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The American University in Cairo
School of Global Affairs and Public Policy

A CAPTIVE’S SUBJECTIVITY

A Thesis Submitted by
Rebeca Joy Blemur
To the Department of Law

Fall 2022

in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law and Justice

The American University in Cairo
School of Global Affairs and Public Policy

A CAPTIVE'S SUBJECTIVITY

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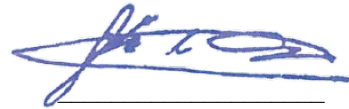
Fall 2022

in partial fulfillment of the requirements for the
Master of Arts degree in International Human Rights Law and Justice has been approved by

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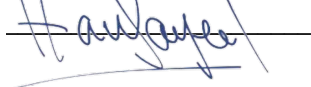
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DEDICATION

To Josh. Thank you for everything.

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The American University in Cairo
School of Global Affairs and Public Policy
Department of Law

A CAPTIVE'S SUBJECTIVITY

Rebeca Joy Blemur

Supervised by Professor Hani Sayed

ABSTRACT

The project discusses the effects of Haiti's colonization as the space transitions from Hispaniola to Saint-Domingue and later to the free state of Haiti. This is done by studying the concept of the right to conquest and the absurdities that exist around the first appearances of international law. The project focuses on the pre-revolutionary period starting around the 1750s, the revolutionary period that began in the 1790s, the French oligarchical class's attempt for social equality, and the war for ultimate colonial conquest between the French, Spanish, and British. The project will display how legally objectifying a human being manifests subjects of the law. This manifestation is challenged by the emergence of the Haitian subject withdrawn from the law or the view of this subject through the medium of warranted violence. As the project begins to discuss the development of the Haitian state and its administration as it maneuvers through notions of legal identity within colonial landscape, it continues to focus on defining subjects of the law. This focus is necessary to formulate a deeper understanding of subjectivity and its effect on the Haitian state. The project will conclude by identifying and defining the Haitian subject and the legal and social infrastructure success of the new Haitian state.

KEY WORDS: Haiti, colonization, decolonization, enslaved, revolution, subjectivity, Black personhood, Haitian subject, captive, Haitian legal subjectivity

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*You come too late, much too late.
There will always be a world—a
white world—between you and us.
The other's total inability to
liquidate the past once and for all.
In the face of this affective ankylosis
of the white man, it is
understandable that I could have
made up my mind to utter my
Negro cry. Little by little, putting
out pseudopodia here and there, I
secreted a race.¹*

I. Introduction: Who is Haiti?

I wanted to start this thesis with an inspiring story, to prepare the reader for the many words to come. I wanted her to be comfortable so she could relate and understand. Relatability at a time was the goal to employ an elaborate connection between personal experience and the communal experience of the people I will discuss, but I could not, and I will not. The narrative you will find within the confines of this thesis is not relatable, more than merely inspirational, not comfortable and it is not meant to entertain. It is individualistic, in the sense that it happens to specific people at a specific time in a particular colonial space. The particular space is terra incognita or terra nulla, a void, an abandoned or unused space with untapped history and archives, whose progress in the future must be secured in modernity.² The individualistic experience is ongoing, and the experience is not fully mine. I am speaking of the land of Haiti and its particular. I am speaking of its colonization, its bondage, its revolution, its decolonization, and its experience with imperialism. Where its identities were developed and maintained through a captive's subjectivity. The land's and people's sense of self, and practice of sovereignty. The instrumentation of oppressive power and reclamation of a power stolen from a sovereign people, through the coercive forging of a captive into a slave.³

¹ Frantz Fanon, *BLACK SKIN WHITE MASKS* (1967), 92.

² Homi K. Bhabha 'Race', *Time and the Revision of Modernity*, in, *THEORIES OF RACE and RACISM A READER* (Les Back and John Solomos, 2020), 365.

³ Jean Casimir has mentioned that "The captive was made slave by way of violence that resulted in death or severe harm." See Jean Casimir, *THE HAITIANS: A DECOLONIAL HISTORY*, (2020), xxi; CLR James

I am interested in the rejection of European awareness in the area of history. Consequently, I will engage with colonial and ‘post-colonial’ legal texts to understand the creation, maintenance, and attempted destruction of the colonial Haitian subject. As a result of this particular colonial understanding, I will engage with Haiti’s historical context in a way that will flirt between the lines of a decolonial and an anti-colonial analyst. I posit this writing as decolonial due to what guides its attention. According to Jean Casimir, a leading Haitian decolonial scholar, “[i]f you shift the geography of reasoning and let it be guided by your emotions, you engage in the growing processes of decolonial politics of knowing, sensing, and believing.”⁴ Similarly, my ‘emotions’ have led me to participate in the storytelling of a ‘state’ that is consistently excluded from history, specifically the legal history of international law. Haiti’s legal progression through time can reveal that the law is a tool of subjugation, is racist in nature, and is all and all exclusionary. I presume anti-colonial analysis because I am engaging in the colonial space utilizing resistance to include parts that were systematically omitted by the colonizer’s interpretation of history and its legal components. In other words, I am attempting to add what has been purposely left out by focusing on the variety of power relations that existed on the island of Haiti. Moreover, to truly understand the progression of power relations in Haiti we need to “investigate forms of resistance, [like the revolution of the Haitian people] and attempt to [dislocate] these relations.”⁵ In order to understand “...resistance as a chemical catalyst so as to bring light to power relations.”⁶ The distinct resistance to power by the Haitian people amidst repression during their revolution unveils the oppressive power relations that existed in this singular space. Ultimately, I will reveal that this oppressive power existed and was reproduced to the virtue of the law.

In this paper, subjectivity will be our key intervention and is defined as “the lived experience of individuals within a larger historical and political context.”⁷ The experience is entirely

explains that, “Fear of cargo bred a savage cruelty in the crew. One captain, to strike terror into the rest, killed a slave and dividing heart, liver, and entrails into 300 pieces made each of the slaves eat one, threaten those who refused the same torture”. See CLR James THE BLACK JACOBINS: TOUSSAINT LOUVERTURE AND THE SAN DOMINGO REVOLUTION, (De Vaissiere, Saint Domingue 1989) 162.

⁴ Jean Casimir. *Supra* note 4. At ix.

⁵ Michel Foucault, *THE SUBJECT AND POWER* (1982), 780.

⁶ *Id.*

⁷ Dianna Taylor MICHEL FOUCAULT KEY CONCEPTS (2014), 1.

involuntary and enforced. The involuntary context is created and maintained by western legal frameworks, particularly those related to French colonialism. The French colonial here will be understood as a form of power, exerted on the everyday life of the Haitian being. This exertion occurred to the Haitian being by “categorizing the individual, marking him by his own individuality, attaching him to his identity, [and] impos[ing] a law of truth on him”⁸ which created the owned ‘Haitian legal subject’. As a result, we need to pay attention to the many power exchanges that occurred between late the 1400s to the mid-1800s. Mainly, the relations that managed property as it attributed its success to the subjugation of Africans into enslaved bodies which manufactured quiddity of Haitian legal subjectivity. Haitian legal subjectivity is involuntary and compulsory for Haiti’s colonial space and future ‘statehood’. A form of enforced subjectivity, which for the Haitian person is enslavement, abuse, pain, and dis-remembrance. I will argue throughout the piece that the preservation process of power rests in the implementation and decree of multiple legal mandates and a caprice sense of legality to ensure that another consistently owns African-descended bodies. It is within the confines of ownership that ‘Haitian legal subject’ exists.

This research project intends to utilize legal historical analysis to track the creation, progression, and alteration of the ‘Haitian legal subject.’ Like Casimir, “I invite readers to place Haitians at the center of their thinking and to recognize the role of external influences without getting distracted by their logic and the norms derived from that logic. The focus here is on the logic and norms of the behavior of Haitians themselves.”⁹ and how these behaviors are intentionally dismissed. I would like to pay attention to the way in which this logic and norms of behaviors are dismissed. In an effort to perceive how legal notions and narratives attempt to prevent and constrict Haitians from freedom and their state from true ‘sovereignty.’ We will use this to answer: How were Haitians governed and how this governance constituted subjectivity? To be more specific, I am interested in the constructed social episodes that have occurred to shape the nation that we now refer to as Haiti. Specifically, legal interventions and implementations that have shaped Haiti’s journey towards statehood. Implementations like the ‘right of conquest’ used by Spanish invaders in the late 1400s and how this right ultimately

⁸ Michel Foucault, *supra* note 6, at 780.

⁹ Jean Casimir, *supra* note 4, at 1-2.

transformed into ‘rights to property’. This arose into one of “the principal conditions of the existence of society” [because] legitimate and unthreatened property is the condition for its happiness”¹⁰. Later, I will discuss how property will consistently refer to the ownership of enslaved bodies or ‘bossales’¹¹ and the land these bodies are forced to cultivate.

It is now precursory to mention that this project is shaped by the ideas and concepts of three scholars: Jean Casimir, Frantz Fanon, Michel-Rolph Trouillot, and Michel Foucault. In his book, *The Haitians: A Decolonial History*, Jean Casimir gives a “critical reauthorization of the very nature of slavery, colonialism, and sovereignty”¹² through a socio-historical account of his country. Casimir's opinions and interpretation of Haitian history heavily influence this thesis more than any other reference scholar. The analytical story that Casimir offers to us is “la merveilleuse invention of Haiti.”¹³ It is precisely, “the renaming and territorial reconfiguration of a trajectory that started with Spanish genocides of the Tainos; followed by the French appropriation of a sector of the islands the Spaniard called Hispaniola and the French called Saint-Dominque;”¹⁴ Casimir's purpose is not to write another historical account of Haiti, but of the Haitians, the formerly enslaved, who were forced to make this manufactured colonial space their home. The book offers “readers a way of rethinking the history of slavery from the perspective of the enslaved, and the history of the constitution of the modern world from the perspective of those whose perspectives have been systematically marginalized and silenced through the colonial process itself”¹⁵. He describes his work as “a priori, unfinished.”¹⁶ As a result, his book is “an invitation to research, and its only goal is to establish the scope of the thinking that guided [his] ancestors and guides [his] compatriots.”¹⁷ I hope to answer his call to research by contributing to the production of the decolonial/anti-colonial legal narrative¹⁸ that is

¹⁰ *Id.* at 95.

¹¹ Bossales is a term frequently used by Jean Casimir, to refer to an enslaved body. He defines the term as being “the African born enslaved who were the majority in Saint-Domingue.” See *Id.*, at 8.

¹² Jean Casimir, *supra* note 4, at xxvi.

¹³ The wonderful invention of Haiti.

¹⁴ Jean Casimir, *supra* note 4, vii.

¹⁵ *Id.*, at xxvi

¹⁶ *Id.*, at xxvi

¹⁷ *Id.*, at xviii

¹⁸ Some may argue that generating a legal narrative for formerly subjugated is not possible because law is inherited from the colonial.

being created for Haitians.

Michel-Rolph Trouillot's book *Silencing the Past: Power and the Production of History*. His book explains how "history is a story of power, a story about those who have won" and by tracking this power we see the discrepancies that exist in certain historical narratives related to marginal societies like Haiti.¹⁹ Trouillot emphasizes, "the fundamentally processual character of historical production, to insist that what history is matters less than how history works; that power itself works together with history; and that historians' claimed political preferences have little influence on most of the actual practices of power."²⁰ For the purposes of this paper, how power works together with history is extremely vital, because it dictates the narrative, we are able to piece together. The text allows us to understand that history itself is a social process with "three distinct capacities 1) as agents, or occupants of structural positions; 2) actors, in constant interface with a context; and 3) as *subjects*, that is as voices aware of their vocality."²¹ We will utilize Trouillot's capacity involving *subjects* as he explains that

peoples are not always subjects constantly confronting history as some academics would wish, but the capacity upon which they act to become subject is always part of their condition. This subjective capacity ensures confusion because it makes human beings doubly historical or...fully historical. It engages them in the sociohistorical process and in narrative constructions about the process.²²

Subjects exist in, are a product of, and are history. They have the ability to nurture their own existence in a restricted and manufactured space. This existence is communicated through a historical social process or a subject's interaction with another. It is within this interaction with the other that historical narratives are generated. These interactions are often negative and have created marginalized and silenced historical narratives. Legality exists among these inherently negative narratives because it participates in the subject's marginalization and subjugation through the social process of power. As we focus on the social process of power, we can observe the ways in which history and power intermingle. Albeit the *subjects'* ability to

¹⁹ Michel-Rolph Trouillot *SILENCING THE PAST: POWER AND THE PRODUCTION OF HISTORY* (2015), 5.

²⁰ *Id.*, at 28.

²¹ *Id.*, at 23.

²² Michel-Rolph Trouillot, *supra* note 20, at 24.

'nurture their own existence' is restricted due to the persistence of tyrannical power. The constraints of power provide a definite existence for the subject which is then portrayed in quotidian narratives.

Frantz Fanon will help us to understand the experience of decolonization. In his book, *The Wretched of the Earth*, he explains how "decolonization is quite simply the replacing of a certain 'species' of men by another 'species' of men."²³ To note, his thoughts on decolonization are colored by his experiences as a participant in the Algerian revolution and his ancestral connection to the French island of Martinique. Through the lens of his experience he explains,

Decolonization never takes place unnoticed, for it influences individuals and modifies them fundamentally. It transforms spectators crushed with their inessentiality into privileged actors, with the grandiose glare of history's floodlights upon them. It brings a natural rhythm into existence, introduced by new men, and with it a new language and a new humanity. Decolonization is the veritable creation of new men. But this creation owes nothing of its legitimacy to any supernatural power; the 'thing' which has been colonized becomes man during the same process by which it frees itself.²⁴

The anti-colonial struggle for Fanon is a transformative experience for the subjugated individual. It is so cathartic that it creates a new species, one that understands that his/her place in the colonial project can be changed. Prior to the encounter with the Europeans, there was no need to operate or overthrow the colonial space. The dismissal of this dehumanizing infrastructure needs a "being" that understands itself as a colonial subject in conjunction with their stolen 'species being'. In other words, "[t]here is of course the moment of 'being for others,' but every ontology is made unattainable in colonized and civilized society."²⁵ The colonial subject's participation in decolonization is a result of their produced consciousness. The consciousness that he speaks of is the awareness of the curtailment surrounding their ability to maneuver through the colonial world. The consciousness is developed through the master's and his white counterparts' ideas, beliefs, and behaviors that allow for an enslaved body to continue to operate within the colonial matrix. An 'encounter' is not necessary for a

²³ Frantz Fanon *THE WRETCHED OF THE EARTH* (1963), 35.

²⁴ *Id.*

²⁵ Frantz Fanon *THE FACT OF BLACKNESS. in, THEORIES OF RACE and RACISM A READER* (Les Back and John Solomos, 2020), 258.

subject to be conscious of herself (i.e. an African) but is necessary to understand herself juxtaposed within the colonial narrative. It will become their propensity to war for their liberation. Lastly, the idea of an encounter can fully encompass the enslaved body's sacrificial performance in the Haitian Revolution. The concept of an 'encounter' asserts proximity to European governance/humanity as the measuring stick of consciousness for subjugated individuals. Because of this Fanon's decolonization concept will be used to understand the legal and social reactions of the initial oppressors of Saint-Dominique, and how these legal and social relations continue in spite of the phenomenon of violence.

As a result, Fanon's explanation of decolonization causes us to ask: What does the colonial encounter do to the decolonized subject? What is the goal of decolonization? Does the goal matter? Why is decolonization important? What does it do for liberated *subjects*? These questions are important especially as we attempt to understand the *colonial matrix of power*,²⁶ and form an anti-colonial narrative. I have come to the conclusion that decolonization is simply a marker in history where a critical social process begins. It is a continuous action with many different markers that the outside historian, lawyer, or sociologist can pinpoint where colonial groups have decided to break away from their colonial oppressor. Synchronously it is also a marker of freedom for those formerly colonized. It signifies that strength does not only exist in the hand of the oppressor. Decolonization is in fact a phenomenon that needs to be acknowledged and celebrated especially as it influences the way marginalized groups continue to experience the world. It is necessarily ongoing or perpetual, especially as we think of the new ways imperial powers attempt to oppress the Third World. In Haiti's narrative, captivity is perpetual thus decolonization must be also.²⁷ Most importantly, in the contemporary era, the term is solely used to highlight the events of colonies revolting in the mid to late 1900s. Thus, at times leaves one of the most important revolts in history in the dark. An understanding of the ongoing nature of decolonization like the one given below in cognizance of the Haitian insurgents can help us not only understand the long-term effects of the transfer

²⁶ Walter D. Mignolo explains that the colonial matrix of power is "a complex structure of management and control composed of domains, levels, and flows... a theoretical concept that helps make visible what is invisible to the naked eye." See Walter D. Mignolo and Catherine E. Walsh *ON DECOLONIALITY: CONCEPTS ANALYTICS AND PRACTICES*, (2018), 143.

²⁷ Jean Casimir. *Supra* note 4. 108.

of colonial power in Haiti but also transfers that have happened around the world and how these transfers are oftentimes sustained by international legality.

Lastly, we will understand notions of power and power's ability to subjugate by relying on the scholarship of Michel Foucault. Foucault will offer us the way power produces subjects and I will use this idea to display the types of subjects that were created in response to France's colonial conquest. The subjects will continue to struggle with Foucault's notion of power as they create their own nation-state while still dealing with the effects of power wielded by France. Foucault explains that a state's ability to regulate and control basic human behavior is referred to as bio-power. Bio-power is "a phenomena...a set of mechanisms through which the basic biological features of the human species become the object of political strategy, of a general strategy of Power."²⁸ This concept is extensive and can be a thesis on its own as it pertains to Haiti. I mention it here because it does have the ability to shed light on the continuation of exploitative labor interrelations with the enslaved African even after the abolishment of enslavement. The ability to control bodies by forced enslavement is a factor of French colonialism's violence and legality. As we begin to see the argument of this paper unfold, we further understand Foucault's interpretations of the foundation of power and how they relate to colonialism's succession. He defines power as a "total structure of actions brought to bear upon possible actions; it incites, it induces, it seduces, it makes easier or more difficult; in the extreme, it constrains or forbids absolutely; it is nevertheless always a way of action upon an acting *subject* or more acting *subjects* by virtue of their acting or being capable of action. A set of actions upon other actions."²⁹ In other words, power relationally and its success is based on the effectiveness of its actions. Further, Foucault's interpretation of the subject and subjectivity is crucial for this paper, especially in our attempts to distinguish between the "Black personhood" of the Haitian individual and the Haitian legal subject. We will understand that personhood is not a precondition to subjectivity. One can be made subject to rules, regulations, and powers without being fully recognized as a person. I argue that power is most successful when it dismisses notions of humanity and objectifies those it subjugates.

²⁸ Michel Foucault SECURITY, TERRITORY, POPULATION (*Lectures at the Collège de France 1977-1978*, 2007).

²⁹ Michel Foucault, *supra* note 6, at 789.

