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A Confusion of Institutions: Spanish Law and Practice in a Francophone Colony, Louisiana, 1763-circa 1798

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I. INTRODUCTION

French Louisiana had been a thorn in the flank of Spain's Atlantic Empire from its founding in 1699. Failure to remove that thorn in 1699 and again in 1716, when doing so would have been comparatively easy and Spanish naval forces were positioned to do so, meant that by 1762 the wound had festered, so that the colony had become what La Salle, Iberville, Bienville, and their royal masters had envisioned: a smuggling station through which French goods reached New Spain and Cuba and their goods—dye stuffs and silver mostly—reached France and helped to pay the costs of a colony that consumed more than it produced, at least so far as the French crown's finances were concerned.¹

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1. I have borrowed the "thorn" from ROBERT S. WEDDLE, *THE FRENCH THORN: RIVAL EXPLORERS IN THE SPANISH SEA, 1682-1762* (1991); ROBERT S. WEDDLE, *CHANGING TIDES: TWILIGHT AND DAWN IN THE SPANISH SEA, 1763-1803* (1995) (carries the story of explorations). The most detailed history of the French colony to 1731 is the five volumes of *A History of French Louisiana*: MARCEL GIRAUD, 1-4 *HISTOIRE DE LA LOUISIANA FRANÇAISE* (1953-74); 1 *A HISTORY OF FRENCH LOUISIANA: THE REIGN OF LOUIS XIV, 1698-1715* (Joseph C. Lambert trans., LSU Press, 1974); 5 *A HISTORY OF FRENCH LOUISIANA: THE COMPANY OF THE INDIES, 1723-31* (Brian Pearce trans., 1991) (not previously published). For a general economic history, JOHN

In the early 1760s, Spain's government determined to cauterize that wound by acquiring the province, if possible, as part of its general alliance with France (the third Family Compact) initiated in the last years of the Seven Years' War. The disastrous outcome of that war, which forced Spain to accept the cession of all of the Gulf South east of the Mississippi River² to Great Britain and the right of that power's subjects to use the Mississippi River through the Isle of Orleans (which became Spanish) in order to reach the Natchez district and points north and east on the great river, made acquisition even more important because it gave the world's leading trading and naval nation access to the same flanking position, the same opportunities for smuggling. France willingly gave Spain what was left of its expansive, and largely unbounded, claim over the Mississippi drainage, being careful to preserve the economic heart of the colony, the Isle of Orleans (whose center was New Orleans) for Spain and, thus for French economic interests.

La Louisiane was a colony like no other that Spain had acquired in the Americas, save possibly what we know as Uruguay. Although slightly more than half of its population was enslaved, by the standards of the time it was a European, not a Native American province.³ Fitting it into Spain's American empire was thus not a matter of using that empire's traditional combination of Spanish towns and missions and presidios. Moreover, the acquisition of Louisiana occurred when the Spanish government was beginning to reform its colonial administration in an attempt to gain greater control and revenue.

CLARK, *NEW ORLEANS, 1718-1812: AN ECONOMIC HISTORY* (1970) is still the best work although it lacks notes (a decision of the Press, not the author).

2. What is today Bayou Manchac was thought to be the easternmost distributary of the Mississippi's lower delta. It was a high water overflow channel whose appearance on maps when the peace treaty was being drafted made it appear to be more navigable than it actually was. Also by using it as the northeastern boundary of the Isle of Orleans, France preserved the economic heart of its Louisiana for Spain.

3. Spanish census documents generally did not count Native Americans living in Lower Louisiana, the most densely settled part. They were, in any case, a small minority compared to the African and European inhabitants. Regarding race, GWENDOLYN MIDLO HALL, *AFRICANS IN COLONIAL LOUISIANA: THE DEVELOPMENT OF AFRO-CREOLE CULTURE IN THE EIGHTEENTH CENTURY* 239 (1992), notes that Spanish administrators relied on local officials, who tended to classify free persons of mixed-race as "white," distorting the White-African ratios in those censuses and blunting the Spanish system of classifying on the basis of actual or imagined genealogical degrees of race-mixture. For the slave/free ratios of particular Posts based on those censuses, see ANTONIO ACOSTA RODRIGUEZ, *LA POBLACIÓN DE LUISIANA ESPAÑOLA (1763-1803)* (1979) (especially tpls.1.8 B (Proporción de Esclavos/Libres, 1763-1777), 2.8 B (Proporción Número Esclavos/Número Libres, 2o Período, 1778-1788) & 3.8 B (Proporción entre Número de Esclavos y Número de Libres (1791-1803))).

