slave institution and became the foundation of the European exploitation colonies. The idea of slave as a factor of production, as an object, is deeply rooted in all the societies that adopted slave legislation. That is why the idea of the slave (and the African slave in particular) as an inferior human being resisted even after slavery was abolished. From this point of view, the slave legislation has certainly achieved one of the objectives it aimed to pursue: the perpetuation of the economic and cultural patterns that lie behind the slave system.

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