Power withholds the ability to remove personhood from a subject meaning, the act of subjectivity is at times a “mode of objectification.”³⁰ Successful subjectivity rests on a power's ability to complete a successful objectification process. Michel Foucault explains that “[t]here are two meanings of the word ‘subject’: subject to someone else by control and dependence; and tied to his own identity by conscience or self-knowledge.”³¹ These two meanings work via a “form of power which subjugates and makes subject to.”³² According to Foucault, power always needs to express itself on an object. A state or legal situation creates subjects through the law as an expression of power.³³ His two definitions of the ‘subject’ will help me to display how the Haitian legal subject remains subjugated³⁴ by and made subject to the many forms of power found in French colonialism pre, during, and post the Haitian Revolution.

The project is divided into three parts: Part I: The Beginning, Part II: The Middle, and Part III: The Continued. In Part I, I will discuss the colonization of Haiti as it progresses from Hispaniola to Saint-Domingue. By discussing ideas behind the concept of the right to conquest and the absurdities that exist around the first appearances of international law. I will then focus on two important legal documents: The Code Noir and the Treaty of Ryswick. These two documents legalized the inhumane actions of colonists as they imported Black bodies for labor and claimed the land as their own. Here, we will see our first remnants of legal subjectivity, mainly what it means to be a subject under French colonial rule, while also seeing the existence of ‘Black personhood’³⁵ absent of the confines of legality. We will trace these very remnants throughout the sections to follow to infer an existence of a specific societal DNA sequence that repurposes itself pre, during, and post-revolution. In Part II, I will discuss the Pre-Revolutionary period which for the purpose of this paper I will observe as starting around the 1750s, the Revolutionary period that began in the 1790s, and something I will call the ‘in

³⁰ *Id.*, at 777.

³¹ *Id.*, at 781.

³² *Id.*, at 781.

³³ Power when it is expressed through legal colonialism creates particular types of subjects. Foucault explains that this expression of power is embodied. In result these subjects are subjugated, becoming disembodied legal subjects. Disembodied meaning disconnected from yourself under the full control of the system in power in place.

³⁴ Subjugation is the action used to disconnect the subject from itself. An example of this would be violence.

³⁵ A Black or African sense of self or being. An existence that is a response to governance or power and a catalyst for revolution.

between'. The 'in between' will describe the oligarchical class's attempt for social equality from the French government and the war for ultimate colonial conquest between the French, Spanish, and British. This section will explain the result of legally objectifying the human being in an effort to manifest *subjects* of the law. In the midst of this, we will see the emergence of the Haitian subject withdrawn from the law or the view of this subject through the medium of warranted violence i.e., revolution against the French colonial. In Part III, I will focus on the development of the Haitian state and its administration as it maneuvers through notions of legal identity within the confines of its landscape, Haitian subjectivity withdrawn from the law imposed by the French colonial, and as it interacts with the international community at the time. This section will also consider if the Haitian Revolution was a successful revolution and method of decolonization. In short, I hope each section will tell a legal story of the movement of hegemonized people up until the mid-1800s.

II. The Beginning

A. Creation of a Colony

*a colony, by definition,
could not be home to a sovereign people.*³⁶

Modern-day Hispaniola is about 700 miles from the coast of modern-day America resting in the middle of the Caribbean Sea with the Atlantic Ocean to the Northeast. At the beginning of colonization, the island was rich in mineral and natural resources which enticed colonial powers. From the time of the island's initial invasion by the Spanish, the colonial nations of France, Britain, and Spain were at war for its ownership. This was “the time when total disregard for the human rights and physical power of the non-Christian peoples of the world, the colored peoples, was officially assumed [by the] great colonizing European nations.”³⁷ In this section, I will discuss the progression of colonization as Ayiti became Hispaniola and then Saint-Domingue. Through, the legal social process that allowed for the induction of an oppressive imbalance of racial power relations on the island.

Ayiti was the name of the island before the Spaniards invaded in 1492. The name Ayiti allows the reader and researcher to acknowledge that the island's history began before its encounter with the colonial. This is the first rupture within the colonial narrative, caused by the intentional mentioning of the island's indigeneity first before we mentioned its ‘conquest’. Ayiti existed by way of its indigenous people, the Tainos. 1492 was the year that an indigenous people group was annihilated³⁸ and 7,500-year-old way of life was destroyed.³⁹ In Part II, we will discuss how the island, later on, was reclaimed with the same name in honor of the Tainos, as an intransigent decision by Jean-Jacque Dessalines who made strides to eliminate the roots

³⁶ Jean Casimir. *Supra* note 4. 189.

³⁷ Oliver Cox *Race Relations: its Meaning, Beginning, and Progression. in, THEORIES OF RACE and RACISM A READER* (Les Back and John Solomos, 2020), 72.

³⁸ CLR James explains that they “[A]nnexed the island, called it Hispaniola, and took the backward natives under their protection. They introduced Christianity, forced labour in mines, murder, rape, bloodhounds, strange diseases, and artificial famine (by the destruction of cultivation to starve the rebellious). These and other and other requirements of the higher civilization reduced the native population from an estimated half a million, perhaps a million, to 60,000 in 15 years.” See CLR James *THE BLACK JACOBINS: TOUSSAINT LOUVERTURE AND THE SAN DOMINGO REVOLUTION*, (De Vaissiere, Saint Domingue 1989), 4.

³⁹ Jean Casimir. *Supra* note 4. 4.

of France's tyranny. To continue,

The territory we now call Haiti was the site of Christopher Columbus⁴⁰ first landing in December of 1492. He named the island 'Hispaniola' after practicing the Spanish Crown's symbolic and legalizing ceremony of possession, known as the 'Requerimento'.... The ceremony involved 'pacing back and forth, drinking water from a stream, cutting down branches' and making crosses and carving the names of the King and Queen 'on rocks and on tree trunks in order to symbolize and legalize land appropriation.⁴¹

This annihilation and destruction armed with the sword and shield birthed the folly of international law. The legalization of the way one objectifies land and a people group through the right to conquest or the right to conquer vis a vis violence. The right to conquest is the idea that a 'state' or colonial power who emerges victorious in a war or genocide has the authority to claim ownership over the potential conquered territory.⁴² In result, Hispaniola will become the first settlement in the Americas precisely because of the manner in which the Spanish "implanted itself [on the island]... as a suzerain, master of lives and property."⁴³ Additionally, these actions also provide us our first insight into understanding what it means to be a subject of the law. In this case, if you cannot be subjugated and controlled by it, you will be eradicated.

In 1625, French and English buccaneers invaded the island of Tortuga⁴⁴ off the northern coast of Hispaniola, present-day Haiti.⁴⁵ Several years later in 1665, Louis XIV established the French colony of Saint-Domingue (St. Domingo), which included Tortuga and the western

⁴⁰ CLR James describes that "Christopher Columbus landed first in the New World at the Island of San Salvador, and after praising God enquired urgently for gold, The natives, Red Indians, were peaceable and friendly and directed him to Haiti, a large island (nearly as large as Ireland), rich, they said, in the yellow metal. He sailed to Haiti. One of his ships being wrecked, the Haitian Indians helped him so willingly that very little was lost and of the articles which they brought on shore not one was stolen." See CLR James. *Supra* note 37. 3.

⁴¹ Liliana Obregón *Empire, Racial Capitalism and International Law: The Case of Manumitted Haiti and the Recognition Debt*, vol. 31 *LEIDEN JOURNAL OF INTERNATIONAL LAW*, no. 3, (2018), 600.

⁴² See Sharon Korman *THE RIGHT OF CONQUEST*, (1996).

⁴³ Jean Casimir. *Supra* note 4. 245.

⁴⁴ CLR James described that "Tortuga was healthy and in the forests of western Saint Domingo roamed millions of wild cattle which could be hunted for food and hides. To Tortuga came fugitives from justice, escaped galley-slaves, debtors unable to pay their bulls, adventurers seeking adventure or quick fortunes, men of all crimes and all nationalities." See CLR James. *Supra* note 37. 4.

⁴⁵ See Marcus Xi. Rainsford *AN HISTORICAL ACCOUNT OF THE BLACK EMPIRE OF HAYTTI*. 2013).

half of Hispaniola.⁴⁶ France's right to conquest built its power "on the scared character of private property, and on its monopolization, created property owners as well as chained slaves and freed slaves."⁴⁷

To a greater extent, the vicious actions of the Spanish and French are the embodiment of colonialism. "Colonialism is the very form, the structure of international law itself, predicated on global trade between inherently unequal polities, with unequal coercive violence implied in the very commodity form. This unequal coercion is what forces particular content into the legal form,"⁴⁸ as per the explanation of China Mieville. Spaniards invaded the island with one objective: gold. They desired to capitalize off the rich minerals they heard existed on the island and would acquire them by any means necessary. China Mieville's book *Between Equal Rights: A Marxist Theory of International Law* provides a critical examination of international law through a Marxist perspective providing the insight necessary to understand the actions of the Spanish, the French, and the British. His ideas allow us to see the capitalist nature of international law and the urge of its methods as it allows colonial powers to participate in processes associated with primitive accumulation. Primitive accumulation "is nothing else than the historical process of divorcing the producer from the means of production. It appears primitive because it forms the prehistoric stage of capital and the mode of production corresponding with it."⁴⁹ In the case of the island of Ayiti 'divorcing the producer' is wiping out the initial producer (the Tainos) and importing a producer (the African captive) that is manufactured to be unattached to the means of production. This imported producer will be the topic of our discussion in the pages to follow. Capitalism and its accumulation have some of its beginnings here on the island of Ayiti and it owes its actuality to the imported producer and the beginning stages of international law. Additionally, Mieville explains that

International law embodies the violence of colonialism and the abstraction of commodity exchange. It is not that the contribution of non-[w]estern politics to

⁴⁶ CLR James. *Supra* note 37. 4.

⁴⁷ Jean Casimir. *Supra* note 4. 188.

⁴⁸ China Mieville BETWEEN EQUAL RIGHTS: A MARXIST THEORY OF INTERNATIONAL LAW, (2006), 178.

⁴⁹ Karl Marx CAPITAL: A CRITIQUE OF POLITICAL ECONOMY, Vol 1. (2013) 508.

international law has been obscured by colonialism, nor that ([w]estern) international law's spread across the world is the result of colonialism: it is that international law is colonialism.⁵⁰

Even though the ideas explained above seem more related to the modern-day practices of international law, his words are relevant and important to how we see the starting points of colonialism. Colonialism and international law are one and the same but in 1492 the legal actions of colonizers did not have a name, but they shared the same purposes and intent, as they clothed their vanquishment of indigeneity with the drawing of the cross and dedication to the crown. Lastly, he details that,

International law is not one [w]estern system, nor one [w]estern plus one Eastern system – it is the dialectical result of the very process of conflictual, expanding interpolity interaction in an age of early state forms and mercantile colonialism. That is the way in which East and West, New World and Old World are inextricable in the formation of international law. Some practices and principles may appear to be maintained from an earlier age, but of course, a continued practice in a changed social context is no longer the same practice.⁵¹

In other words, international law is indeed a social process. It rests with the enclosed interaction of the other⁵² or with another. It is in the act of othering or humanizing that we see international law or colonialism have its rise to success. It is within the act of othering that *subjects* are molded, created, and sired. The act of othering finds its success first in forms of violent extinguishment followed by legal justification. It is in the legal justification that *subjects* remain vulnerable and are never able to escape the social category of 'other' that has been constructed by colonialism.

The Treaty of Ryswick or the Peace Treaties of Ryswick ended the 'Nine Year War'⁵³ between France, Spain, England, The Dutch Republic, and the Holy Roman Empire. The war between these powers of the time can be considered one of the world's first global wars. The treaty was

⁵⁰ China Mieville. *Supra* note 47. Page 169.

⁵¹ *Id*

⁵² The 'other' s is what or who is unknown to the European.

⁵³ "Lacking capital [the French] raided the English island of Jamaica and stole money and 2,000 Negroes. [Resulting] in French, British, and Spanish raid[s] and counter-raid[s]." See CLR James. *Supra* note 37. 5.

a series of documents signed between the months of September and October in the year of 1697. The documents are as followed:

- 20 September 1697 – Treaty of Peace between France and Spain
- 20 September 1697 – Treaty of Peace between France and England
- 20 September 1697 – Articles for the Suspension of Armed Conflict in Germany between France and the Holy Roman Empire
- 21 September 1697 – Treaty of Peace and a Treaty of Commerce between France and the Dutch Republic
- 09 October 1697 – Separate Article for the Dutch Republic
- 30 October 1697 – Treaty of Peace between France and the Holy Roman Empire.

The Treaty of Peace between France and Spain signed on September 20, 1697, is our focal point because it legalized a transfer and a division of power on the island of Hispaniola. This treaty ultimately divided the island of Hispaniola into two: one for the French and the other side for the Spanish which remained under the name of Hispaniola. At the time, the French already had occupied parts of the island including Tortuga⁵⁴ but they needed an avenue in which they could legally claim their invaded territory to permit the beginning of their capitalist production, this was received from the Treaty of Ryswick. Now, the French could fully begin their creolization⁵⁵ of their section of the island of Hispaniola that they now call Saint-Domingue, which was the vision of the Crown. A settlement that developed into an exploitative colony: “a Creole Society.”⁵⁶ The French’s maneuvers of creolization will result in what I will refer to as the ‘Haitian legal subject’.

Prior to the importation of African labor, the Spaniards first enslaved the remaining Tainos that did not perish as fatalities of their ‘right to conquest’ efforts. The Tainos were not perdurable enslaved bodies and died at rapid rates because of the many diseases brought to the island by the Spanish and largely, because of the harsh laborious conditions that came with crop cultivation. These deaths ensued the importation of African captives to the island in 1502.

⁵⁴ CLR James explains that the “French, British, and Spaniards slaughtered one another for nearly 30 years, and the British were actually in possession of Tortuga at one time, but by 1659 the French Buccaneers prevailed.” See CLR James. *Supra* note 37. 4.

⁵⁵ Creolization is the process of social and cultural change in French colonial societies.

⁵⁶ Jean Casimir. *Supra* note 4.68.

The enslaved were brought to cultivate the land for the ‘profit of the metropole’⁵⁷ and to satisfy the on-the-ground colonial perpetrators in all required areas. The process of transforming captives into slaves is what allowed for this profit-driven purpose to be achieved. This process of captivity to enslavement transpired far worse in the Caribbean than in the northern Americas or other colonial spaces. As a consequence of the similar ‘extreme conditions’ experienced initially by the Tainos. These conditions placed the uttermost pressure on the backs of enslaved bodies along with other contributing factors such as the unique characteristics of the landscape that they were forced to inhabit. The landscape was mountainous and filled with greenery making it a difficult space for colonists to retain control over enslaved bodies. Also, the ratio between white colonists and the number of enslaved bodies on the island of Saint-Domingue was drastic with the number of enslaved bodies outnumbering the whites. Due to this ration and a preserved consciousness, the enslaved were apt to escape toward freedom and form maroon⁵⁸ communities. The creation of maroon communities is vital to mention because the creation of these communities contributed highly to the success of the Haitian Revolution by providing the grounds for guerrilla warfare that we will later discuss. These maroon communities were able to survive without being entrapped in the *colonial matrix of power*, by denying slavery. Casimir explains that “vagabondage constituted itself as the opposite of captivity, as it was defined by agricultural regulations and rural police codes.”⁵⁹ The repercussion of their peripheral flourishing existence detached from “the capitalism of the commodity-producing plantations” gave rise to colonial perceptions that describe marronage “as simply the expression of varieties of laziness, idleness, and vagabondage.”⁶⁰ Enslavement was ‘intended’ to free the objectified body from laziness, idleness, and vagabondage. But those who sought marronage were conscious bodies deeply

⁵⁷ CLR James states that this was “Known as the Mercantile system in England, the French called this economic tyranny by a more honest name, Exclusive. Whatever manufactured goods the colonists needed they were compelled to buy from France. They could sell their produce to only France.” See CLR James. *Supra* note 37. 46.

⁵⁸ CLR James explains that, “Those whose boldness of spirit found slavery intolerable... would fly to the woods and mountains and form bands of free men—maroons. They fortified their [refuge] with palisades and ditches, Women followed them. They reproduced themselves. And for a hundred years before 1789 the maroons were a source of danger to the colony... Many of these rebels leaders struck terror into the hearts of the colonist by their raids on the plantations and the strength and determination of the resistance they organised against attempts to exterminate them. The greatest of these chiefs was Makandal.” See CLR James. *Supra* note 37. 20.

⁵⁹ Jean Casimir. *Supra* note 4. 143.

⁶⁰ *Id.*, at 97.

attached to their identities as free Africans and understood the atrocity of their current state of being.⁶¹ For example, some captives escaped and while others committed suicide exclaiming that “I rather die than be a slave.”⁶² These examples provided the first encounter with the ever-existing 'Black personhood', which responds independently of the needs, desires, beliefs, circumstances, and requirements of the colonists. This personhood that dwelled within the enslaved warranted a 'justification' for the egregious treatment of the enslaved population to ensure their consistent submission without resistance. 'Black personhood' had to be crushed into a malleable form of identity that solely carried out France's economic tasks. This was made possible by “the foundation [of] the colony's social framework [which] was France's right to conquest and the right to property that flowed from it.”⁶³

France's initial economic tasks focused on the island; their focus was on producing indigo but transitioned to sugar cultivation in light of indigo's ability to exhaust soil quickly. In the early eighteenth century, a hundred sugar plantations were established. Sugar cultivation made the colony of Saint-Domingue the most profitable in the western hemisphere and amongst all of France's colonies. Its profitability came at an exploitative cost to the enslaved.⁶⁴ So as profit increased the demand for labor and laborers increased as well.

In 1681, there had been 2000 slaves in Saint-Domingue; in 1701, there were 10,000. By 1720, the French were importing 8,000 slaves each year from Africa. When the French began to plant coffee, around 1734, profits in Saint-Domingue soared and more slaves were needed for yet another labor-intensive crop. By the mid-18th century, Saint-Domingue was producing 60% of the world's coffee. Crop expansion required additional labor, as did the high mortality of the slave population due to harsh working conditions. Between 1764-1771, 10,000-15,000 slaves were arriving each year; 25,000 arrived in 1786; and more than 40,000 arrived in 1787. By 1787, there were 450,000 slaves in Saint-Domingue. At this time, 60% of the French slaves

⁶¹CLR James states that, “They died not only from the regime but from grief and rage and despair. They undertook vast hunger strikes; undid their chains and hurled themselves on the crew in futile attempts at insurrection.” See CLR James. *Supra* note 37. 9.

⁶² See King Flex Entertainment, *1804: The Hidden History of Haiti*, (2017).

⁶³ Jean Casimir, *supra* note 4, at 70.