Captain Antonio de Ulloa, well known as an investigator of colonial societies⁴ and a fluent speaker of French and then without assignment, was designated as Spain's first governor of Louisiana. His charge was to discover and report how the colony actually ran, thus allowing Madrid to formulate policies for its incorporation into the empire should Charles III and his Minister of State—The Marquis of Grimaldi, who was given charge of the operation because he had helped to negotiate the French cession and the Peace Treaty of 1763—decide to treat it as other than an entirely separate colony governed by its own laws and customary government but allowed to trade with the Spanish colonies. That is, would it become a province incorporated into the empire in the way that the Hapsburgs had done—one King but many semi-autonomous kingdoms? That seemed to be what Ulloa's initial instructions indicated. But such an initial situation was unlikely to continue. And indeed Louisiana's unique situation in 1763-1768 did not continue, whatever assurances the French Naval Minister, the Duc de Choiseul, had sent to the colonists on the basis of what he knew of Ulloa's initial orders.⁵

A confusion of institutions was almost bound to happen as both the new rulers and their new subjects defended their own institutions and traditions. Let me add that I am using "institution" in a broad and general sense as denoting significant *patterned behaviors defined in part by laws*, not just "an established corporation of a public character," the usual restrictive definition.⁶

I want to focus briefly on what seems to me the three principal institutions where Spanish law and practice came into conflict with the local French institutions, laws, and practices. These are the economic system, the nature and thus the role of the council governing at New Orleans, and slavery. For analytical purposes, these institutions could be

4. He had done so in 1734-1736 with Jorge Juan when they had accompanied La Condamine's French scientific expedition to Ecuador to measure the arc of the meridian as part of an effort to accurately determine the shape of the Earth, and again, less successfully, as Governor of Huancavelica, Upper Peru (Bolivia), 1758-1764. The first investigation had produced the originally secret but now famous *Noticias Secretas de América*, the second, various reports on the corruption of the local establishment and frustration when they successfully resisted changes not only in their system of exploiting the mine but also in technical aspects of the mining. JOHN PRESTON MOORE, *REVOLT IN LOUISIANA* 3-8 (1976).

5. MOORE, *supra* note 4, at 42-44 (quoting Letter from Charles III to Ulloa (May 1, 1765) (no changes at present) and Letter from Charles III to Council of Indies (May 22, 1765): "I have resolved that in this new acquisition no changes in its government will be made for the moment." Moore italicized "for the moment.").

6. *Institution*, WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 438 definitions 3a & 3b (1963).

treated separately, but that does violence to the overlaps between them, as will become clear below.

II. THE ECONOMIC SYSTEM AND LOCAL LAW AND ORDER

Ulloa found that French Louisiana had developed trade not only with France, but also Cap Français (Cape Haitian), Martinique, Guadalupe, the Gulf of Campeche, the east coast of central Mexico (other than Veracruz) and Cuba. In 1765-1768 those trades and the local economy were in disarray, or so the New Orleans merchants claimed. Untaxed importation of all manner of goods was routine and fairly open. Too, the English and Anglo-Americans had arrived on the Mississippi in force, building on smuggling begun decades earlier and offering slaves on credit as well as other goods and also shipping for Louisiana's bulky exports (timber, bricks, grains).⁷

Ulloa also found that the Superior Council, in form and judicial function somewhat like a Spanish Cabildo or city council, was in fact, as French Director General (i.e., Governor & Commissaire-Ordonnateur) Jean Jacques Blaise d'Abbadie had reported to *his* ministers in June 1764, the center of corruption, notably for speculation in the French Crown's funds and supplies and colonial currency and in the administration of probates.⁸ It was also failing to repress what he called the "spirit of insubordination and independence which has manifest itself" and had almost since the colony's founding.⁹ D'Abbadie's reference was to social conditions in New Orleans as well as trade, but

7. CLARK, *supra* note 1, at 90-91 (early English trade), 159-62, 166-67; MOORE, *supra* note 4, at 104. While these merchants were usually called "English," it is evident that some were Anglo-American, from the thirteen colonies.