⁶⁴CLR James details that, “In addition to Negroes, they brought whites, the engages, who would be freed after a period of years. So little did they bring the Negroes because these were barbarous or black, that the early laws prescribed similar regulations for both Black slaves and white engages. But under the regimen of those days the whites could not stand the climate. So, the slavers brought more and more Negroes.” See CLR James, *supra* note 37, at 5.

in the Americas were in Saint-Domingue, and two-thirds of those slaves were African-born.⁶⁵

Sugar plantations' labor intensity created the brutalist form of forced labor in comparison to plantations that produce coffee or indigo.⁶⁶ It had a unique ability to weary the enslaved body. Causally, the lifespan of an enslaved body was about 3-7 years with ten percent dead by the end of the first year due to these conditions. In result, two-thirds of those enslaved were born in Africa,⁶⁷ and were brought by boat. The "dreaded journey across the ocean usually caused a woman to be sterile for two years,"⁶⁸ causing the inability of the enslaved population to reproduce. The lifespan of an enslaved and the demand for labor resulted in an influx of the number of imported enslaved bodies between 1697 to 1790 because colonists needed to consistently replenish their labor force. The rapid pace of importation also included the cultures, behaviors, and beliefs of the captives that would later be the catalyst for the enslaved uprising in the summer of 1791. The colonists' constant need for labor would be what guaranteed the loss of Saint-Domingue to the hands of those once enslaved.

The process of creolization and its goal of making spaces like Saint-Domingue French was a method utilized to keep the culture and norms of the enslaved at bay. The term creole exists "In areas where a Black presence has been central to the emergence of a [French related] public political discourse, [the term Creole is used]. [C]reole is associated with persons of partially African descent."⁶⁹ Creolization starts as an invasion of a space and then with dwellers of that space. Saint-Domingue's creolization was enabled through the legal transfer of power between the Spanish to the French via the Treaty of Ryswick. The French acquired the space and then instituted its notions of 'being' on the space and its inhabitants. French colonialism and creolization happen simultaneously, meaning one cannot exist or be successful without

⁶⁵ See CLR James. *Supra* note 37. 55. Additionally, See Robin Blackburn THE MAKING OF NEW WORLD SLAVERY: FROM THE BORQUE TO THE MODERN, (1997).

⁶⁶ "Cane could be planted and would grow at any time of the year, and the reaping of one crop was the signal for the immediate digging of ditches and the plating of another. Once cut they had to be rushed to the mill lest the juice became acid by fermentation. The extraction of the juice and manufacture of the raw sugar went on for three weeks a month, 16 or 18 hours a day, for seven or eight months in the year." See CLR James, *supra* note 37, at 10.

⁶⁷ *Id.*, at, 56.

⁶⁸ *Id.*, at 14.

⁶⁹Liliana Obergon. *Between Civilisation and Barbarism: Creole Interventions in International Law*. vol 27, *Third World Quarterly*, no. 5. (2006), 818.

the other. Creolization is the “absorption into the modern world”, in our case the modern French world through language, religion, law, etc. Creolization “becomes a functional necessity for the system rather than being an option, or simply a potential outcome”⁷⁰ because “the master has to be able to constrain, manufacture, and construct the slave.”⁷¹ It is what allowed the enslaved to move toward “the integration and assimilation that allowed them to accommodate themselves to the plantation society.”⁷² Further, there was a confrontation between the master and the will of the captive to exist. Even though the master “legally owns the captive, in daily life he is always in the process of taking possession, and seeking to occupy what he appropriates.”⁷³ This action could be considered as the forming of Creole legal consciousness, a term used by Lillian Obergon as she attempts to make sense of the existence of Creole intervention in international law.⁷⁴ Creolization plays a major role in the instrumentation of turning the African into property or into the Haitian legal subject by the French as exploitation. By enforcing a language and culture upon the African, the colonist, in theory, created an avenue in which he/she can control the enslaved’s mind, body, and soul.

B. The Code

In order to develop a definition of the ‘Haitian legal subject,’ we need to also further examine their placement within the scope of colonial society. In Saint-Domingue, a stratification system was created, one primarily based on skin color manufactured and maintained by the Code Noir⁷⁵ also known as the Black Codes instituted by Louis XIV in 1685. It was a “[r]acial system [that provided a way] of classifying people...by judging how closely their phenotype fits with the somatic norms images of what the different races ‘look’ like. Races derive from these

⁷⁰ Jean Casimir, *supra* note 4, at 108.

⁷¹ *Id.*, at 108.

⁷² *Id.*, at 274.

⁷³ *Id.*, at 108.

⁷⁴ See Lillian Obergon, *supra* note 70, at 817.

“This consciousness...means that the region’s elite often assume themselves as being part of the metropolitan centre while at the same time challenging the center with notions of their own regional uniqueness.”

⁷⁵ See Malick W. Ghachem *Montesquieu in the Caribbean: The Colonial Enlightenment between ‘Code Noir’ and ‘Code Civil’*, vol. 25, *HISTORICAL REFLECTIONS / REFLEXION HISTORIQUE*, no. 2, (1999), 183–210.

Additionally, Louis Sala-Molins describes the Code Noir as an instrument for “the legitimation of a practice . . . of torture” and the regulation of “utilitarian genocide.” See Louis Sala-Molins, *Le Code Noir, ou le Calvaire de Canaan*, 6th ed., PRESSES UNIVERSITAIRES DE FRANCE, 1998) 12. Colin Dayan characterizes the Code Noir as part of a broader “language” of slave law that “offered protection and normalized abuse.” Colin Dayan, *THE STORY OF CRUEL AND UNUSUAL* (2007), 10–11.

classification systems. Racial [stratification] has implications for a person's life chances because [it] is a social hierarchy."⁷⁶ A slave system was the initial intention of the metropole but later developed into a racial system that was enforced and ensured the colony's success. It was "[t]he king and his powerful minister Jean-Baptist Colbert...who concluded that it was necessary to develop a comprehensive slave system in order to increase efficiency, and this maximizes profits."⁷⁷ This 'slave system' that functioned as a stratification system sustained and formed racialized social relations, which will dictate the behaviors of wealthy whites, free people of color, poor whites, freed blacks, and the enslaved. A study of these relations will reveal the nature of emancipation for the enslaved. Casimir explains that "the captive was born in social existence at the moment of his emancipation, the enjoyment of which implied a favor from the system, which in turn assumed recognition of the master's self-defined rights. The emancipated or enfranchised were absorbed into conquering nations: they became French."⁷⁸ To be free or to be made free for Saint-Domingue only meant that a person was French. This ideology further was true for all strata groups of the island and how their sociality was consistently filtered through their proximity to Frenchness. Now, the proximity to Frenchness for each strata group will be found within the confines of ownership. Frenchness and its freedom are linked to one's ability to own and access property. The link to property will create a metaphorical social ladder. Those who own an abundance of property will find themselves at the top absorbed in all the benefits of Frenchness and at the bottom are those who will never own property and will never climb up the social ladder. This social ladder needed to legalize its endeavors of colonial conquest and control of social relations. France's legal justification was granted through the Code Noir. The Code Noir's intentions were to govern the new slave system but in doing so the metropole utilized the legal space to control the social behaviors of its French citizens and its property; the enslaved. In an effort to understand France's social control, I will analyze specific articles of the Code Noir that ensured the prolonging of these racialized social groups and behaviors.

⁷⁶Vilna Bashi and Antonio McDaniel *A Theory of Immigration and Racial Stratification*, vol. 27, *JOURNAL OF BLACK STUDIES*, no. 5, (1997) 670.

⁷⁷Liliana Obregón *Black Codes In Latin America*, vol 1, *Africana: Encyclopedia of the African and African American Experience*, (Kwame Anthony Appiah and Henri Louis Gates Jr. 1999) 2.

⁷⁸Jean Casimir and Mary Claypool *Going Backwards Towards the Future from Haiti to Saint Domingue*, in, vol. 6 *THE GLOBAL SOUTH*, no. 1, (2012), 175.

I will refer to members of wealthy whites and free people of color strata as the oligarchs and elites of Saint Domingue. These social groups can trace their ancestry to the 1500s when the importation of enslaved bodies began. Wealthy whites were noble Frenchmen who owned the majority of the plantations on the island. Free people of color were a result of enslaved African women forced and coerced into sexual relations with the Spanish, Dutch, and French colonialists. These women became pregnant, and their children were known as mulattos due to their light skin complexion and were freed only by the discretion of the white colonists. The population of mulattos grew to form the free people of color strata. The mulattos oftentimes were sent to France to be educated and later returned to be overseers or owners of sugar and coffee plantations. At the lower end of Saint-Domingue's stratification system are the poor whites and the freed blacks. The poor whites were the majority of the island's colonists and were a part of France's peasantry class, those who the King placed at the bottom of the social ladder; "vagabonds, outlaws, artisans, tradespeople, prisoners, sailors, [etc]."⁷⁹ Freed blacks' place in this system was created at the volition of plantation owners who granted their high-status enslaved freedom. The existence of African ancestry at the top and bottom of Saint-Domingue's social communities caused immense tension because of each social groups' desire for overall societal acceptance. Which instituted a hierarchy based on color with the wealthy white colonists (*grand blancs*) at the top, the mulattos, and poor whites (*petit blancs*) in the middle, freed Blacks following close behind and the Black enslaved at the bottom.

The colonial space of Saint-Domingue had, and still has, a semi-diverse population in which the majority are formerly Black enslaved. These individuals were oftentimes uneducated and had to figure out how to receive minuscule benefits. Stratification, based on color in this colonial space, became an indispensable tool of French colonialism because it orchestrated division amongst lower stratas which nurtured the power of the metropole. The system was arranged by the limited designations of freedom. Colonists recognize that disunity and division prevented forms of uprising, because maintaining power relations was vital for the French colony, especially when it came to labor relations. The implementation of the Code Noir is

⁷⁹ See Jean Casimir, *supra* note 4, at 103.

also a legal example of limiting freedom based on color. Color-based limitations on freedom provided the foundation necessary for disunity and division that kept tensions high in Saint-Domingue the Code's intentions were to guide the actions of French citizens and property abroad, but the Code and its legality ultimately created the social relations mentioned above. These relations would end up altering the fabric of the social and legal society of both Saint-Domingue and Haiti.

Before 1681, “France had no tradition of slavery and no laws on slavery had been in force in metropolitan France for centuries. French custom was silent on the subject [with no royal legislation regarding the matter].”⁸⁰ On the grounds of France’s inexperience with colonial enslavement, legal scholars like Alan Watson argue that “Roman law was the inevitable model for the French law of slavery,”⁸¹ because of the somewhat humane provisions and possibilities of freedom provided in the document. The humanity that existed in the language of the Code did not necessarily warrant that the slaves were human. The King's interests were inextricably linked to the conservation of his wealth which meant that his property had to be fit for the task. In short, the legal decision of France by way of the royal decree will always be to fortify wealth.

The fortification of wealth per the Code ensured the eternal subjugation of its enslaved population granting only its white and property-owning population a form of agency under the law. The requirements laid out by the metropole did not manifest in its colony, which attests to the metropole's inability to properly interpret the social climate of its ‘territory.’ The metropole of France did not and was not able to fully acknowledge the state of racialized relations causing its legal degrees to be null and void, as colonists began to believe that the decrees did not fit the make-up of their colonial situation. For example, instead of mandating the food rations required by the King, colonists provided half of what was required. They distributed

⁸⁰ Vernon Valentine Palmer THE ORIGINS AND AUTHORS OF THE CODE NOIR, 56 LA. L. REV. 363 (1995), 364.

⁸¹ *Id.*, at 364.

half-a-dozen pints of coarse flour, rice, or peas, and half-a-dozen herrings. Worn out by their labors all through the day and far into the night, [the enslaved] neglected to cook and ate the food raw. The ration was so small and given to them so irregularly that often the last half of the week found them with nothing.⁸²

To put it plainly, the colonists did not listen and chose extreme methods of inhumanity to govern their plantations. A pattern evident in the present-day enforcement of international law. International law dictates behavior absent of an immediate enforcer but at times sends and manufactures ‘figureheads’, decrees, policies, etc. to ensure its goals are being accomplished. King Louis XIV wanted his international citizens and property to understand “that although they live in regions infinitely removed from our normal residence, we are always present to them, not only by the range of our power but also by the promptness of our attempts to assist them in their needs. For these reasons by the advice of our council and by our certain knowledge, full power, and royal authority, we say, rule, and order, wish and are pleased...”⁸³ The language used here poses itself as advisory, but the document also serves as a reminder that legal power and the decisions that come with that power rest with the French metropole.

The Code Noir provided the legal grounds for racial social relations. These relations affected the colony of Saint-Domingue and the free state of Haiti. Also, the existence of racialized social relations is the place in which the ‘Haitian legal subject’ will find itself being developed in both French and later Haitian society. The Code Noir attempted to make sense of what was happening on the ground in Saint-Domingue. In terms of the relationships that would form between the enslaved population and their owners. These relationships need to be controlled through a variety of restrictions that prevented movement, community, religion, and other forms of individuality. It produced a society focused on the attainment of freedom wielded by Frenchness. The crown insisted that the Code was instituted to help with prosperity while also maintaining propinquity to the mother country, but it created disunity among the inhabitants of Saint-Domingue and between France and its colony.

⁸² CLR James, *supra* note 37, at 11.

⁸³ “The Code Noir (The Black Code),” *LIBERTY, EQUALITY, FRATERNITY: EXPLORING THE FRENCH REVOLUTION*, <https://revolution.chnm.org/d/335>.

Now, we will look closely at the Code Noir to locate racial indications that call attention to France's methods of controlling the behaviors of colored⁸⁴ bodies. The evidence of this control in the Code Noir will provide the reason for the subsistence of racial relations that sprouted in the 1500s by the French buccaneers. These methods of control will not only be evident during the plantation period but also in the legal regimes to follow. The Code Noir left its genetic code which made it impossible for Ayiti to exist without some sort of legal control of its lower classes. The code consisted of sixty articles, but I will analyze four closely: Article IX, XII, LIX, and XXVIII. In order to demonstrate how the Code Noir does not only create racialized social relations but also in its form as a legal document subjects both people and property creating the building blocks of Saint-Domingue's legal society. It is in the analysis of these four articles that we will see the functionality of the Code Noir as a genetic sequence existing in colonial, revolutionary, and post-colonial society.

Article IX states:

Free men who shall have one or more children during concubinage with their slaves, together with their masters who accepted it, shall each be fined two thousand pounds of sugar. If they are the masters of the slave who produced said children, we desire, in addition to the fine, that the slave and the children be removed and that she and they be sent to work at the hospital, never to gain their freedom. We do not expect however for the present article to be applied when the man was not married to another person during his concubinage with this slave, who he should then marry according to the accepted rites of the Church. In this way she shall then be freed, the children becoming free and legitimate...⁸⁵

A concubine is a woman who lives [and has sex] with a man but has lower status than a wife or wives.⁸⁶ The act of concubinage with a slave is the active raping of an enslaved woman. The language of concubine makes it seem like the relationship was consensual, but the use of the word 'slave' negates that. All sexual relations between the master and the enslaved are acts of

⁸⁴ Colored is an umbrella term used to discuss both mulattos and Blacks.

⁸⁵ "The Code Noir (The Black Code)," LIBERTY, EQUALITY, FRATERNITY: EXPLORING THE FRENCH REVOLUTION, <https://revolution.chnm.org/d/335>.

⁸⁶ See Thomas A. J. McGinn *Concubinage and the Lex Julia on Adultery, in*, vol. 121, TRANSACTIONS OF THE AMERICAN PHILOLOGICAL ASSOCIATION (1974-2014), (1991).

rape. The children from these sexual relations are a result of sexual power-domineering relationships. This article is intended to direct the sexual relations between the colonist and the enslaved. As we know sexual relations between enslaved women and white colonists began prior to the implementation of the Code Noir because of this the article governs the continuation and the ‘products’ of these sex relations. An attempt to make sense of a social relationship and its outcomes legal. This article's sanctioned punishments weigh more heavily on the enslaved person versus the colonist, to nurture the perpetuation of the island's social ladder that kept whites at the top. Even though the colonist often times would rape and purposely impregnate African enslaved women for their own profit or sexual benefit. The ‘responsibility’ of the legitimacy of the relationship always fell on the enslaved, which removed the fullness of punishment from the colonists. The article also points out the Christian⁸⁷ foundation that guided the French’s legal perspective. This religious foundation also provided the moral justification for the social hierarchy system that emerged with the Code Noir and most importantly the vindication of slavery. The Code Noir’s “system was justified by the deeply felt, and sometimes theologically sanctioned, belief that Black people were born to serve white people”⁸⁸ Lastly, this article secures the existence of the mulatto class, making their existence and production legal but also constrained to the social requirements within the Code and the other legal decrees to come. Article IX, along with other related articles located within the confines of the sixty articles administered the social movement of the mulatto class of Saint-Domingue. Ultimately, the purpose of the Code was to control all aspects of social behavior on the island that could possibly affect the lucratively of the island.

Article XII states,

Children born from marriages between slaves shall be slaves, and if the husband and wife have different masters, they shall belong to the masters of the female slave, not to the master of her husband.⁸⁹

⁸⁷ See George Breathett *Catholicism and the Code Noir in Haiti*, vol. 73, THE JOURNAL OF NEGRO HISTORY, no. 1/4, (1988), pp. 1–11.

⁸⁸ Vilna Bashi and Antonio McDaniel, *supra* note 71, at 671

⁸⁹ “The Code Noir (The Black Code),” LIBERTY, EQUALITY, FRATERNITY: EXPLORING THE FRENCH REVOLUTION, <https://revolution.chnm.org/d/335>.

Article XII consolidates one of the main intentions of the Code: the continuation of slavery. To ensure that the human behavior of the Black enslaved is legally publicized and perceived as inhumane. This perception needs to be controlled and maintained for slavery to remain successful. This humanization can only take place if the enslaved remain enslaved and at the bottom of society. The enslaved attempts to personify themselves will always be rejected and perceived as unequivocally inhumane to the colonizer and its created colonial space. The article is putting the act of ‘grandfathering in’ slavery by birth into law to grow the "lowest" social class for the benefit of the metropole. It will ensure that they will always have slaves even if France has to cease participation in the Atlantic Slave Trade, they would continue to profit. These methods to assure a profit and to maintain the enslaved population were influenced by the Code Noir.

*Once a slave, always a slave.
Once a laborer, always a laborer.*

Article LIX states,

We grant to freed slaves the same rights, privileges, and immunities that are enjoyed by freeborn persons. We desire that they are deserving of this acquired freedom and that this freedom gives them, as much for their person as for their property, the same happiness that natural liberty has on our other subjects.⁹⁰

Article LIX, focuses on the importance of emancipation⁹¹ and the benefits that come with the attainment of such freedom. It does not mention that for racialized strata groups this freedom discussed in Article LIX is limited. The privileges and immunities that it mentions will not and will never be fully accessible. The discussed freedom in the Code Noir does not actualize for the enslaved, the freed Black person, or the mulatto because it is restricted by the social process of society. These strata groups will never be truly free and equal in French society whether that is in Saint-Domingue or in France. Counterfeit freedom exists and was created through the lofty words of the Code Noir but will never be fully implemented in the French colonial

⁹⁰ “The Code Noir (The Black Code),” LIBERTY, EQUALITY, FRATERNITY: EXPLORING THE FRENCH REVOLUTION, <https://revolution.chnm.org/d/335>.

⁹¹ Liliana Obregón explains that “It was not unheard of that plantation owners would free slaves, especially the offspring of male owners and female slaves. In Caribbean societies, this produced a mixed population with various race and class strata among people of African descent.” See Liliana Obregón, *supra* note 78, at 3.

space. Because freedom and equality for the lower strata will always mean a hindrance to the economic success of the colony and its metropole. It is true that “[t]he freed slave could not participate in civic life as a citizen unless they unconditionally accepted the right to conquest and its corollary, the right to the strongest. To defend their interest in even the most basic sense would mean attacking the monopoly of private property, or working around it, and negotiation with those who were stronger.”⁹² In the years leading up to the revolution, the freed black class and the mulattos discover their promised freedom is restricted as they attempt to utilize the legal system in an effort to earn their equality. Those who become free cannot and will not receive the ‘same rights, privileges, and immunities’ as their white counterparts.

The Code was effective in the socialization of the racialized subjects, but it was ineffective when it came to controlling the actions of white colonists in Saint-Domingue. Particularly their behavior towards the enslaved as mentioned before in regard to food ration distributed by plantation owners. For example, “planters and managers ignored many of the provisions of this document, particularly those that provided protection to slaves.”⁹³ For example, Article XLII states that

The masters may also when they believe that their slaves so deserve, chain them and have them beaten with rods or straps. They shall be forbidden however from torturing them or mutilating any limb, at the risk of having the slaves confiscated and having extraordinary charges brought against them.”⁹⁴

It is clear, according to this article that, “provisions in the Code Noir limited acceptable forms of torture⁹⁵ to whipping but were never effectively enforced.”⁹⁶ The intentional disregard for the ‘standards of care’ for the enslaved while observing other articles that keep

⁹² Jean Casimir, *supra* note 4.

⁹³ Laurent Dubois SLAVE REVOLUTION IN THE CARRIBEAN, 1789-1804: A BRIEF HISTORY WITH DOCUMENTS, (2016), 14.

⁹⁴ “The Code Noir (The Black Code),” LIBERTY, EQUALITY, FRATERNITY: EXPLORING THE FRENCH REVOLUTION, <https://revolution.chnm.org/d/335>.

⁹⁵ It is detailed that, “Their masters poured burning wax on their arms and hands and shoulders, emptied the boiling cane sugar over their heads, burned them alive, roasted them on slow fires, filled them with gunpowder and blew them up with a match; buried them up to the neck and smeared their heads with sugar that the flies might devour them; fasten them near to nest of ants or wasps; made them eat their own excrement, drink their own urine, and lick the saliva of other slaves” See CLR James, *supra* note 37, at 12.

⁹⁶ *Id.*, 14.

the social hierarchy of Saint-Domingue intact is an indication of the ill intent of colonial planters. This intent is connected solely to their determination to become and remain wealthy.

Article XXVIII of the Code Noir states:

We declare that slaves cannot own anything that is not owned by their masters and everything that comes to them through their work or through the gifts from other people, or any other way, no matter the conditions, is considered completely the property of their masters. The children of slaves, their mothers and fathers, their relatives, and all others can never claim property through succession, contracts between living people, or because of death. We declare any such dispositions null and void, along with all promises and obligations they have made because they were made by people who are incapable of arranging and making contracts for themselves.⁹⁷

Property cannot own property. Rights to property like access to freedom were never created for the colored person of Saint-Domingue. The legal notion of the right to property as exclusionary(racist), resulted in its ability to be useful in the colonial establishment and the perpetuating imperial racial capitalist system in Haiti. Sala-Molins in the book *Dark Side of the Light: Slavery and the French Enlightenment* explains that “[t]he black man may perhaps not exist, certainly not in a state of liberty and security or of resistance to oppression. And in any case what is the relationship between slavery and "political association"? And can one be everywhere at the same time? But the Negro sits enthroned in property. He does not possess it. He is property. Ontologically, legally, specifically, exclusively, he is property, only property. Yesterday's social body produced the Code Noir in order to keep this piece of property outside the category of subject.”⁹⁸ Code Noir attempted to control this social category of property by placing restrictions on any human-like activity the enslaved could participate in. Its intended purpose was “[t]o govern the relations between Africans and Europeans and to regulate the emancipation of slaves.”⁹⁹ To do this successfully it had to place restrictions on all of society,

⁹⁷ Jean Casimir, *supra* note 4, at 145.

⁹⁸ Louis Sala-Molins and John Conteh-Morgan, *supra* note 99.

⁹⁹Amy R. Sumpter “*Segregation of the Free People of Color and the Construction of Race in Antebellum New Orleans*, vol 48, SOUTHEASTERN GEOGRAPHER, no. 1, (2008).

to keep property at its focal point. The enslaved were the center of colonial Saint-Domingue; as a result, all activity was predicated on one's interaction with those who were enslaved.

The articles above were chosen for analysis to display how the enslaved and interactions with the enslaved had the ability to shape and change the functionality of Saint-Domingue. Overall, the Code Noir ensured throughout the longevity of plantation/slave society that certain groups of society will always remain at the bottom of the social ladder. This bottom group's existence was necessary to continue profit-making for wealthy plantation owners and the island's metropole. It is this function of the Code Noir that we will continue to see in post-colonial Haiti. Haitian leaders attempt to construct an independent society but are found recreating a social ladder resulting in the formerly enslaved being forced back to the social bottom for the financial security of the island and its oligarchy class. Racial capitalism is 'the process of extracting social and economic value from a person of a different racial identity'. Some will argue that Haiti is "the most evident example of imperial practices and ideologies sustained by racial capitalism, as well as illustrating how the same ideology formed its own nation and then resisted past independence"¹⁰⁰. Specifically, in Haiti, this legal notion is 'used' to exclude the formerly enslaved African descendants who were a majority of the country's population which resulted in this group remaining as exploited laborers. To reiterate, even if the enslaved were to achieve manumission, they own nothing. They have no capital or family, so while they could make it out of the system, they are still not privy to much when and if they make it to 'freedom'. They theoretically or quite literally make it out of slavery and into a labor society that directly mirrors the framework of slavery.

The ramifications of the Code Noir were largely due to the subjects' or different strata groups' reactions to the Code. The Code Noir was an ambiguous document¹⁰¹ because those who drafted its articles were ignorant of the day-to-day operations of the slave economy in Saint-Domingue. Some interpreted the Code Noir as a humanitarian legal document,¹⁰² because some articles required the humane treatment of the enslaved as mentioned above. It is clear

¹⁰⁰ Liliana Obregón, *supra* note 40, at 598.

¹⁰¹ Malick W. Ghachem THE OLD REGIME AND THE HAITIAN REVOLUTION, (2021), 200.

¹⁰² See George Breathett. *Catholicism and the Code Noir in Haiti*, vol. 73, THE JOURNAL OF NEGRO HISTORY, no. 1/4, (1988), pp. 1–11.

that the Code was impactful by the observed reactions of the white majority,¹⁰³ freed people of color, and the enslaved. Legal rules are only successful if they are listened to and applied. If not obeyed, the law loses its power and with the Code Noir certain articles were made more important while others were not. Articles that restricted the behavior of those enslaved along with restrictions to their emancipation were honored because it guaranteed control over the islands' most important assets.¹⁰⁴ In his book, *The Old Regime and the Haitian Revolution* Malick Ghachem attempts to highlight how “the regime of the Code Nor - can be refashioned, over time and through combined efforts of often conflicting groups and individuals, into a source of emancipation”.¹⁰⁵ He explains how the enslaved and the free people of color were actively subjugated to the law, preventing their ability to become active participants of the law but subjects controlled by the law. Later, these controlled subjects would make an effort to transform the law of slavery that “consistently operated on them with a disturbing ruthlessness.”¹⁰⁶ In this way, the Code worked not to emancipate the enslaved or the free people of color but to ensure that they remain at the bottom of society as new regimes began to emerge in ‘post-colonial’ Haiti. Ghachem’s work, even though not completely aligned with my argument, does support the idea that the Code Noir formed social groups based on color through the control of social behavior. He explains that “the law of slavery sought to control the actions of masters as well as slaves, whites and persons of African descent (both slave and free) alike.”¹⁰⁷ It was a “system of tremendous individual control at different times, particularly with respect to the regulation of manumission and planter brutality.”¹⁰⁸ It “planted hegemony over slaves [which was] the core objective of the law of slavery.”¹⁰⁹ The Code Noir was a legal document of control to ensure the perpetual success of plantation society, by legally guaranteeing that its property and its French citizens remain in certain social categories.

¹⁰³ See Melvin D Kennedy *The Bissette Affair and the French Colonial Question*, vol. 45, THE JOURNAL OF NEGRO HISTORY, no. 1, (1960), 1–10.

¹⁰⁴ See George Eaton Simpson *The Belief System of Haitian Vodun*, vol. 47, AMERICAN ANTHROPOLOGIST, no. 1, (1945), 35–59.

¹⁰⁵ Malick W. Ghachem. *supra* note 102, at 5.

¹⁰⁶ *Id*

¹⁰⁷ *Id*

¹⁰⁸ *Id*

¹⁰⁹ *Id*, at 12.

Lastly, the Treaty of Ryswick and the Code Noir permitted the legalization of what we know to be global capitalism and its exploitation of the mind, body, and soul. The Code Noir “remained the foundation for the legal framework of French Caribbean slavery through the early years of the Haitian Revolution.”¹¹⁰ The Code managed social life not just between colonists and their property but amongst all African descendants that inhabited the island. While the Treaty of Ryswick granted the legal space for racism, brutality and exploitation Jean Casimir describes that,

“The Code Noir stops being an object of study and is converted into a tool for interpreting observed facts. Our social behavior is explained according to the meanings given to our skin color by our executioners, rather than through reference to what we have learned from our own knowledge, our daily experiences, and the way we live these experiences. We end up no longer being the primary motors of our actions and are seen instead as acting from within the parameters defined by our abductors.”¹¹¹

As indicated before, legality exists in the social process of power. This power is demonstrated through the subject’s interaction with the other or another. Further, this concept of the social process of power also relies heavily on the other’s reaction to the interaction with the subject. The reaction is what constitutes legality. The Code Noir is a reaction to an interaction and the Treaty of Ryswick allowed for the appropriation of the space for the reaction to transpire. This reaction made ‘color’ a matter of legal necessity by implementing laws based on a social system rooted in colonialism. In the sections to follow, the Code Noir will now serve as the lens through which we understand the events that materialized in forms of subjectivity Pre-Revolution, during the Revolution, and after. The materialized events are all influenced by and are for this social process of power that is dictated by the color of a subject’s skin.

In Haiti, the division in class did not prevent an uprising but encouraged it because of the lower strata’s desire for a form of autonomy apart from the metropole. These relations kept the oligarchs and elites in control of the government before and after independence in 1804. Because “...Haitian elites up to the present implicitly claim that the right to prescribe limits to

¹¹⁰ Jean Casimir, *supra* note 4, 49.

¹¹¹ Jean Casimir, *supra* note 4, at 15.

their local identity, modulating it according to their particular emotional and intellectual attachment to France."¹¹² The new free society quickly became integrated into western values with the hopes of being accepted as western but instead “it remained subject to the implications of their original racial inferiority, which they believed they could be overcome with a profession of faith, sometimes quite loud, in the superiority of France and its culture.”¹¹³ This is an empty hope that will, can, and does reproduce itself in the tyrannies of power, imperialism, and modern capitalism.

¹¹² *Id*

¹¹³ Astride Jean-Bertrand TOUSSAINT-LOUVERTURE: THE HAITIAN REVOLUTION, (2008). 30.

III. The Middle

*Age of revolution;
[limited] liberty,
[limited] equality,
[limited] fraternity*¹¹⁴

In this section, I will discuss the outcomes of the Code Noir on a variegated group of people. The reader will now begin to identify the process of stratification and how it functioned to create certain social groups that were attached and detached from the metropole in both active and passive ways. A discursive implementation of the law manifests as it works its way through the stratified groups, from the enslaved to oofy white plantation owners. It is here that the perception of the law in Saint-Domingue reveals itself as “an institutionalized exercise of socially-centralized violence, empirically identifiable through its coercive enforcement, its ‘material consequences;’¹¹⁵ a system of norms which is consistently enforced against delinquents.”¹¹⁶ Simply, because the law is working to maintain wealth at the cost of those who are intentionally subjugated and made invisible. This socially centralized violence “acts upon a body or upon things; it forces, it bends, it breaks on the wheel, it destroys, or it closes the door on all possibilities.”¹¹⁷ In the contextual place of Saint-Domingue, these delinquents will be those who are African laborers or descendants of African laborers. These African descendants will be explained as constantly attempting to break away from their destined delinquency by appealing to the ruling, royal, and white French. In this, a dialectic will emerge, one that attempts to sift through if and when race should contribute to one's ability to be recognized as a citizen subjected to the law but endowed with all the rights of French citizenship.

With predilection, I will display how the law's western development via the French revolution

¹¹⁴ CLR James, *supra* note 37, at 80.

¹¹⁵ Jason Beckett quotes that “the external perspective of the ‘bad man,’ who cares only for the material consequences which such knowledge enables him to predict.” See Jason Becket, Oliver Wendell Holmes Jr., *The Path of the Law*, 10 *Harv. L. Rev* (1897), 357.

¹¹⁶ Jason Becket *THE DECEPTIVE DYAD: FALSENESS AND FANTASY IN INTERNATIONAL LAW*, (2021) 13.

¹¹⁷ Michel Foucault, *supra* note 6, at 789.

and its falsities of liberation muffle the story of the enslaved. Due to this, the protagonists of this section will indeed appear to be the mulattos, freed Blacks, and the whites as we discuss the 'in between' and the Haitian Revolution. This is because preeminently, "[t]he sector of the emancipated, or the formerly freed, [and the free people of color], carried the colonial matrix forward. They were the ones responsible for the maintenance of capitalist domination over the population. They governed the country with the conceptual tools they received from colonialism."¹¹⁸ As a result, it has presented itself as inevitable that those who are charged with perpetual oppression are withdrawn and silent from the story. This is simply because we are discussing the law and its control. For its control to be fully successful and long-lasting, legality cannot tell the story or fully encapsulate the story of the oppression; it can only muzzle their existence in an effort to prolong its own. I urge you to pay attention to the rifts within the narrative that push you to ask the questions: What about the enslaved? What are they doing? How are they getting free? How are they placed in this racially constructed space? It is through these questions that we will be able to actualize the 'Haitian legal subject'.

A. Pre-Revolution

About thirty years prior to the Revolution the social space in Saint Domingue began to experience developmental change, as we see not only an influx of captives entering the colony but also a variety of European colonists arriving on the island as 'French immigrants' desiring to generate wealth. In the midst of this, we also detect economic advancement amongst the mulattos and free blacks who begin to produce wealth and status amongst themselves in conjunction with poor and wealthy whites. Power struggles and the desire to accumulate wealth became the foreground for social activity in the colony which induced internal and external conflict. The internal conflict focused on who had rights to wealth and the external conflict focused on the colony's desire to be detached from the legal decisions distributed by the metropole. In other words, the struggle for property and the struggle for active independent citizenship. These conflicts would be stepping-stones toward revolution, instigated by the higher strata's ability to consistently exclude the enslaved population from conversations surrounding equality and liberty. In response to this, we can distinctly understand what Jean Casimir meant when he explained the importance of racialized human

¹¹⁸ Jean Casimir, *supra* note 4, at 100.

relations in the “establishment of the modern [w]est”. He explained that if these types of human relations are ignored, willingly or unwillingly, we risk-taking on the racism of colonial powers and turned it into axis or social relations.”¹¹⁹ Similarly,

“Racial discrimination and color prejudice attacked the construction of a civil society that responded to the inescapable need for reproduction and private life by creating a sustainable form of colonial life. The modern, colonial state [or the metropole] inserted itself into the management of the intimate lives of citizens in an effort to destroy the embryos of an autonomous, sovereign way of life. By closing the doors to the major avenues of social promotion in public life, the state circumscribed the private life of people of color with increasingly narrow and modest limits.”¹²⁰

It is through the reaction to freed blacks and mulattos profiting participation in Saint-Domingue’s economy, that we see the existence of racial stratification and France’s metropolitan classism’s imposition on poor whites. The two mix together to provide the legal terrain of the Haitian Revolution, a terrain that does not ensure that enslaved Africans experience full autonomy. These racist social distinctions embedded in the concepts of stratification and oppressive classism were a part of an “embryonic structure of settlement [which was] envisioned by the Code Noir.”¹²¹ The embryonic structure was challenged in the mid-1700s through the consciousness of freedom and equal rights discourse, causing an attack on the slave trade “led by the Jacobins and the Society of the Friends of the Blacks,”¹²² resulting in the abolishment of slavery in France and her colonies.

Towards the end of the 1780s, there were roughly 24,800 free non-whites and 30,800 whites in Saint-Domingue. A portion of the non-whites¹²³ were surprisingly “wealthy planters and merchants.”¹²⁴ Quite of few members of this ‘free’ group “owned and exploited slaves [while

¹¹⁹ Jean Casimir, *supra* note 4, at 188.

¹²⁰ *Id.*, at 83.

¹²¹ *Id.*, at 71.

¹²² *Id.*

¹²³ The term non-whites will refer to both freed Blacks and free people of color or mulattos.

¹²⁴ Laurent Dubois. *Supra* note 94. 15.

identifying themselves as French colonists.”¹²⁵ These hopeful non-white French colonists “played a critical role in destabilizing colonial society [despite] not [being completely] opposed to slavery, their attack on racism,”¹²⁶ functioned as a stimulant for the Revolution to come. Non-whites specifically those of mix-ancestry even as wealthy planters and merchants “were [still] outlaw[ed] from participating in the creation of municipalities; occupying any role in the judiciary; carrying weapons; practicing medicine, surgery, or midwifery, or taking up clerical roles. [T]hey were banned from wearing certain clothes and jewelry, excluded from dances, and outlawed from using European names.”¹²⁷ Freed Blacks were highly discriminated against greater than the mulatto. Even though both held positions as merchants or planters and worked tirelessly to be treated equally and wished to be accepted by the whites of the island, whites of the metropole. Consequently, whites would use non-white inhabitants in the *le marechaussee*,¹²⁸ “for the difficult physical work of patrolling the roads, searching slave hits, and chasing escapees in trackless interior.”¹²⁹ The social categories of, the emancipated slave and the free person of color, were consciously constructed by the Code Noir and to carry out the oppressive management of the colony. This oppressive management guaranteed that French privilege continued to accrue profits absent of difficulty. *Le marechaussee* is an instance where colonists utilized this consciousness. Through the formulation and conservation of these social categories the emancipated slave and the free person of color are “molded within and by the very French colonial thought that justified their [ancestral] killing and deportation.”¹³⁰ These groups of people were also recruited into military service as “an administrative project to increase the separation between white and free non-individuals in the colony.”¹³¹ It is important to note that, “[i]n the colonial system, the liberty of the former slaves was inextricably linked to their core task—that is, the security and support of the whites. To accede to the rank of the emancipated meant, unavoidably, to always behave as a freed slave.”¹³² In the guise of their service in the military, local police force, and other service industries, in “they [continued to be] subjected to an increasing number of laws that

¹²⁵ *Id*

¹²⁶ *Id*

¹²⁷ Jean Casimir. *Supra* note 4. 82

¹²⁸ The island’s police force.