8. CARL A. BRASSEAU, DENIS-NICOLAS FOUCAULT AND THE NEW ORLEANS REBELLION OF 1768, at 32 (1987) (d'Abbadie's titles); MOORE, *supra* note 4, at 114-15 (as much as 10,000,000 livre in various forms of heavily discounted paper money were in circulation or in the hands of speculators; Ulloa claimed Foucault had a "considerable quantity of these notes" (*id.* at 115), but Brasseaux's discussion of Foucault's calling in of a million plus livre in treasury notes in 1762 does not indicate any speculation by him (BRASSEAU, *supra* at 23-25)); James D. Hardy, *Probate Racketeering in Colonial Louisiana*, 9 LA. HIST. 109 (1968).

9. Letter from D'Abbadie to the French Ministry (June 7, 1764), in CHARLES GAYARRÉ, 2 HISTORY OF LOUISIANA 104-06 (Pelican Publishing Co. 1965) (1903); *also in* MOORE, *supra* note 4, at 39 n.34. Charles Aubry, D'Abbadie's successor after the latter's death on February 4, 1765, wrote much the same thing, but indicated the problem was at least a decade old (*id.* at 41). While I do not agree with all of her ideas, SHANNON LEE DAWDY, BUILDING THE DEVIL'S EMPIRE: FRENCH COLONIAL NEW ORLEANS (2008) describes the general "disorder" as European administrators and religious figures saw it, to 1763. LAWRENCE N. POWELL, THE ACCIDENTAL CITY; IMPROVING NEW ORLEANS (2012) provides a more balanced account, while acknowledging the wide-open nature of Louisiana's economic system and the social "disorders" of New Orleans's multi-ethnic society, disorders common to port cities in most of the Atlantic world.

the same could be said of the social situation in the countryside with regard to the treatment of slaves and generally with regard to trade. In both spheres laws were routinely ignored, especially by the powerful.

The Superior Council had been created in 1716 to enforce law and social order by detecting and punishing crimes and as a mechanism for the resolution of civil law disputes. Its authority extended over all of the settlements in lower Louisiana. That is, it was a provincial, not simply an urban institution. For example, marriage contracts and wills had to be registered with its notaries to be valid, regardless of where the parties resided.

However, because some of the same men held offices in each body (the overlap was not total) during the Company of the Indies period (1718-1731) the Superior Council became overlaid with administrative and even some legislative functions that belonged to the Company's Council of Administration. The royal governors and the *commissaire-ordonnateurs*, or Commissaries (that is, the Crown's chief fiscal officials) seem to have been content after 1731 to govern through the Superior Council, allowing the continuation of the mixing of its original judicial functions with the administrative, commercial, and legislative ones of the Company's Council of Administration. They and long-term Attorney General François Fleuriau (1722-1752) also did not challenge the Council's assumption of a right to refuse to obey royal orders that were at odds with local custom and/or existing local law. In that regard, the Superior Council acted like one of the thirteen Parlements of France.¹⁰ That is, by historical precedent more than by law, the Superior Council saw itself as the government of the colony, able to mediate between the French crown and its local subjects in all matters, but especially regarding commerce, a topic on which it allowed great liberty, the more so if doing so touched the interests of the planter class.

By Ulloa's time six of the nine members—the three councilors and three assessors—were planters or merchant-planters of note, some of

10. As of 1748, the governor, *ordonnateur*, commandant, procurator-general, counselors, and ranking military officers (when present) were members, in some cases ex-officio as befitted their rank in the socio-political hierarchy. Its staff included notaries and clerks. Its judges (assessors) were those of first instance in New Orleans while the body as a whole served as an appeals court from those judges and the district commandants' courts. Jerry A. Micelle, *From Law Court to Local Government: Metamorphosis of the Superior Council of French Louisiana*, 9 LA. HIST. 85 (1968) (discussing its evolution); cf. MOORE, *supra* note 4, at 30 n.13 (disputing Micelle's views, especially regarding the Council's legislative role, which Moore thinks was quite limited). Giraud's *Histoire* provides many details of its early years. See also Donald J. LeMeux, *The Office of 'Commissaire Ordonnateur' in French Louisiana, 1731-1769: A Study in French Colonial Administration* (1972) (unpublished Ph.D. Dissertation, Louisiana State University), 7228360 PQDT 302605641.