¹²⁹ Laurent Dubois. *Supra* note 94.15.

¹³⁰ Jean Casimir. *Supra* note 4. 99.

¹³¹ Laurent Dubois. *Supra* note 94.15.

¹³² Jean Casimir. *Supra* note 4. 88.

discriminated against them because of their African descent.”¹³³ For example, “A white man could trespass on a mulatto’s property, seduce his wife or daughter, insult him in any way he chose, certain that at any time of resentment or revenge all the whites and the Government would rush out ready to lynch.”¹³⁴ In spite of legal discrimination non-white men later found themselves serving in the American Revolution with the royal French troops and in the same vein “treated poorly by their own officers at the battle of Savannah.”¹³⁵ In response, prominent leaders of the free people of color’s militia “petitioned Royal officials in France for changes in the colony’s racial laws, “wishing to wear the royalist white cockade, [which] were prohibited by the triumphant bureaucrats. Rejected in France, and humiliated at home, the mulattos organized a revolt. It was the quarrel between bourgeoisie and monarchy that brought the Paris,”¹³⁶ that created political traction for non-whites’ requests. It would be only after the beginning of the French Revolution that free colored activists [found what] they needed, ‘to plead for their equal rights’.

In 1788, an anti-slavery movement started to develop in France and had a major influence on the continuation of slavery in France's colonies. Out of this movement emerged the political group titled ‘Societe des Amis ses Noir’ (Society of the Friends of Blacks). This group quickly made political connections with white colonists and free people of color in Saint-Domingue, because of these connections, members of the Society of the Friends of Blacks would begin to make consistent efforts to be involved in the metropole’s legal decisions regarding Saint Domingue. Even though their participation was unwanted by royal officials, they proceeded in their endeavors to provide contributions to the metropole and were later offered attendance to the meeting held in Versailles on June 1789 by the Estates-General. The meeting included the clergy (First Estate), nobility(Second Estate), and the common people of France(Third Estate). During this meeting, the Third Estate’s pleas for equality were disregarded resulting in the formation of their own convention; the National Assembly.¹³⁷ The National Assembly would later become the legal voice for the French Revolution and would be responsible for

¹³³ Laurent Dubois. *Supra* note 94.16.

¹³⁴ *Id.*, at 38.

¹³⁵ *Id.*, at 16.

¹³⁶ *Id.*, at 73.

¹³⁷ The first revolutionary government of the French Revolution which consisted of the Third Estate, the peasantry.

drafting the Declaration of the Rights of Man.¹³⁸ The declaration¹³⁹ would not only change the social patterns and distinctions in France but also in its colonies, by attempting to ensure that every citizen would have the right to liberty, property, and security. Article 1 of this declaration states, “Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.”¹⁴⁰ The free people of color would utilize this article along with others as an argument to be equally integrated into French society. They explained how they are as qualified as their white counterparts for inclusion. The Free Citizens of Color address the National Assembly on October 22, 1789, and “[t]hey claim the rights of man and if citizen, those inalienable rights based on nature and the social contract, those rights that you have do solemnly recognized and so faithful established when you established as the foundation of the constitution ‘that all men are born and remain free and equal in rights.’”¹⁴¹ While also drawing attention to Article LIX of the Code Noir’s definition of their right to be considered ‘Free and French’. At the same time in Saint-Domingue, “Planters...described this document as the ‘terror of the colonists,’ and a potential threat to slavery.”¹⁴² The pursuit for inclusion by the mulattos and the looming threat of slavery inaugurated discontentment amongst the poor white class who were already struggling for economic opportunity. The Declaration of the Rights of Man altered the trajectory of the French Revolution but most importantly would sow hopes of a transformed society in Saint-Domingue, where free people of color were properly accepted as French citizens. The Declaration inserted an equal rights discourse into the law which would cause a small tear in the class system of France. The class system will eventually be shredded apart through the Third Estate’s sanguinary revolution. This same discourse began to break apart the stratification system in Saint-Domingue, particularly between the free people of color and the whites on the island.

In the paragraphs above I have laid out the social, political, and legal climate of both Saint-Domingue and France while alluding to how these social connections between the two provide the pretexts for the potential abolishment of slavery and equality for free people of color. I

¹³⁸ Declaration of the Rights of Man. See https://avalon.law.yale.edu/18th_century/rightsof.asp

¹³⁹ See Louis Sala-Molins and John Conteh-Morgan. *Dark Side of the Light: Slavery and the French Enlightenment*, University of Minnesota Press, 2006.

¹⁴⁰ *Id*

¹⁴¹ Laurent Dubois, *supra* note 94, at 69.

¹⁴² *Id*, at 19.

have also made intentional efforts to pinpoint the Code Noir's production of a stratification system and how it generates strata groups based on race. This strata system allows for the endless control of Black bodies to ensure the continuation of wealth in the economy. Yet, France's class system still impacted individuals on the island. It is possible to conclude that the Code Noir managed racial relations and put in place the infrastructure for a class distinction. A valid inference but it does not fully encompass the rare nature of French colonial society. The Code Noir did manage race relations, but it also produced colored subjects who would be injected into the pseudo-class system of Saint-Domingue while displacing others; the poor whites.

“The white population was divided in complex ways and many whites were waiting for an opportunity to transform their relationship with France and improve their economic possibilities. Free people of color, many of them wealthy and content with the economic order, were frustrated by the legal discrimination and hoped to challenge the racial order. Most importantly, the enslaved lived under a brutal regime and were ready to revolt when they saw an opening.”¹⁴³

Hence, the Code Noir “rationalized the functioning of an artificial society where class exploitation and the exploitation of an inferior race were one and the same.”¹⁴⁴ The Code set the stage “for an intertwined set of struggles over the status of free people of color, administration of the colonies, and the question of slavery itself.”¹⁴⁵

It was aforementioned that the poor whites of Saint-Domingue were a part of France's peasantry class. those who the king placed at the bottom of the social ladder; “vagabonds, outlaws, artisans, tradespeople, prisoners, sailors, [etc].”¹⁴⁶ The social status of the peasantry had an incapacity to ascend up the French economic ladder. The incapacity for ascension also limited poor whites' access to basic rights and governmental participation. As a result, poor whites had their own reasons to participate in the equal rights discourse after the release of the Declaration of the Rights of Man, because of their displacement from society by either wealthy Frenchmen or wealthy free people of color. Poor whites are at the focal point of the

¹⁴³ Laurent Dubois. *supra* note 94, at 18.

¹⁴⁴ Jean Casimir. *supra* note 4, at 152.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*, at 103.

intersection of French and Saint Domingue society. Their role at this intersection is encompassed by friction as they attempt to establish themselves as equal citizens, in the midst of constant economic displacement. The existence of poor whites reveals that the French did not account for the semi-replication of their native class system in their colonies. Poor whites originally came onto the island as indentured servants who had worked on plantations and in wealthy planters' homes. Soon after wealthy planters began to realize that whites could not labor as well as the enslaved, these whites lost employment and then re-settled into their positions as a part of the French peasantry¹⁴⁷ class. As free people of color began to assimilate and experience economic advancement, poor whites began to remain in the same class status. They did not experience economic movement like free people of color; this imbalance resulted in feelings of jealousy, regret, and anger. Throughout the existence of Saint-Domingue, we know that race and racism guided the behavior and treatment of colored bodies. Discrimination, based on race, didn't emerge until poor whites began to experience their own displacement because of free people of color. However, on May 15, 1791 "the National Assembly voted to give full citizenship to free men of color whose mothers and fathers had been born free and owned sufficient property."¹⁴⁸ A decision that led to an increase in the variance between the free people of color and whites in the colony. In the months of June and July, armed conflict broke out and concentrated around major areas of the island which inevitably involved the current enslaved. Poor whites in the name of the French revolution and against economic inequalities wanted their rights and their ability to be recognized as free and equal. These economic and racially armed battles would lead up to the official beginning of the Haitian Revolution.

Additionally, wealthy whites also had "their own complaints against the colonial system."¹⁴⁹ Many resented France's trade laws, "which prohibited them from selling their sugar directly to the profitable foreign market and from buying slaves from foreigners."¹⁵⁰ Additionally, they

¹⁴⁷ Further, as we think through the difference between what it meant to be a peasant versus what it meant to be a slave, race is at the center of this difference. It has been agreed that "to be compared to a peasant, a particular character has to be subjugated. The peasant owes their condition to divine providence, while the slave is the product of the will of a master protected by the machinery of the state."

¹⁴⁸ Laurent Dubois, *supra* note 94, at 22.

¹⁴⁹ *Id.*, at 16.

¹⁵⁰ *Id.*

opposed the many legal attempts of the royals “to humanize slave conditions” in 1784 and 1785, and the Supreme Council of Le Cap refused to “register the decrees.”¹⁵¹ Due to their subversion, the royals shut down the council, leading to strife between the colonies and its metropole, causing the continued ill-treatment of enslaved bodies. The metropole attempted to advise the colony with the belief that “the unchecked brutality planters might provoke a slave revolution.”¹⁵² Their efforts were unsuccessful because, in 1791, the slave insurgency began as the enslaved “presented themselves as defendants of the king of France...[by reason of the] royal attempts to better their conditions.”¹⁵³

The ability to become and fully operate as a French citizen was the goal for free people of color, poor whites, and wealthy whites. An active French citizen is someone who owns sufficient property and has the ability to contribute to the economy, and only a small sector of French society could claim active citizenship. Active citizens were “property owners who were almost all Creoles” and passive citizens “who were almost all agricultural laborers.”¹⁵⁴ The phrase ‘free and French’ in Saint-Domingue only applied appropriately to wealthy planters. As poor whites did not attain this status of active citizenship because they could not attain a certain economic status. Free people of color would strive towards active citizenship but were limited because of their African ancestry. All other inhabitants of the island were non-active citizens and were subjected to laws imposed on them, given the inability to actively participate with the law. Their attempt at participation was ignored, inducing the creation of political groups to rebel against their ruling government. This restriction on participation is successful because these bodies exist within the realm of legal subjectivity. All social stratas of Saint-Domingue were affected by this realm of legal subjectivity because there were areas of their social lives due to the legal subjugation that was placed upon them, engendered by colonialism.

Even though there were unattainable limitations placed on wealthy planters, poor whites, mulattos, and free people of color nothing could compare to the social prison that the enslaved

¹⁵¹ *Id.*

¹⁵² *Id.*, at 17.

¹⁵³ *Id.*

¹⁵⁴ Jean Casimir, *supra* note 4, at 155.

were forced to exist in. “The Black person is a slave, and the slave is black. His creation and his exploitation belong to the realm of social relations and not that of natural law.”¹⁵⁵ The Black person, the slave, was stratified as property. This property benefited all those who had the ability and access to participate in the colony's economy even if the partaking was limited for some. The stratas above the enslaved had the ability to use their limited power on the enslaved population. Foucault's concept of power implies that power only exists “when it is put into action, it is integrated into a disparate field of possibilities brought to bear upon permanent structure .”¹⁵⁶ Power is not vindicated on consent, “itself is not a renunciation of freedom, a transference of rights, the power of each and all delegated to a few [but it] does not prevent the possibility that consent may be a condition for the existence or the maintenance of power.”¹⁵⁷ Nevertheless, power is not in its “nature the manifestation of consensus,”¹⁵⁸ but a result of violence. Foucault explains that violence reveals the ‘primitive form of power’ or its origin among men.¹⁵⁹ Power is “a mode of action which does not act directly and immediately on others...it acts upon their actions: an action upon an action, on existing action or on those which may arise in the present or the future.”¹⁶⁰ Power is the instrument that makes a subject subjugated to the law. It is power and its imbalance that contributes to the maintenance of Saint-Domingue's social system.

The enslaved of Saint-Domingue's legal subjugation cultivated their existence as the Haitian legal subject. This subjectivity is formed via the attachment of the enslaved's labor to the financial benefit of the metropole and its colony. Haitian legal subjectivity is the absence of personhood from the enslaved by strictly focusing on their labor and financial production. The Haitian legal subject is not an active citizen, a person, or a foreigner. They are property, legally defined by the Code Noir. The law of colonialism maintains their status as property, to satisfy all the needs of their masters. The Haitian subject is made silent and devoid of individuality. They did not have a perceived culture, autonomy, or a family. The Haitian subject was trapped within the captivity of the French colony. Its subjectivity existed for French

¹⁵⁵ *Id.*, at 109.

¹⁵⁶ Michel Foucault. *Supra* note 6. 788.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

colonists. In result, the only story that can be told in relation to the Haitian subject is the successful conquest over them by the French. The Haitian legal subject is a created and imaginary sector of existence that perpetually attempts to remove personhood from an individual. It is an ongoing process that does not cease.

B. Black Personhood

Though the Haitian legal subject's actuality was predicated on the suppression of Black or African identities in both the individual and communal sense. Its actuality was stifled by those who worked to oppress it. The Code Noir, the royals, the wealthy planter, the poor whites, and even the free non-whites did not account for the unbreakable existence of 'Black personhood'; the being of the African before captivity and the fashioning of enslavement. It was this 'Black personhood' that contributed to plantation owners' and planters' harsh treatment of those who were prior to captivity. Some of the enslaved were African war heroes and leaders, who were militarily trained in Africa due to the multiple civil wars that broke out amongst the native tribes. Casually, when captives were brought to the island revolts and insurgencies broke out. Africans did not 'easily adjust' to colonial subjugation and they constantly warred against it. The captives were rebellious, and their rebellion was made unseen by categorizing it as defiant or criminal. These rebellions looked like suicide, running away to join maroon groups, poisoning their 'owners', and even killing their own children. The enslaved knew the life that was taken away from them off the coast of Africa was a life of freedom. A life outside of the scope of European legality and this capitalist system. A life that involved agency, autonomy, and individuality. The existence of this 'Black personhood' that was bound to their African sense of self substantiated the fact that slavery was the problem, not the African. This idea was made evident by insurgency and unmeasurable violence.

During the 1750s, the enslaved began using nature to carve their way to freedom. This new form of resistance was taught by the herbalist and spiritual leader Makandal.¹⁶¹ Makandal was an enslaved African who 'freed himself' and resided among the marróon communities dwelling in the mountains of Ayiti. Makandal provided lessons in modern-day toxicology, botany, and

¹⁶¹ CLR James, *supra* note 37, at 21.

the art of poison. His knowledge was connected to his practice of the Voodoo religion. It has been said that,

“Saint-Domingue’s most significant episode of prerevolutionary slave resistance began around 1752 when the charismatic slave Makandal was alleged to be poisoning whites and their livestock in the north province. This rumor created a kind of hysteria among colonists. Although they captured and executed Makandal in 1758, his ability to create networks of resistance linking workers on different plantations provided an example for the successful revolt of 1791. The stories that circulated about his exploits both among masters and slaves helped keep alive the idea that a dramatic change in the social order was possible.”¹⁶²

Makandal orchestrated the killing of over 6,000 French men and their many Black collaborators through the cooking of enslaved women over the course of 18 years. Black collaborators were those who were loyal and obedient to their white masters, and willing to betray their Black peers. The existence of these individuals is partly attributed also to the Code Noir, and its promises of freedom that can only be granted by white plantation owners. The collaborators would go on to sabotage the enslaved’s progression towards freedom. They were workers in the homes of the white colonists or Black plantation overseers. Before “the *maréchaussée*,¹⁶³ the colonial police force captured him in 1758. Makandal was burned alive after he was turned in by a collaborator but in his final moments, he made a prophetic speech where he mentioned that he will be reincarnated as a mosquito. Years later when French troops began to invade the island during the revolution thousands of soldiers died of malaria while the enslaved fighting for liberation remained unharmed. Makandal’s herbal rebellion continued to shape Saint-Domingue as a rebellion continued long after his murder through the art of poison and his last prophetic words.

Dutty Bookman was another leader whose methods shaped the start and longevity of the Haitian Revolution. He was an Islamic leader of slave resistance in Jamaica and then sold by the British to the French. He was sold because the British did not want to kill him because

¹⁶² Laurent Dubois, *supra* note 94, at 18.

¹⁶³ The police organization was mainly made up of mulattos who “arrest[ed] fugitive Negroes, protect[ed] travelers on the high road, captur[ed] dangerous Negroes, [fought] against the maroons.” See CLR James, *supra* note 37, at 87.

they believed an uncontrollable rebellion would ensue. Most importantly the French were known for their success at breaking down rebellious slaves so the colonist believed that Bookman would be controlled. Bookman and a woman by the name of Cecilia Fatima,¹⁶⁴ gathered a group of both enslaved and marronage individuals for the infamous spiritual ceremony Bois Caiman which took place in an alligator swamp. This ceremony brought the enslaved Africans together in remembrance of their culture, religion, and freedom.¹⁶⁵ This ceremony has been described as demonic, barbaric, and the cause of Haiti's consistent suffering as a nation. The Haitians sold their souls to the devil in the name of freedom, said Pat Robertson a Christian televangelist. Considering this, I would like to draw your attention back to the ceremony performed by Christopher Columbus in 1492 titled Requerimento. Columbus performed an outrageous ceremony before he killed thousands of Tainos, but this would be remembered as him discovering America not as an act of violence against colored bodies. A major difference between the two ceremonies is that one has been hidden and forgotten, while the other has been exposed in such a way that emphasizes the assumed savage nature of modern-day Haitians. When in actuality Bois Caiman was a ceremony of connection, of community, and most notably of freedom. Consequently, Bookman was later executed for his revolutionary ideas, but his legacy of revolution would live on. Despite the execution of both Makandal and Bookman, the Haitian Revolution continued and only because of the communal effort of enslaved Black bodies.

¹⁶⁴ Cecilia spent about four years traveling around Saint-Domingue to assemble enslaved Africans for this ceremony. Her efforts are one of the main reasons for its success.

¹⁶⁵ According to CLR James, "There Boukman gave the last instructions and, after Voodoo incantations and the sucking of the blood of the stuck pig, he stimulated his followers by a prayer spoken in creole." See CLR James, *supra* note 37, at 87.

*This God who made the sun,
who brings us light from above,
Who raised the deal and who makes the storm
tumble,*

*That God is there, do you understand?
Hiding in a cloud,
He watched us, sees all the whites do!
The God of the whites pushes them to crime,
but he wants us to do good deeds.
But that God who is good orders us to vengeance;*

*He will direct our hands, and give us help,
Throw away the image of the God of the whites
who thirst for our tears,
Listen to the liberty that speaks in all our
hearts.¹⁶⁶*

C. The Revolution

Burn it all down!

Haitians were empowered by their communal spiritual encounter and decided that they wanted their lives back. The fullness of “Black personhood” becomes visible and we can now understand why it is important to bear in mind that “to be Haitian in Haiti means to be Black, and the more Black one is, the more Haitian one can be.”¹⁶⁷ Blackness is a direct connection to one's African ancestry, culture, and being. This idiosyncratic group of individuals cannot be fully contained within the social strata categories that exist in France's colony. They most certainly cannot be reined in to fit the mold of the Haitian legal subject. From captive to enslavement, ‘Black personhood’ attempted to reveal itself through insurgencies, suicide, and marronage. An existence restrained on “an island of repose in the midst of racial oppression and objective dehumanization.”¹⁶⁸ Achille Mbembe's notion of blackness is fitting to provide meaning to the discord between the Haitian legal subject and ‘Black personhood’. The two cannot exist peacefully,

¹⁶⁶ Laurent Dubois, *supra* note 94, at 88. See also CLR James, *supra* note 37, at 87.

¹⁶⁷ Achille Mbembe *CRITIQUE OF BLACK REASON*, (2013), 47.

¹⁶⁸ *Id.* at 48.

they are always contending for control over the individual or over the community. Since the two are contending for control one identity has to win over the other. One has to constantly be destroyed for the other to endure. Mbembe explains that blackness could be transformed “into a symbol of beauty and pride” and “a sign of radical defiance, a call to revolt, desertion, or insurrection.”¹⁶⁹ I would say 'Black personhood' works to destroy the Haitian legal subject to ensure its already existing beauty and pride. For its own defiance, revolt, desertion, and insurrection against the systems of power that cause subjugation. This symbol of beauty and pride is what millions of Haitians celebrate every year on January 1st. The start of the ongoing violent takedown of the colonial project. Specifically, the French colonial project and its attempts to sustain the *colonial matrix of power*. The colonizer was required to re-understand the former captive as human, because the violent outbreak could not be ignored or contained; it could only be used to shed light on the needed liberation of a people group as they burned their way through the island of Saint-Domingue.

On August 22, 1791, plantations and homes were set ablaze by those empowered by Bois Caiman. According to CLR James “[t]here were perhaps 12,000 slaves in Le Cap, 6,000 of them men. One night the slaves in the suburbs and outskirts of Le Cap were to fire the plantations. At this signal, the slaves in the town would massacre the white and the slaves on the plantation would complete the destruction.”¹⁷⁰ The [enslaved] “destroyed tirelessly. [T]hey were seeking their salvation in the most obvious way, the destruction of what they knew was the cause of their sufferings; and if they destroyed much it was because they had suffered much.”¹⁷¹

The whites on the island were inattentive to a possible slave revolt. By the fourth day “whites of the six parishes were either refugees, prisoners, or corpses. Flames had consumed one hundred sugar [plantations]; and twenty thousand slaves, once peaceful and submissive, were now so many cannibals, threatening Cap Francois with the same fate.”¹⁷² Colonists did not understand that the enslaved of Saint-Domingue did not care about the fate of Saint-

¹⁶⁹ *Id.*, at 47.

¹⁷⁰ CLR James, *supra* note 37, at 86.

¹⁷¹ *Id.*, at 88.

¹⁷² Laurent Dubois, *supra* note 94, at 93.

Domingue or even about their own livelihood. They cared about leaving a legacy of freedom for Black bodies to come. As mentioned previously, “the vast majority of ancestors who set in motion and lived through the revolutionary period had arrived directly from Africa and had been familiar with merchant slavery only for two or three decades at most. There is no proof that they interiorized the idea of Black inferiority lauded by plantation society. Their colonial experience, instead, was more of resistance to oppression than of servile submissiveness of chained servants.”¹⁷³ Ergo, dying for the enslaved Africans was an opportunity to return to their ancestors, which meant a return to Guinea.¹⁷⁴ There was no fear of death, but there was always hope for eternal freedom. ‘Modern’ Haitians are known for not fearing death and this perception can be traced back to the revolutionary period, as a spiritual form of rebellion.¹⁷⁵ The Haitian Revolution displays the many manners in which African bodies die bravely whether if that was by beheading, boiling, drowning, shot, burnt at the stake or gas.

The Revolution was started for and by the enslaved population, but the Revolution eventually was overpowered by the affairs of the colony. Saint-Domingue was in a state of political and legal chaos leading up to the Revolution that this chaos did not cease with an uprising from the island's enslaved population. The enslaved insurrection added supplementary disorder to the social space of Saint-Domingue, as the colony's economy was burned away. The disorder was quickly used for the benefit of those who understood how to subjugate in the name of active citizenship. The conflict became consumed by the political unrest in France and their inability to maintain their own instituted infrastructures. In result, the attention of the Revolution shifted to focusing on the attainment of economic success regardless of strata, class, or race, which meant placing the being of 'Black personhood' back within the extremities of the Haitian legal subject. An erasure emerges as the colonizer attempts to use their fight for freedom to maintain their imprisonment within the *colonial matrix of power*. “Black personhood” is erased from its own story of freedom, by the silent transformation back into the Haitian

¹⁷³ Jean Casimir, *supra* note 4, at 135.

¹⁷⁴ The transmigration of the soul is a common thread in the spiritual traditions of Africans. Transmigration of the soul means that the soul is internal. ‘I rather be dead than be a slave’ was the thought that a lot of Africans who were being subjugated to slavery had. A response to this way of thinking was the act suicide.

¹⁷⁵ According to CLR James, “Suicide was a common habit, such was their disregard for life that they often killed themselves, not for personal reasons, but in order to spite their owner. Life was hard and death, they believed, meant not only release but a return to Africa.” CLR James, *supra* note 37, at 16.

legal subject. The political and legal decisions made at this time will silence Black individuality by the creation of a new creole social category: *the cultivator*. A position that is still exploitative and economically productive for those who withhold power while keeping the Black body silent.

France was already in its own revolution and experiencing radical shifts to its political and legal infrastructure. Initiating, the first French constitution drafted by the National Assembly in 1791, which later led to the communal dismissal of Louis XVI from power. In 1792, King Louis XVI and Queen Marie Antoinette were arrested, and France proclaimed itself as a republic. The National Convention then wrote a new constitution, “that eliminated the monarchy and placed all power in the hands of the legislators.”¹⁷⁶ The former king was then tried for treason and executed on January 21, 1793, a decision that “led to a war with England and Spain”, which established its battlegrounds in Saint Domingue. Prior to the commencement of the Revolution, an internal conflict already existed between free people of color and the poor whites. The political climate between the colony and the metropole was in disarray because both social stratas desired equal rights along with inclusion. In consideration of the enslaved insurrection, the metropole began to believe that the freed men of color of Saint-Domingue were the “best defense against the growing slave rebellion.”¹⁷⁷ In view of that fact “The security of the *master* class rested on the cooperation between whites and the free people.”¹⁷⁸ Thus, the Legislative Assembly voted for a “colonial law, reversing the September decree of the Constituent Assembly. The law extended citizenship to all free men of color, urging them to join other colonists in repressing the rebel slaves.”¹⁷⁹ The French understood that Free people of color were “at home among the slaves, and in addition to his wealth and education, could have an influence among them which a white man could never.”¹⁸⁰ It is later on with the rise of revolutionary political and military leader Toussaint Louverture that this decision proves itself indispensable. In response to the colonial decision made by the Legislative Assembly, France began to send revolutionary commissioners to Saint-Domingue

¹⁷⁶ Laurent Dubois, *supra* note 94, at 26.

¹⁷⁷ *Id.*, at 28.

¹⁷⁸ *Id.*, at 15.

¹⁷⁹ *Id.*, at 26

¹⁸⁰ CLR James, *supra* note 37, at 39.

to quell the rebellion through political negotiations. These commissioners relied heavily on “the newly enfranchised men of color, promoting them to both military and administrative positions.”¹⁸¹ The Revolution was not about one war with many battles but many wars that fought many of the same battles. The stratification system is what caused the Revolution to break up into many wars with the intention of leading stratas to rise to the top. Each social category had their own reasoning for violence, and all wanted their own dominant victory. The difficulty with this inference is the misconception that all stratas struggled for power were the same, but this is untrue. The enslaved’s combat for a ravenous freedom, was unconnected from legality and control within matrices of power. To reiterate it was a return to full self, a return to Guinea within the borders of Saint-Domingue. For this reason, we can surmise that the lighting of a fire on August 22, 1791, was not just about a release from slavery but a release from the formal hegemonizing participation in colonial society. This desire for release contributed to the continuation of Black resistance even after the colonial decision of 1795.

The conflict in Saint-Domingue stopped being about the contention regarding the abolishment of slavery for those who withheld colonial power. The colonists observed that the rebellion proved itself useful in defending the invasions of Spain and Britain. They saw the abolishment of slavery as a temporary decision that could prevent the eternal destruction of the French colony. The official abolishment of slavery began first in Saint-Domingue and then in France. Saint-Domingue’s commissioners abolished slavery in the north providence with the hopes that the née enslaved would join forces with French to fight the Spanish and the British in the current imperial war, other providences began to follow suit by abolishing slavery with this goal in mind. The emancipation in Saint-Domingue led to the National Conventions’ official decision to end slavery throughout the French Caribbean. France’s new Constitution of 1795 contained specific antislavery language and affirmed that the colonies would have the very same laws as France. No geographical or ethnic limits could exclude people from being and acting as French citizens.”¹⁸² Slavery was abolished but the imperial war continued. The French, Spanish, and the British were battling now to claim the island of Saint-Domingue for

¹⁸¹ Laurent Dubois, *supra* note 94, at 26.

¹⁸² *Id.*, at 29.

themselves, notwithstanding the years of agricultural damage the island sustained.

Some of the Revolution's key leaders were Toussaint Louverture, Jean Jacque Dessalines, Henri Christophe, Alexandre Pétion, Jean-Pierre Boyer, etc. They challenged the concepts that maintain the color lines within France's colonial empire, but some would attempt to establish steps towards legal colonial consciousness. Even though there were many leaders of the Revolution, Toussaint Louverture is placed at the forefront of Haitian revolutionary history. It is Louverture, his née enslaved army, and his deep desire to be accepted as free and French that dictated the success of France's military advantages against the British and Spanish. At the start of the imperial war following the slave insurrection, Toussaint Louverture formed a military allegiance with the Spanish but following the abolishment of slavery he switched military allegiance and the course of the war shifted. Louverture right away became the most important French military officer assisting in the imperial war. Louverture, née enslaved, and the French fought tirelessly against the Spanish and the British which eventually prompted a peace treaty in 1795 between the French and Spanish. Toussaint then was tasked with channeling all his expertise into defeating the British and with time he did. Toussaint became a politician as he became the "leading French officer of color."¹⁸³ He would "dominate political life in Saint-Domingue from 1794 until 1802."¹⁸⁴ His politics were attentive to proving himself as a sufficient leader in a colony deserving of French citizenship and nobility. Albeit his inclinations towards the abolishment of slavery Louverture will still be found operating within the space of coloniality. Evident in his actions towards maintaining not only a connection with France as a metropolitan power but also in his efforts to sustain plantation society.

Slavery was abolished in 1793 but revolutionary commissioners "implemented a series of labor regulations meant to keep former slaves working on plantations, where they were to be paid with part of the commodities they produced."¹⁸⁵ Within the existence colonial power,

"The freed could not rid themselves of these tools, which were the foundation for

¹⁸³ *Id.*, at 31.

¹⁸⁴ *Id.*, at. 30.

¹⁸⁵ Laurent Dubois, *supra* note 94, at 32.

their existence. They received them as a subordinated group, a disdained minority. Their survival depended on the dexterity with which they appropriated and used these conceptual tools for the maintenance of public order. As an intermediary group, they did not possess, nor could they invent, a form of social thought different from that of their masters.”¹⁸⁶

The desire of economic prosperity caused the elimination of the slave trade to cause the freed slaves to be forced into a ‘new’ social group. This was done “by abandoning the system [that called for the replacement of] bossales by new bossales.” Instead, it launched a “general development of slave labor on site, which would replace these bossales with Creole slaves [or cultivators]. At the end of all of these changes, the Creole slave would be able to change their condition by buying their freedom and becoming a ‘free’ worker, and consumer according to the European economic model.”¹⁸⁷ Creole meaning developed outside of France but within the scope of Frenchness. ‘Creole’ “refers to something or someone that had foreign (normally metropolitan) origins and that had now become somewhat localized.”¹⁸⁸ It was the same exploitative labor model with a new name and the *née* enslaved actively resisted the implementation of this new form of exploitative labor and its efforts to conserve the plantation society in Saint-Domingue. A consequence of the Code Noir was the forced appropriation of the Creole identity. The Creole slave is the transposition of the freed slave into the *cultivator*, distinctly developed by property owners within white and non-white social spaces. A continuation of the colonial projects’ will to accumulate wealth at all costs. The transposition will only change the name of the social strata of the enslaved but will retain the enslaved in a space to only financially benefit those in power. The rebaptizing of the enslaved colonial worker is pivotal as it “marked out the territory...to contain the agricultural worker in the nineteenth century.”¹⁸⁹ In the face of resistance, Louverture, free men of color, along with the French commissioners “were convinced that the export economy had to be maintained, and continued to enforce and refine plantation policies.”¹⁹⁰ The continuation of plantation society

¹⁸⁶ Jean Casimir, *supra* note 4, at 100.

¹⁸⁷ *Id.*, at 71.

¹⁸⁸ Robin Cohen Creolization and Diaspora-the Cultural Politics of Divergence and Some Convergence, *in*, OPPORTUNITY STRUCTURES IN DIASPORA RELATIONS: COMPARISONS IN CONTEMPORARY MULTI-LEVEL POLITICS OF DIASPORA AND TRANSNATIONAL IDENTITY, (Gloria Toticagüena 2007), 4.

¹⁸⁹ Jean Casimir, *supra* note 4, at 102.

¹⁹⁰ Laurent Dubois, *supra* note 94, at 32.

led to Louverture's ability to rebuild a portion of the colony's economy through an increase of coffee exports and the reconstructing of sugar production. In the end there was one type of society that needed to be carried on and it was grounded in plantation production. This attests to the idea that, "leaders of a revolution are usually those who have been able to profit by the cultural advantages of the system they are attacking, and the [Haitian Revolution] was no exception to this rule."¹⁹¹ The political and economic efforts of Louverture displays the way in which the colonial project can continue even through those it subjugates.

In 1802, the Revolution returned to its original intent free the Haitian legal subject from its bondage. The transition was due to the arrival of Napoleon Bonaparte who made the decision to,

End all prevarication with Saint-Domingue by abrogating the decree of the abolishment of slavery, decreeing the deportation of all property-owning citizens who were not white, and ordering the extermination of the newly freed so that the island could be repopulated. In the wake of the general insurrection, the re-establishment and success of the plantation economy demanded the renewal of the labor force, either by the sword, by forcing assent through torture, or by preventing access to land.¹⁹²

His instructions were simple "to get rid of Toussaint and the Black leaders, both Negroes and mulattos, and then to re-establish slavery."¹⁹³ It was Bonaparte's attempt to reinstate slavery that united the freed people of color, freed blacks, and the enslaved of Saint-Domingue against the French. With the reinstatement of slavery also came discrimination against the free people of color who would be subjected to slavery under Napoleon Bonaparte's instructions. Louverture's allegiance to France quickly dissolved and he worked alongside the other revolutionary leaders to fight for the island's eternal freedom. Louverture, in a letter dated February 1802 to Jean-Jacque Dessalines, provided instructions to "Tear up the road with a shot; throw corpses and horses into all the fountains, burn and annihilate everything in order that those who have come to reduce us to slavery may have

¹⁹¹ CLR James, *supra* note 37, at 19.

¹⁹² Jean Casimir, *supra* note 4, at 279.

¹⁹³ Dantes Bellegarde *Alexandre Pétion: The Founder of Rural Democracy in Haiti*, in, vol. 3, CARIBBEAN QUARTERLY, no. 3, (1953), 169.

before their eyes the image of that hell which they deserve.”¹⁹⁴ Despite the awareness of the concluding plans of Bonaparte, Louverture still believed that he had the ability to appeal to the leading French power using his political strategy. Louverture believed strongly that his Frenchness and his accomplishments as a French military officer would lead to successful negotiations with Bonaparte. His beliefs lead to his ultimate demise as he was captured and deported to France. He was imprisoned in the Fort of Joux in the Jura, and died on April 7, 1803, after ten months of rigorous captivity.”¹⁹⁵

A Black body, a mulatto body, a formerly enslaved body will and can never be French. These beings will only be used for the political and economic gain of the metropole. The Revolution continued in spite of Toussaint Louverture’s death as it broke down the walls of Haitian legal subjectivity and as “Black personhood” resurfaced as the leading state of being of those who made up the majority of those fighting against the French. The née enslaved are disposed of and the Haitian emerge.

“Take courage, I tell you, take courage. The French will not be able to remain long in San Domingo. They will do well at first, but soon they will fall ill and die like flies. Listen! If Dessalines surrenders to them a hundred times, he will deceive them a hundred times. I repeat, take courage, and you will see that when the French are few we shall harass them, we shall beat them, we shall burn the harvest and retire to the mountains. They will not be able to guard the country and they will have to leave.”¹⁹⁶

¹⁹⁴ CLR James, *supra* note 37, at 300.

¹⁹⁵ Dantes Bellegarde, *supra* note 192, at 169.

¹⁹⁶ Michel Foucault, *supra* note 6, at 788.

The last two years of the Revolution were critical to the succession of Saint-Domingue to the *née* enslaved, the Haitians. According to Foucault, “[w]e must cease once and for all to describe the effects of power in negative terms: it ‘excludes’, it ‘represses’, it ‘censors’, it ‘abstracts’, it ‘masks’, it ‘conceals’. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production.”¹⁹⁷ The opposition to the effects of power in Saint-Domingue was led ruthlessly by Jean Jacques Dessalines, *née* enslaved, after the death of Louverture. He had no interest in being French or accepted by the French. He desired freedom for himself and for those who were victims of the cruelties endured under the violent oppression of French colonists and their imperial puppets. Dessalines understood that “It was the behavior of the laboring classes reduced to slavery, [who was not a] part of the visible power structure, that both built the colonial political system and [who could dig] its grave.”¹⁹⁸ Dessalines proclaimed, “I shall make you independent. There will be no more whites among us.”¹⁹⁹ Dessalines was the only revolutionary leader who proclaimed independence for both the island and its people. He was violent and at times ruthless because he knew the only way to eradicate his oppressor was through a phenomenon of violence. A violence that in its own way needed to be comparable to and at times worse than what he and his counterparts endured. He then, ordered the creation of the Haitian flag by ripping out the white from the tricolor French flag. With the creation of the Haitian flag became the official symbol of unity of Black and mulattos under one common goal which was to dispel the French at any means necessary. Dessalines in his orders to decimate the French would cry “Koupe tèt, brule kay,” meaning, “Cut their heads, burn their houses.” A colonist stated that, “It was evident that we no longer inspired moral terror, and it is the greatest misfortune that can befall an army.”²⁰⁰ The Revolution with Dessalines as its leader reached its purpose as a decolonization movement. Dessalines’ efforts brought a natural rhythm into existence, introduced by new men, and with it a new language and a new humanity. Dessalines brought to the surface a new species of being not one due to the encounter with the colonial but one pre-existing but trapped within the Haitian legal subject. “Black personhood” led Dessalines and the *née*

¹⁹⁷ Michel Foucault *DISCIPLINE AND PUNISH: THE BIRTH OF A PRISON*, (1991), 194.

¹⁹⁸ Jean Casimir, *supra* note 4, at 95.