whom often stayed on their plantations rather than attend meetings.¹¹ The winter social season in New Orleans that Governor Pierre de Rigaud, Marquis de Vaudreuil, had enhanced provided the opportunity for these men and others like them to gather and informally agree on how Louisiana was to be run. The social season thus supplemented meetings with each other around dining tables on the plantations.¹²

Ulloa's first trade decree, dated September 6, 1766, brought to the surface the Superior Council's claims to power. The decree allowed Louisiana's customary trades with France, St. Domingue, and Martinique but required ship captains to come to Louisiana with passports issued by the Spanish consuls resident in France and French West Indian ports. Too, the Superior Council's "commissioners"—that is, some of the members who normally monitored market conditions—had to obtain Ulloa's approval of the prices at which the imported goods would be sold before they could enter the market. And at least a third of the value of imports were to be paid for with Louisiana products. Ulloa's intention was to mollify the general populace, which was complaining about the high costs of imports, especially wine.¹³

Immediately the merchants of New Orleans asked the Superior Council to stop the issuance of the decree until the Attorney General, Nicolas Chauvin de La Frenière, a local man recently (1763) returned from France with a law degree, could study it and rule on its legality. They also enlisted Denis-Nicolas Foucault, the acting Commissary.¹⁴ By French law, the Commissary regulated commerce (because it was taxed) and also controlled the use of the King's subvention that supported the soldiers and officials stationed in the colony, powers that Foucault and his

11. MOORE, *supra* note 4, at 51-52. Ulloa noted the lack of any legal training among its members, except, possibly, for the attorney general, and that the councilors normally resided on their plantations outside of the city and did not attend its meetings. Injustices resulted. *See also* GILBERT DIN & JOHN E. HARKINS, *THE NEW ORLEANS CABILDO: COLONIAL LOUISIANA'S FIRST CITY GOVERNMENT, 1769-1803*, at 42 (1996).

12. POWELL, *supra* note 9, at 110-12. Francisco Boulogny commented in his *Memoria* of 1776 that the planters "often dine together, and their conversation is always directed toward the condition of the crop and the progress that each is making in the cultivation of his land" (per copy in ALCÉE FORTIER, 2 A HISTORY OF LOUISIANA, THE SPANISH DOMINION AND THE CESSION TO THE UNITED STATES, 1769-1893, at 34 (2nd ed. by Jo Ann Carrigan, 1972)).

13. MOORE, *supra* note 4, at 105-06 (quoting the decree). On May 6, 1766, the Crown had authorized trade with the French West Indies and certain Spanish colonial ports from which agents for Louisiana's French government (so long as it lasted) could export beef and grain, paying a 5% duty, and complying with certain paperwork requirements. The export of Louisiana products to pay for those imports was allowed (*id.* at 105).

14. Foucault had been named the commissary for Mobile, but the temporary detention of Jean-Jacques-Blaise d'Abbadie, the appointed *Commissaire Ordonnateur* for La Louisiane, while a British prisoner of war in 1762-1763 made Foucault, the next ranking fiscal agent, the acting Commissary (BRASSEAU, *supra* note 8, at 17).

predecessors used to favor merchants who reciprocated, although in Foucault's case, Ulloa charged, he was more interested in speculating in the depreciated paper of the French regime, expecting Spain to redeem it at face value.¹⁵ Shortly, Ulloa went to the Balize at the mouth of the Mississippi River to superintend the works he had ordered—for defense and to improve navigation—and to await the arrival of his Peruvian bride.¹⁶ In effect, he allowed the local interests to protest a royal order, although the mechanism they used was not the one customary in the Spanish empire.¹⁷ The established system of trade continued with minimal interference.¹⁸

Ulloa did not let this challenge to Spanish authority pass. He wrote to Madrid identifying the Superior Council as a body that had to be abolished, while acknowledging its judicial role. Madrid responded with two plans to replace it with purely judicial bodies, neither implemented before the Revolt of 1768. In March 1767, Grimaldi prepared a decree suppressing the Superior Council except, temporarily, as the Governor's court, effective when Spain assumed full formal control of Louisiana.¹⁹