¹⁹⁹ CLR James, *supra* note 37, at 314.

²⁰⁰ CLR James, *supra* note 37, at 317.

enslaved towards and to freedom. After the bloodstained battle of Vertières, Dessalines on January 1, 1804, announced the independence of Saint-Domingue and renamed the island Haiti or Ayiti, 'land of high mountains,' in remembrance of the Tainos, the island's indigenous people. His "proclamation marked both the birth of the second independent nation in America and the entrance of a Negro people into the society of civilized nations. It was also an eloquent affirmation of human liberty and of the equality of races."²⁰¹ To seal independence for his people he orders the slaughter of the remaining French citizens on the island ensuring that the island and its newly free dwellers would be free and absent of all Frenchness. Ayiti would represent the concepts of a sovereign people. Creole phrases like "tout moun se moun— every person is a person," which translates more accurately as 'all people are of equal value,'"²⁰² would be the guide of the Haitians transition into fully expressed prideful sovereignty. "The sovereign people are the parents of their own minds,"²⁰³ and the temporary designers of the first 'free Black republic'.

Power. Movement.
Consciousness. Death.
Freedom

²⁰¹ Dantes Bellegarde, *supra* note 192, at 169.

²⁰² Jean Casimir, *supra* note 4, at xix.

²⁰³ *Id*

IV. The Continued

*As the contradiction among the features creates harmony of the face, we proclaim the oneness of the suffering and the revolt.*²⁰⁴

Etched in blackness is where we find the Haitian historical rhetoric of freedom. Yet, within this rhetoric the Haitian reality is strangled by a colonial matrix conceived on account of enslavement. Its stranglehold repurposes French colonialism through forms of endemic internal and external relations relating to and produced by modes of neo-imperialism and neo-colonialism. In response to these unchangeable relations, Haiti had to develop its own sense of legal consciousness. With the intention of dealing with not only the majority's sense of communal identity but intimidating pressure from the international community, and the social hierarchical system that existed due to the Code Noir. Liliana Obregón in *Between Civilization and Barbarism: Creole Interventions in International Law* explains that,

Consciousness refers to the total contents of a mind, including images of the external world, images of the self, of emotions, goals and values and theories about the world and self. [Legal consciousness] is a only slightly more defined notion [than consciousness]. It refers to the particular form of consciousness that characterizes the legal profession as a social group, at a particular moment. The main peculiarity of this consciousness is that it contains a vast number of legal rules, arguments, and theories, a great deal of information about the institutional workings of the legal process and the constellation of ideals and goals current in the profession at a given moment.²⁰⁵

Legal consciousness is the sine qua none of the creation of a nation state. It contributes to the avenue for distinctly western legal rules, arguments, and theories. If Haiti wanted to successfully engage with the international community, they had to develop themselves as a nation state through the guise of legal consciousness or western modes of legal modernity, utilizing language first found in the Code Noir. Legality and its consciousness as we have seen

²⁰⁴ Homi K. Bhabha, 'Race' Time and the Revision of Modernity, Frantz Fanon, The Fact of Blackness

²⁰⁵ Liliana Obregón *Between Civilization and Barbarism: Creole Interventions in International Law*, in, vol 27, THIRD WORLD QUARTERLY, no. 5. (2006), 819.

in previous sections cannot and will not bend to the needs of 'Black personhood'. 'Black Personhood' is contrary to law's legality and subjugation; in result the Black person must now contort themselves back into what he/she once was. The necessity of contortion caused the former oligarchical class to edge their way into positions of power with the reminisce of their Frenchness to reinstate a legal system identical to the previous methods of their former metropole. Specifically, "[t]he normative principles and ideological orientation of [Haitian] governing institutions and public administration were an extension of those of the French state."²⁰⁶

The Haitian state had to build itself towards freedom and sovereignty but had no model for reference. Their sole guides were the French who only instituted a "colonial administration...[as form of reference that] was incapable of endowing a state of law with key principles."²⁰⁷ The lack of state law with key principles was beneficial to the metropole because with the installment of a colonial administration came unification of France and its colony via the "racialization of human relations."²⁰⁸ However for the newly established state, the racialization of relations will become the incessant stumbling blocks that prevented and will prevent the "establishment of a state of law, a state where the law reflects rights."²⁰⁹ A stumbling block that eventually gave France complete control over Haiti's economy due to a request for an indemnity. The Haitian state never truly reflected or obtained French laws and freedoms curated by the French Revolution. It only reflected the legal decisions of the colonial administration and the racial divisions created and withheld by the Code Noir. These race divisions or race relations are forms of racism. Racism does not only create problems but, "internalized characteristics within its victims, [but] institutions [also] have lasting consequences on the *social relations* between the institutional participants."²¹⁰ Without proper guidance and the presence of residual racism the Haitian state and its leaders were forced to retreat towards its former colonial structure by operating in the social distinctions provided by the Code Noir. This meant that the

²⁰⁶ Jean Casimir. *Supra* note 4. 200.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Vilna Bashi and Antonio McDaniel, *supra* note 71, at 674.

Four fundamental traits [that] characterized colonial Saint-Domingue [via the unveiling of coloniality]: slavery, dependence, commodity production for export, and the plantation regime. The society embodied internal contradiction that were ultimately irreconcilable: between slavery and freedom, dependence and independence, export commodities and foodstuffs, plantation, and garden plots. Racism, segregation, and the more or less effective political isolation of those who were neither whites nor slaves cemented the system.²¹¹

The wealthy and lighter skin, after a few years post the revolution, eventually found themselves in spaces of governmental power trying their best to remain ‘free and French’ while subduing the *née* enslaved, the Haitian, and the resilience of their ‘Black personhood’. In this section we will see, “the coexistence of diverse cultural groups and the survival of local legal traditions, the complex mixture of peoples, the new social stratifications, the distance from the metropolis, the extensive territory, different forms of land management and economic exploitation [which] posed many new legal issues that were not foreseeable.”²¹² We will see a rebranding of the ‘Haitian legal subject’ into a free laborer instead of a slave, as the success of the Haitian Revolution diminishes. Statements of true sovereignty, isolation, and freedom will be professed by the Constitution of Jean-Jacque Dessalines, while narratives surrounding usefulness to the state or republic begin to surface via the initial Constitution of Toussaint Louverture, the Codes of Henri Christophe, the Code of Alexander Pétion, and lastly through the decision of indemnity made by Jean-Pierre Boyer. All of these legal narratives, despite contrasting political and legal views, concluded that property was “the foundation of the social order.”²¹³ All of these components will be looked at in this section as an attempt to make sense of what it means to be a subject of the new freed legal order of Ayiti.

A. The Haitian Administration, Constitutions, and Codes

The Code Noir’s system of social relations is compulsory to the development of the multiple Haitian regimes toward the end of and after the Haitian Revolution. In the desire for freedom, we see leaders emerge from the formerly enslaved population, from the freed Black population, and from the mulatto population. The conditionality of that freedom is what

²¹¹ Jean Casimir, *supra* note 4, at 329

²¹² Liliana Obregón, *supra* note 206, at 820.

²¹³ Jean Casimir, *supra* note 4, at 162.

affects the positive progression of Haitian society following the revolution. It is important to note that “the administration that sought to govern Haitian society was inherited from French colonialism.”²¹⁴ When the Haitian state emerged after the 1804 revolution two groups or populations emerged as well, “[o]ne that was French and wanted to remain French, although France disowned it under the Consulate (1799-1804), and [the other] was never considered to be French and for who it was never a question of assimilating or being introduced into the world of Frenchness, except under conditions that the population in question considered to be essentially abysmal.”²¹⁵ This second group since the beginning of the 17th century were always perceived as “second-class subjects or [as property].”²¹⁶ The formerly enslaved were of the second category. They were owned and thus were absent from all Frenchness but were responsible for the continuation of a French like society based on economic advancement that the first category of people had aspirations for. Additionally, it caused the society to carry on with discrimination to ‘use’ a certain group of people for the protraction of their well-being. In all respects to the enslaved in Saint-Domingue their ‘otheredness’ was consistently incompatible with the norm point of view of every colonial and ‘post-colonial’ society that they found themselves operating in. We can now argue that all points of view are robbed whether it be those who are forced to yield to the power of slavery or those who found themselves existing adjacently to it. They all existed within the confines of coloniality pre, during, and post-revolution. Also, “the early national constitutions in Haiti imply a complex struggle to form a unified nation that undoubtedly went well beyond the efforts of political leaders. Constitutions are valuable sources because they highlight national character as it was officially assigned to the country.”²¹⁷ The case in Haiti displays the struggle that former colonized subjects experience as they attempt to establish themselves as a nation-state. Particularly the difficulty that exists around completely breaking ties with their colonial past as it continues to shape their post-colonial social and legal infrastructures.

²¹⁴ Jean Casimir, *supra* note 4, at 215.

²¹⁵ Jean Casimir and Mary Claypool GOING BACKWARDS TOWARDS THE FUTURE, (2012), 173.

²¹⁶ *Id*

²¹⁷ Julia Gaffield *Complexities of Imagining Haiti: A Study of National Constitutions, 1801-1807*, in, vol. 41, JOURNAL OF SOCIAL HISTORY, no. 1, (2007), 98.

Toussaint Louverture found himself existing between these two brackets as a freed Black man. Toussaint was referred to as "Le Premier des Noirs"²¹⁸ and was the military mastermind behind the Revolution. Toussaint Louverture was raised by a woman from modern day Benin, native to the Dahomey Amazon she-warriors. He was born enslaved²¹⁹ in the Caribbean and was 'freed' around the age of 30. Louverture was Christian and could read and write. His way of life was very much centered around European ideologies particularly those seasoned in Frenchness. At a certain age, he became a soldier in the French military and later became one of its first African generals. He was a successful French soldier and always held himself to that regard. Louverture's experience²²⁰ of enslavement compared to his compatriots in the Revolution was different. He did not face the same brutalities and torture from his former 'master'. This gave him an esteem for his former 'master' and other whites on the island. Unlike other leaders he had a rapport for the French, which accounted for his at times problematic decisions and behaviors throughout the duration of his service in the revolution. In the final years of the revolution Louverture drafts the first Constitution of Haiti. In this convention he abolishes slavery but shows favor to plantation-society. The drafting of this constitution led to his ultimate demise because in response the 'great' Napoleon Bonaparte made a decision to arrest Louverture and to re-instate slavery in Saint-Domingue. Toussaint's life regardless was spent struggling towards French recognition and acceptance. Indeed, there are certain moments within his political and military career that he sees the fruit of his labor. It is within the borders of his inhibited French experience that his constitution is born.

In 1801, Toussaint Louverture had the first Constitution drafted for Saint-Dominique as a functional French colony. This constitution would potentially govern the space of Saint-Domingue for the French by Louverture and his followers. The intentions of this constitution were to nurture a version of colonial continuity meaning that his ideas for the island were tied to a residual and legal connection to Frenchness. This is seen in Article 6, where he writes that, "The catholic, apostolic, roman faith shall be the only publicly professed faith."²²¹ It is not

²¹⁸ Dantes Bellegarde, *supra* note 192, at 168.

²¹⁹ "[H]e had probably never been whipped as so many slaves had been whipped." See CLR James, *supra* note 37, at 94.

²²⁰ Laurent Dubois, *supra* note 94, at 25

²²¹ <https://discovery.nationalarchives.gov.uk/details/r/C12756259>, [https://thelouvertureproject.org/index.php?title=Haitian_Constitution_of_1801_\(English\)](https://thelouvertureproject.org/index.php?title=Haitian_Constitution_of_1801_(English))

mentioned enough in this paper, but religion played a major role in maintaining colonial society. Catholicism²²² was vital to the initial invasion by the Spanish, the successful transfer of power along to the French, and overall creolization of the island. Consequently, to be of Christian faith is strongly connected to one's ability to be 'free and French' because you could not be truly French or an extension of French society without being Christian. Next, I want to note that Louverture did not proclaim freedom or independence. His policy, "postulated that the liberty of [B]lacks could be guaranteed only by the prosperity of export agriculture. It asked the working classes to entrust the use of their labor and the nation's rich to representatives chosen from among the property owners, under the watch of the public administration."²²³ To be clear, the liberty he discusses in the article is not one of an independent nation but the same liberty that can be found referenced in the Code Noir. He desired for the same rights, inclusions, and the abolishment of slavery that was written in French Constitution of the National Assembly. For example, Article 3 of his constitution states, "There cannot exist slaves on this territory, servitude is therein forever abolished. All men are born, live and die free and French."²²⁴ He made it clear that slavery would not exist on the island but there would always be perpetual connection to French being. His opposition to enslavement existed simultaneously with his belief in the necessity behind the continuation of the plantation economy. Louverture attempted to institute a familial model to plantation society. The model required that the owners of plantations would have to supply basic necessities for the livelihood of its cultivators. "Louverture defin[es] the familial economy in Article 15 [as] "Every plantation is a factory that requires a gathering of cultivators and workers; it is a tranquil refuge for an active and loyal family, where the owner of the land is necessarily the father."²²⁵ In exchange for provisions from plantation owners the *cultivator* must be loyal to the owner of the plantation committing wholeheartedly to the work of the field. The cultivator is not only a worker, but he is a part of a 'plantation family,' a bizarre dynamic but one Louverture believed in. It is also in Article 17 of his constitution where we see his

²²² See Sue Peabody *A Dangerous Zeal: Catholic Missions to Slaves in the French Antilles, 1635-1800*, (2002).

²²³ Jean Casimir, *supra* note 4, at 140.

²²⁴ *Haitian Declaration of Independence*, <https://discovery.nationalarchives.gov.uk/details/r/C12756259>, [https://thelouvertureproject.org/index.php?title=Haitian_Constitution_of_1801_\(English\)](https://thelouvertureproject.org/index.php?title=Haitian_Constitution_of_1801_(English))

²²⁵ Jean Casimir, *supra* note 4, at 199.

rhetorical attempts to create another avenue to push the née enslaved into the captivity of the *cultivator*. Article 17 states that,

The introduction of the cultivators was indispensable to the re-establishment and the growth of planting will take place in Saint-Domingue. The Constitution charges the governor to take the appropriate measures to encourage and favor this increase in arms, stipulate and balance the diverse interests, and assure and guarantee the carrying out of the respective engagements resulting from this introduction.²²⁶

The preservation of plantation society according to Louverture and his colleagues is the only way forward. There is not another mode of economic production that could possibly contribute to the sustainability of both Saint-Domingue and France. In result, Louverture with his expertise in politics needed to recreate the enslavement category absent of dehumanizing characteristics. The *cultivator* is a laborer who labors for himself, his father, his land and for the French. Unknowingly, clothed in his dreams for freedom, Toussaint re-positioned the née enslaved into the *colonial matrix of power* where they would continue to be exploited by current oligarchs and the French.

About three years later Louverture's Constitution²²⁷ would be thrown out as Jean-Jacque Dessalines rose to political and military power. His actions towards the end of the Revolution produced,

“in 1805, one of the most radical constitutions of the New World. It outlawed nobility, instituted freedom of religion, and attacked the two concepts of property and slavery, something that the American Revolution had not dared to do. Not only did the new Haitian Constitution abolish slavery. It also authorized the confiscation of lands belonging to French settlers, decapitating most of the dominant class along the way. It abolished the distinction between legitimate and illegitimate birth and pushed then-revolutionary ideas of racial equality and universal liberty to their ultimate conclusion.”²²⁸

²²⁶ *Haitian Declaration of Independence* <https://discovery.nationalarchives.gov.uk/details/r/C12756259>, [https://thelouvertureproject.org/index.php?title=Haitian_Constitution_of_1801_\(English\)](https://thelouvertureproject.org/index.php?title=Haitian_Constitution_of_1801_(English))

²²⁷ *Id.*

²²⁸ Achille Mbembe, *supra* note 168, at 49.

Dessalines was a long way off from the written and oral narratives of other post-revolutionary leaders. He passionately believed and fought for a free and independent Haiti withdrawn from all passivity and compromise. Jean Jacques Dessalines was raised by a she-warrior from the Dahomey Amazon. He was an “erstwhile slave whose body still showed scars from the lashings of his master's whip.”²²⁹ He was an enslaved field worker up until 1791 when the Revolution broke out. Dessalines bestowed himself with the title Governor for Life in 1804 and served as Haiti’s leader until October 1806 when the nation experienced its ‘first’ military coup.²³⁰ He left a radical legacy for the state of Haiti and at times is forgotten. But according to

With the death of Dessalines, the majority of the productive land was divided among the mulatto elites, who took over their fathers’ land and estates, and the black commanding officers of the revolution. They kept intact the export based economic arrangements which existed under colonialism and Toussaint’s regime with the mulatto elites— because of their status as mulattoes—serving as the middle persons between the nation-state and outside merchants. What emerged in Haiti, following the Revolution, was the same colonial class structure under the leadership of the Affranchis²³¹ and their adversarial partnership with an emerging foreign white and mulatto merchant class, which assisted in the acquisition of manufactured goods, petit-bourgeois blacks who converted their plantations into agribusinesses, and the Africans in the provinces and mountains whose products were heavily taxed by the emerging nation-state under the leadership of the Affranchis.²³²

Even though following his death Haiti still remained within the *colonial matrix of power*, Dessalines’ Constitution of Hayiti, May 20, 1805, was still radically different from Louverture’s and other leaders to follow. Divergent to Louverture, Dessalines was hyper focused on the freedom of Haiti and its people. In Article 1, Dessalines states, “The people inhabiting the island formerly called St. Domingo, hereby agree to form themselves into a free state sovereign and independent of any other power in the universe, under the name of the empire of

²²⁹ Dante Bellegarde, *supra* note 192.

²³⁰It is believed that Henri Christophe and Alexandre Pétion, provoke a coup that led to Dessalines assassination in 1806. He was ambushed north of Port-au-Prince at Pont Larnage, (now known as Pont-Rouge) on October 17, 1806 en route to battle rebels to his regime. See Rev. Emmanuel Dumay THE ERA OF MILITARY COUP D’ETAT: HAITI 1986-1991, (2011).

²³¹ Another word meaning free people of color.

²³² See Paul C. Mocombe *Jean-Jacques Dessalines the Avenger and Mediator, in*, vol 1, JOURNAL OF CULTURAL AND SOCIAL ANTHROPOLOGY, issue 1, (2019).

Hayiti.”²³³ Dessalines was the first leader with full confidence to claim Haiti as sovereign. Thus, he would be the first to deal with defining what it meant to be a free and sovereign state as a formerly enslaved population. For Dessalines this meant keeping the French out of the Haitian space at all costs. His constitution was similar to Louverture in his denouncement of slavery but took a more radical approach to his prohibition of slavery. Article 12 states, “No white man of whatever nation he may be, shall put his foot on this territory with the title of master or proprietor, neither shall he in future acquire any property therein.”²³⁴ Dessalines’ laws were attuned with his experience with whiteness as it subjugated and oppressed. For him the only way that Haiti and its people could attain sovereignty is through the complete execution of whiteness’ physical, emotional and spiritual control. As a necessary ramification, approximation to whiteness also was an issue for Dessalines. Article 7 of his constitution states, “The quality of citizens of Hayiti is lost by emigration and naturalization in foreign countries and condemnation to corporal or disgrace punishments. The first case carries with it the punishment of death and confiscation of property.”²³⁵ Dessalines wanted the people of Haiti to be fully committed to the progression and formation of the Haitian state. He would not accept any person who showed any partiality to Frenchness or any other white nationality. Article 52 reinforces Dessalines’ opposition to Frenchness. The article states, “The state does not provide for the maintenance of any religious institution, nor or any minister.”²³⁶ As mentioned above in the explanation of Toussaint's constitution, religion played an important role in maintaining French colonial society. Dessalines’ imposition of a form of freedom of religion is radically opposing Louverture and his proximity to French colonialism.

The duo shared common themes and goals in their constitutions that we can provide interpretative links to. However, there is an unmistakable link between the two that I would like to draw our attention to regarding the subject of property. Article 6 of Dessalines Constitution states, that “Property is sacred, its violation shall be severely prosecuted.”²³⁷ In

²³³ Constitution d'Haïti. [20 mai 1805.], <http://catalogue.bnf.fr/ark:/12148/cb32024189w>, Bibliothèque Nationale de France, Département Réserve des Livres Rares, 4-PU-239, <http://faculty.webster.edu/corbetre/haiti/history/earlyhaiti/1805-const.htm>

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

the same way Article 13 of Toussaint's Constitution states, "Property is sacred and inviolable. Every person, either by himself or his representatives, has the free disposal and administration of that which is recognized as belonging to him. Whoever infringes upon this right renders himself criminal towards society and responsible as concerns the person troubled in his property."²³⁸ The emphasis placed on importance of property relations is crucial, due to their shared experience. Both leaders had a shared experience of Saint-Domingue's social stratification system that constrained their attainment of property or rights to property. Largely because they both at a point in time were property. It became vital that their legal infrastructure had strong regulations regarding property's existence, and its protection against any potential insecurities. Furthermore, the experience of being owned by another facilitated their understanding of the power of ownership. Ownership of one's own body, control of one's own thoughts, and control of one's will, were more than just rights - they defined a person and were essential. The concepts of property were reduced to a tool for exercising the subject's free will, an essential attribute for its existence.²³⁹ In result the two regimes had to generate the legal jargon that would not only included a property rights discourse but also to prevent themselves, as colored bodies, from ever becoming property again.

Following the military coup of Dessalines leadership two agricultural administrations arose and were led by Alexandre Pétion and Henri Christophe. The two regimes existed simultaneously with the kingdom of Henri Christophe in the North and the republic of Alexandre Pétion in the South. In their concurrent existence we will see the continuation of an attempted implementation of a transposition of the enslaved into the *cultivator* which was started by Toussaint Louverture's constitution. The kingdom and the republic both believed that agriculture and an attempt to participate in the international economy were the best methods to ensure the success of the newly established Haitian state. The pair, "created a citizen property owner²⁴⁰ and imposed the possession of wealth as the demarcation line between social classes that they created from their all-powerful positions."²⁴¹ Active citizenship and disapproval toward marronage manners of lifestyle posed challenges for the two regimes.

²³⁸ *Id.*

²³⁹ Jean Casimir. *Supra* note 4. 144.

²⁴⁰ *Id.* (Moise. 2009.133)

²⁴¹ *Id.* at 199.

Their regimes made it clear that inhabitants of Haiti had to participate in the overall well-being of the state because an active citizen cannot exist without generating any monetary value. The amount of money that a person produced and the manner in which they did so determined your position on the social ladder, meaning that those who were formerly enslaved still found themselves at the bottom of said ladder because it remained an impossibility for the enslaved turned *cultivator* had the inability to accumulate enough revenue to be able to purchase land. Wealth and ownership go hand-in-hand, so to be an active citizen you must be wealthy, but you must also own property. The *cultivator* could not do this so they never truly acquired active citizenship.²⁴²

Alexandre Pétion was born in Port-au-Prince to a mulatto mother and a white father. He was educated but not at an advanced level because “whites had not established schools in the Colony of Saint-Domingue.”²⁴³ He joined the French military in the 1790s and served as a Lieutenant-General under André Rigaud. Proving himself useful during the civil war of 1800 between Toussaint Louverture and Rigaud who then commanded the Southern Province. Like most of the revolutionaries, Pétion at first did not participate in the efforts towards revolutionary victory, he battled against them. In October 1802 this changed, when Pétion received a visit from Dessalines as Napoleon Bonaparte was trying to reinstate enslavement. The meeting ended with Pétion becoming a military leader under Dessalines to fight for the country’s newly formed Army of Independence. After the death of Dessalines through his influence Pétion brought ‘democracy’ to Haiti and established himself as the first President of the nation in 1806. Rural democracy specifically is what Pétion is famous for because he attempted to distribute land equally to the Haitian population. He believed “developing a nation's spirit was to attach the citizen to the soil by making him the owner of the land he cultivates.”²⁴⁴ There was a stipulation to his ‘rural democracy’, the land would be distributed to a certain group of people. By a law in 1814 “Pétion contrived the division of the large colonial plantations and the distribution of the land this formed as ‘national gifts’ to the lower officers and soldiers of the Army of Independence.”²⁴⁵ Many of these lower officers and

²⁴² *Id.*, at 141.

²⁴³ Dantes Bellegarde, *supra* note 192, at 167.

²⁴⁴ *Id.*

²⁴⁵ Dantes Bellegarde, *supra* note 192.

soldiers were from similar social backgrounds to either Louverture or Pétion himself. As a result of his act of ‘good faith’ he, like his predecessor Louverture, left out the née enslaved, pushing the née enslaved to be laborers forced to cultivate the land for those in closer proximity to power.

In 1807, Pétion ratified Law No.111, *Concerning the Policing of the Plantation, the Reciprocal Obligations of Property owners, and Renters, and of Cultivators* which performed as a first step towards his unique democracy. It was one of the first ratifications that would “assure that the cultivators [would] have access to the fruit of their labor and all the advantages they [could] receive on the plantations.”²⁴⁶ A notion related to Louverture familial plantation society where the cultivator would be provided for and by the plantation owner. In the same way the cultivator under Pétion will be given a portion of their labor production. Similarly, Henri Christophe will institute a relation like this between the laborer and their means of production. Pétion’s law perpetuated the previously mentioned social categories: *cultivator* and property owner “that were transmitted from the colony to the independent society without modification.”²⁴⁷ Pétion’s administration was “nothing more than a self-governing Saint-Domingue.”²⁴⁸ One in its own ways separated from France but found their governmental existence in the consequences of the former colonial administration. Despite this, his law acknowledged the island’s ‘cultivators’ precarity and tried to alleviate it by ensuring access to the fruits of their own labor. But his law did not account for the fact that his legal narrative contributed to the precarity he was trying to alleviate. His legal narratives made “no reference to any kind of obligation to repair the abuses this population had suffered or any kind of settling of accounts with this undefined power that could procure it certain advantages.”²⁴⁹ Pétion is a product of his social strata group. His interests minorly aligned with the alleviation of suffering for the formerly enslaved.

Henri Christophe was born a slave on the island of Haiti. He was later freed and found work at a hotel on the island of Saint-Domingue. It was in his freedom that he “acquired

²⁴⁶ Jean Casimir, *supra* note 4, at 163.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

considerable knowledge of the prevailing manners and customs of the society of which he was a daily spectator. He was master of the French, English, and Spanish languages, and was thought to be the most polished gentleman of all of Toussaint's generals."²⁵⁰ Christophe, like Louverture, had a different experience with the colonial order, due to his ability to work as a freed black man. Despite his free experience, Christophe did not fully lean in favor of Frenchness or French colonial rule. He wished to bestow the formerly enslaved populations with freedoms through his legal declarations. Henri Christophe or King Christophe "governed his kingdom with an iron hand. But he proved himself to be an administrator of the first order. He created schools, built public roads, developed agriculture, and encouraged industry. He constructed as a residence the magnificent palace of Sans-Souci, which was his Versailles. Against the possibility of a return of the French, he built on the top of a mountain 2,800 feet high, the Citadelle Laferrière, which has become one of the places most visited by tourists today."²⁵¹ His kingdom ruled in the North of Haiti between the years of 1811 and 1820. His rule came to an end when rumors of a coup began to circulate, leading Christophe to commit suicide.

King Christophe instituted the Code Henri which laid out "the reciprocal obligation of property owners, renters, and agricultural laborers."²⁵² In the kingdom of Christophe

Government estates were put on lease for a five-year term; large plantations belonging to the state were tilled by cultivators who were compelled to live on and grow money crops like sugar and coffee. For his remuneration the laborer received a quarter of the total crop. In addition, each family had its own garden plot on which to raise staple foods for immediate consumption. Nobility of the kingdom received their estates by royal favor and held them as leases so long as the King pleased.²⁵³

Henri's Code like Pétion outlined his kingdom based on the labor relations of a particular group of people he referred to as the agricultural laborers. The agricultural laborers' social make-up was the same as the cultivators, primarily made up of formerly enslaved Africans.

²⁵⁰Well Brown Williams *The Black Man, His Antecedents, His Genius, and His Achievements* The <https://docsouth.unc.edu/neh/brownww/brown.html#brown92>

²⁵¹ Dantes Bellegarde, *supra* note 192, at 170.

²⁵² Jean Casimir, *supra* note 4, at 164.

²⁵³ Jean-Claude Gerlus *Revolution and Nation-State Formation: The Economic Origins of the Haitian Military*, (1996), 238-252.

His policies would favor the agricultural laborer in a “deliberate effort to repair and correct the harms done to the population.”²⁵⁴ Henri’s policy differs from Pétion’s policy in this way because Henri provided attention to the overall well-being of the laborer especially as it relates to their past as née enslaved. His law rarely used the term *cultivator* “opting instead for agriculteur, or agriculturalist.”²⁵⁵ Regardless of the change in language and emphasis on the well-being of the agriculturalist, Henri's labor system still resembled its colonial past. Mainly, by keeping the same social and economic hierarchy that existed before the Revolution. The former enslaved still experience no real economic freedom and their societal existence is solely attached to their production.

Jean Pierre Boyer was president of Haiti between 1818 to 1843. He is mainly known for his Rural Code and his negotiation of the debt²⁵⁶ of recognition to France. He also united the island making the island of Hispaniola one under the Republic of Haiti. Boyer was born a mulatto in Haiti to a white father and a formerly enslaved mother. His father sent him to France where he received his education. After the completion of his studies like many other revolutionaries he joined the French military. Similarly, Pétion participated in the Revolution but initially fought on the side of the French. After he learned that the “French had planned to restore slavery and reduce mulatto ascendancy,”²⁵⁷ he joined the Army of Independence. Boyer’s decision to accept France’s request for indemnity indebted Haiti until the mid-20th century and is a major reason why the Haitian economy is still currently in a desolate state. His decision like his successor is a key example of how the colonial project continues through those it once subjugated. It also displays the way in which colonialism repeats itself resulting in a re-suppression of those who are newly free.

²⁵⁴ Jean Casimir, *supra* note 4, at 168.

²⁵⁵ *Id.*, at 168.

²⁵⁶ Jeff King states that “Illegal occupation debts are those contracted by an illegal occupying power and which the creditor purports to be binding on that occupied territory even after the occupation has ended. Corruption debts are those debts procured through bribery or corruption of a state representative, or those that are knowingly provided, in part or in whole, for the personal enrichment of public officials (indirect bribery). Subjugation debts, the most contentious of odious debts, have traditionally been defined as those loans that are ‘hostile’ or contrary to the ‘major’ interests of the population of a debtor state.” See Jeff King *The Doctrine of Odious Debt in International Law*, (2016), 100.

²⁵⁷ John Edward Baur *Mulatto Machiavelli, Jean Pierre Boyer, and the Haiti of His Day*, (1947) 309.

Recognition allows for states to be able to participate actively in the global legal order, because this act of recognition recognizes the space and its people as an official state. Recognition was vital for Haitian oligarchs and elites, specifically President Boyer, because they desired to resemble their former French colonizers, but this desire caused him to submit a debt of subjugation.

Subjugation debts are those debts that are made for the purpose of facilitating the violation of *jus cogens* norms, or the commission of serious or flagrant violations of human rights, humanitarian law, or other fundamental international law principles in respect of the population of the debtor state. This definition flows from the precedents, observes the high threshold, but uses contemporary standards of international law to give greater specificity to the notion of harm to the population.²⁵⁸

The debt acquired by Boyer was intended to further free Haiti, but it only oppressed Haiti by putting a financial constraint on its new freedom. Jean Casimir explains that “The freedom of the emancipated presumed integration within modern [w]estern values; it remained subject to the implications of their original racial inferiority, which they believed they could overcome with a profession of faith, sometimes quite loud, in the superiority of France and its culture”. Recognition in their view would guarantee the communal journey down the path to resembling their former oppressors who in actuality distorted their model of success. To do this a sacrifice that had to be made, this sacrifice was economic suicide. France required an indemnity from Haiti, a debt of manumission, which would be paid over the course of 100 years.

“The offer of the indemnity to the former colonists was calculated based on the value of the land before the Revolution of 1789 as if the popular struggles that had taken place from 1791 to 1804 were nothing but an unfortunate parenthesis. The sovereignty of the state created in 1804 was negotiated based on the real estate market as it had been defined during the period of primitive accumulation, without any connection to the trajectory and the awakening of the Haitian people.”²⁵⁹

Haiti’s debt to France of over 60 million Francs²⁶⁰ or approximately 9.4 million U.S. dollars can be seen as one of the first major examples of France attempting financial accumulation.

²⁵⁸ Jeff King *The Doctrine of Odious Debt in International Law*. (2016) 69.

²⁵⁹ Jean Casimir, *supra* note 4, at 94.

²⁶⁰ The initial debt was reduced to 60 million from 100 million in the *Traite D'Amitie* in 1838.

Due to the state of Haiti's economy in 1825 they were unable to remunerate their initial payment to France. This resulted in a request for a loan of 30 million Francs or about 5.1 million dollars by the Haitian government under President Jean-Pierre Boyer. The loan had “6 per cent annual interest rate, and an additional 6 million Francs [or about 942,000 U.S. dollars] for handling fees, which meant that only 24 million Francs [or about 3.8 million U.S. dollars] made it to the French treasury for compensation of former slave owners.”²⁶¹ Providing payment to France for the second installment proved also difficult for Haiti. Since “another loan was taken with French bankers Lafitte, Rothschild, Lapanonze, to repay 227 million Francs [or about 36 million U.S. dollars] during 35 yearly installments of 6.5 million Francs [or about 1 million U.S. dollars]. Haiti quickly defaulted after the two first installments.”²⁶² Obviously, these loans put additional stress on the Haitian economy, ensuing President Boyer to announce that “the debt...belong[ed] to all Haitians, and he imposed a rural tax base, forced over-production, and issued paper money...”²⁶³ The working population of Haiti had to suffer due to his political decision. In total Haiti had to borrow over 160 million Francs [or 25.1 million U.S.] to pay the initial recognition debt of 60 million Francs [or 9.4 million dollars] “with more than half [of this money] used to pay bank commissions, fees, and interests.”²⁶⁴

The request of debt for recognition is an example of primitive accumulation for France. This indemnity is also “a powerful reminder of the colonial genealogy of finance capitalism, and the ways in which debt has been used as a technique of colonial and neo-colonial governance.”²⁶⁵ To continue, primitive accumulation is

the commodification and privatization of land and the forceful expulsion of peasant populations; the conversion of various forms of property rights (common, collective, state, etc.) into exclusive private property rights; the suppression of rights to the commons; the commodification of labour power and the suppression of alternative (indigenous) forms of production and consumption; colonial, neo-colonial, and imperial processes of appropriation of assets (including natural resources); the monetization of exchange and taxation, particularly of land; the slave trade, the

²⁶¹ Liliana Obregón. *Supra* note 40. 612.

²⁶² *Id.*

²⁶³ *Id.*, at 613.

²⁶⁴ *Id.*

²⁶⁵ Stephen Morton *Capital Accumulation and Debt Colonialism After Rosa Luxemburg*. (2018), 17.

national debt, and ultimately the credit system.²⁶⁶

By creating a new form of colonial burden for Haiti caused by belief that Haiti financially owed them after the Haitian Revolution because France lost their monopoly over their most prosperous labor production. While also providing one of the first examples of an imperialistic mode of production in the Western Hemisphere. France took complete control of Haiti's maturing economy in an effort to sustain their own. This type of accumulation is essential to the establishment of a capitalist global order by way of cultural production. Cultural production is "a way of producing human subjects and social orders of a certain kind."²⁶⁷ This form of production was displayed in Haiti through the push of the formerly enslaved back to plantation-based work by the Haitian government and its elites. Despite their triumphant act of decolonization, the newly freed nation had both the social and economic inability to break free from its colonial past.

In their effort to prove their likeness of state to the western world, Haiti was quickly left out of the global economy due to their failure to pay their debt. Their failure meant exclusion because of their inability to accumulate wealth in spite of their debt. Specifically, regarding Haiti's journey to modernity or to "modern capitalism, which is characterized by the development of productive forces driven by the process of competitive accumulation."²⁶⁸ Even though France desired repayment, Haiti desired to be included in the developing world. The debt was accepted with the intent of providing financial proof to assume the same sovereignty as other independent states. In other words, Haiti wanted to display their 'likeness' or 'sameness'. This was never achieved because of the circumstances of Haiti fully paying their debt to France in 1938.

²⁶⁶David W. Harvey *THE NEW IMPERIALISM*, (2003), 145.

²⁶⁷Arturo Escobar *Encountering Development: The Making and Unmaking of the Third World*, (2012), 59.

²⁶⁸ China Mieville, *supra* note 47, at 195.

IV. Conclusion: Haiti's Dilemma

*There will always be a white world
between you and us.*²⁶⁹

From the invasion in 1492, to France's right to conquest, to the institution of the Code Noir to the Revolution, and then to state sovereignty; none of which was planned. An uncontrolled situation that has impacted the lives, futures, and identities of Haitian people, with the ultimate goal for one group of people to find themselves victorious. Those people are the same in every story, white European males. They come to oppress, appropriate, rape, steal, and destroy in the name of wealth power mobility status. After they have obtained their financial goal, they leave without thinking of those who they have affected. The institution of legal rules and required international involvement was at times ambiguous with no clear understanding of what end results will transpire. In the face of this the enslaved population of Saint-Domingue were able to revolt and obtain freedom. Their fight for freedom was inspiring and memorable but was unable to fully break the cycle of colonial control. As I have laid out in this thesis Haiti's leaders following the revolution reinstated many of the same legal structures that oppressed the enslaved and free people of color. I am hesitant to say that Haiti's revolution was a failed act of decolonization because I think in some ways Haiti experienced a form of freedom under Jean-Jacques Dessalines. Regardless, I think it is appropriate to say that Haiti's legal and social infrastructure was not strong enough to withstand the ways in which the outside western world would work to re-enslave the nation for its own benefit. So now I pose the question: Was Haiti ever free?

²⁶⁹ Frantz Fanon BLACK SKIN, WHITE MASKS, (1967), 92.