15. BRASSEAUX, *supra* note 8, at 14-15; MOORE, *supra* note 4, at 115.

16. MOORE, *supra* note 4, at 70, 139-40.

17. The merchants' appeal to the Superior Council to rule on the legality of the decree was based on the Council's unlawful but long-standing practice of exercising a sort of veto over royal decrees if they were thought inconsistent with established local privileges and law. Foucault's protest was a defense of his office's right to locally issue and enforce royal orders on matters of trade and economic life generally. In the Spanish empire, royal officials and *cabildos* could refuse to carry out a royal decree by invoking the "obedezco pero no cumplo" rule—I obey, that is recognize that this is a lawful order of my sovereign, but "do not carry out" because the royal intent is to do good but this order is based on incorrect, incomplete, or incompetent advice and so is not what the sovereign intended. This was a formal process, done before a notary. More often, decrees that conflicted with local interests were simply ignored. For an explanation of the philosophical basis of this Spanish practice, see COLIN M. MACLACHLAN, *SPAIN'S EMPIRE IN THE NEW WORLD: THE ROLE OF IDEAS IN INSTITUTIONAL AND SOCIAL CHANGE* 21-23 (1988).

18. Ulloa did enforce Spanish law when *Nuestra Señora de La Luz* arrived at Balize in October 1766, claiming stress of weather on a voyage from the Bay of Campeche to Havana. The intention was to sell a cargo of dyewood at New Orleans, as had been done before. The Superior Council helped with the sale and repairs. MOORE, *supra* note 4, at 107-08.

19. Memo to Grimaldi (Jan. 1767), *in* MOORE, *supra* note 4, at 51-53. Grimaldi signed a decree on March 22, 1767, suppressing the Superior Council as of the date that Spain took formal possession of Louisiana while allowing its members to continue to draw salaries and judge cases already in process, but under the governor's authority as presiding judge. Criminal matters would be judged by the customs of the land, but all other laws would be those of Spain and its empire. The small court Grimaldi ordered reflected Spanish practice. Spanish governors had superior jurisdiction in the towns as well as the provinces where they resided. Almost never trained in law, they nominally presided over a court whose actual operations were directed by an *asesor letrado*, a trained legal expert, who also advised the governor on what to rule. Grimaldi's order forbade the Commissary from interfering, whatever the instructions he had from France or had been the custom.

Then in early 1768 Grimaldi ordered Ulloa to establish a small Spanish law court, one Ulloa expanded to include three Spaniards and four locally prominent men who were friendly to the Spanish regime.²⁰

As is well known, while Ulloa was away from New Orleans, La Frenière and others who foresaw yet more Spanish interference with their power and customs began to plot. Rumors about and then the arrival in the colony of the trade decree of March 23, 1768, brought the stew of discontent to a full boil.²¹ Based on the new *comercio libre* or “free trade” regulations being implemented for Cuba and Spanish Hispaniola, the decree authorized point-to-point trade with six, later nine, ports in Spain in ships of Spanish construction and ownership with crews that were two-thirds Spanish subjects. Goods shipped from Spain paid no tariffs on either end of the voyage; Louisiana goods entering Spain were to pay 4% there, but export from Spain to another country rebated that tariff, although not the additional shipping costs.²² Ulloa and later O’Reilly and the Spanish Crown ruled that ships owned in Louisiana were Spanish; the rule on crews was, as always, largely ignored.

Invoking the authority of the Superior Council on which many of the plotters sat, the conspirators had the Superior Council order Ulloa to leave the colony on a claim that he had no legal authority to issue his decrees. They backed this with the threat of a drunken Acadian/German Coast mob brought to New Orleans for the purpose. With a pregnant wife and no reliable nor numerous military forces to suppress the insurrection, Spain’s first governor boarded ship and sailed to Havana.²³

Field Marshall Alejandro de O’Reilly’s landed at New Orleans on August 18, 1769, with a force of two thousand soldiers and authority to fully implement Spanish rule. This event signaled a coming shift in the management of Louisiana from the Minister of State, Grimaldi, to the Ministry of the Indies and the full Spanish colonial system.²⁴

20. The court ordered was to consist of the governor, an *asesor* (legal adviser), and a French and a Spanish notary. To them, Ulloa added three Spaniards and four Frenchmen, but left the Superior Council intact. DIN & HARKINS, *supra* note 11, at 43.

21. There were other factors such as Ulloa’s forced reliance on the French administration, his lack of Spanish soldiers and funds, and his private life. Moore and Brasseaux explore these factors and the historiography of the rebellion.

22. MOORE, *supra* note 4, at 111-13. For *comercio libre*, see CLARK, *supra* note 1, at 171-72.

23. MOORE, *supra* note 4, at 124-64, *passim*; see also BRASSEAUX, *supra* note 8.

24. BIBIANO TORRES RAMIREZ, ALEJANDRO O’REILLY EN LAS INDIAS 97-105 (1969); MOORE, *supra* note 4, at 185-98, 216-17 (Cabildo and integration); DIN & HARKINS, *supra* note 11, at 46-47. The formal integration of Louisiana into the Spanish empire was done with a decree of November 24, 1770.

O'Reilly quickly abolished the Superior Council, replacing it with a nine-member city council (*ayuntamiento*), which had the same functions of maintaining law and order and mediating civil law disputes, but *only* in the city of New Orleans and its district (*partido*), a district which was understood to include not just the city but also the plantation zone extending from below New Orleans up to, but not including, the German coast. A seeming exception to this limited jurisdiction was that the *Alcalde Mayor Provincial* (one of the councilors) was to investigate crimes, fires, and certain other matters that took place in the countryside where there was no *villa* or *lugar*, smaller subordinate settlements that could exist within a municipal district and that sometime had their own judicial officials.²⁵ None existed within the *partido* of New Orleans, effectively making the *Alcalde Mayor Provincial* the face of the law in rural areas much as the *alcaldes ordinarios* were in the city.

Until the 1790s, the Cabildo (to use its popular name) consisted of six proprietary *regidores* or councilors (each with specified duties) who annually elected two *alcaldes ordinarios* (local judges), a *síndico procurador general de la republica* (defender of the public interest or attorney general) and a keeper of the ayuntamiento's incomes (*mayordomo de propios*). Most of the holders of these offices were wealthy francophone planters, although in time Spaniards also acquired some of them. Gilbert Din and John Harkins have shown that the *alcaldes* handled most criminal and civil matters not involving *fueros* (legal privileges such as those of soldiers) unless the Governor chose to remove a case to his own court. Appeals from both sorts of court went to Havana where a special tribunal was created and, in some rare cases, all the way to the Council of the Indies at Madrid. Commandants in the countryside (aided by syndics who reported local events) and, after 1779, *alcaldes de barrio* (neighborhood judges) in the city, served as (investigating) judges of first instance for limited kinds of cases in their areas, cases that then went to the governor's court.²⁶ The governor or his lieutenant normally presided over the Cabildo's Friday meetings, making it clear where the real political and legal authority lay; that is, *not* with the Cabildo.

Because none of the initial *regidores* knew how Spanish town councils operated as courts of law much less in the limited administrative

25. TORRES RAMIREZ, *supra* note 24, at 115-18, 188-96.

26. DIN & HARKINS, *supra* note 11, following 100 fig.2, 101-26 (see 57 tbl.1, 60-61 tbl.2, 69 tbl.3, 72 tbl.4 for lists of incumbents). The *alcaldes de barrio* were somewhat like justices of the peace in the Anglo-American system. Two at first, in 1792 Carondelet created an additional two (*id.* at 121).

and legislative areas allowed, General O'Reilly had his legal advisors prepare comprehensive regulations that followed the Laws of the Indies, the so called Code O'Reilly of November 25, 1769. O'Reilly also ordered a number of annual fees and various taxes to give the new municipal government income with which to pay its officials and provide for (limited) city services.²⁷

O'Reilly not only reformed the government of the city of New Orleans, he also enforced the trade decree of 1768 but with exceptions that marked the beginning of the Spanish retreat from its terms. His order of September 22, 1769, expelled seventeen British merchants from New Orleans and made it clear that British smuggling along the Mississippi would not be tolerated. However, he allowed Oliver Pollock and William Moore, British subjects who had provided flour from British North America, to remain and to continue to trade in that commodity (and others) via the French West Indies. He also allowed the owners of five ships based at New Orleans to go there with Louisiana products, in effect recognizing a trade pattern of long-standing and supporting the French merchants trading with the colony. Looking to the future, O'Reilly suggested that the decree be modified to allow a three-legged trade with Havana in which Catalan wines (and a few other products) would be brought to Louisiana, exchanged for Louisiana products (except tobacco) to the extent that the local demand allowed, after which the rest of the wine and the Louisiana goods would be shipped to Cuba, where the Catalans could obtain cargos of sugar to return to Catalonia. Spanish manufactures brought to Havana by licensed trade and Cuban *aguardiente* would flow back to Louisiana to pay for the lumber, rice, indigo, cotton and peltry thus supplied. Both legs of the Havana-New Orleans trade should be tariff free. The Crown approved this arrangement on an interim basis on January 26, 1770, except for the permission for Louisiana-owned ships to trade with the French West Indies. Only trade with Spain and Havana was allowed; unofficially, the favored Anglo-Americans continued their commerce. In August 1772, a

27. TORRES RAMIREZ, *supra* note 24, at 125 (initial officials only); DIN & HARKINS, *supra* note 11, at 60-61 tbl.2 (listing the offices and the men who held them). Of the men elected, only Francisco María Reggio (royal standard bearer) had also been on Ulloa's court. TORRES RAMIREZ, *supra* note 24, at 126 (citing the various salaries, taxes, and fees), app. at [1], [187]-202 (citing the full Spanish text of O'Reilly's *Reglamento*, defining the duties of each office and procedures), app. at [2], 203-25 (citing a second *reglamento* dealing with judicial standards and processes). DIN & HARKINS, *supra* note 11, discusses the details, with examples. See chapters 8-11 for the growth of limited city services in the last decades of the 18th century.

duty (*almojarifazgo*) of 2.5% was imposed on goods (legally) entering the colony and O'Reilly's preliminary regulations were made final.²⁸

O'Reilly's disruption of the British trade, the decree of January 1770, and then an Anglo-Spanish crisis over ownership of the Falkland/Malvinas Islands in 1770-1771 and difficulties initiating the Havana trade produced a sharp fall in Louisiana's commerce and reports that the French merchants (who had driven the indigo trade, Louisiana's most valuable export) were leaving New Orleans.²⁹ However, Governor Luis de Unzaga's toleration of British trading out of sight of New Orleans produced a reversal. Ship traffic at the Balize, where a pilotage fee was required of all ships entering or leaving the Mississippi, rose steadily from 58 passages in 1770 to a peak of 161 in 1775, with a decline thereafter to the outbreak of the Anglo-Spanish war of 1779-1783. Fragmentary evidence shows that the majority of these ships were British, not Spanish or ships owned at New Orleans. Spanish tax records and Francisco Boulogny's *Memoria* of 1776 indicate that Louisiana's *legal* commerce was about 600,000 pesos a year by 1775. Of that, 50,000 pesos involved trade with Havana but only 15,000 pesos was with Spain. The remaining 535,000 pesos evidently was with France and the French West Indies and English North America. Trade with the first two had again been authorized in 1774, in response to the Cabildo's petitions of 1771 decrying the loss of the French markets for peltry, indigo, and tobacco, although the direct trade with France was a one-off experiment at the time.³⁰

Spain's preparations for its war with Great Britain over control of the Caribbean (1779-1783) led Governor Bernardo de Gálvez to seize eleven British "floating warehouses" anchored at various places along the Mississippi and to order British merchants to leave the colony, both measures with little effect. To replace British trade and shipping, on November 21, 1777, Gálvez announced a continuation of trade with the French West Indies for ten years in Spanish and Louisiana ships. French

28. CLARK, *supra* note 1, at 173-76; Ruth King, *Social and Economic Life in Spanish Louisiana, 1763-1783* (1931) (unpublished Ph.D. Dissertation, University of Illinois), 01224265 PQDT 301837351 (providing a detailed account); *see also* CHARLES GAYARRÉ, 4 HISTORY OF LOUISIANA (Pelican Publishing Co. 1965) (1903); CHARLES GAYARRÉ, 3 HISTORY OF LOUISIANA: THE SPANISH DOMINATION 26-28, 49 (Pelican Publishing Co. 1965) (1903) [hereinafter GAYARRÉ, 3 HISTORY OF LOUISIANA] (commenting that the decree of August 17, 1772, "did not prove of much importance to the welfare of the colony").

29. CLARK, *supra* note 1, at 176-78.

30. Pilotage fee: Archivo General de Indias, Santo Domingo 2628; King, *supra* note 28, 163-69 (almojarifazgo receipts); Francisco Boulogny, *Memoria* (1776), *in* FORTIER, *supra* note 12, at 38; PAUL E. HOFFMAN, A HISTORY OF LOUISIANA BEFORE 1813, at 133-34, 137-47 (1996) (a general overview of the shifting trade decrees and situation).

ships coming from the West Indies could bring slaves, coins, or bills of exchange to the colony and take away its exports. Both sorts of ships required consular clearance in the West Indies. The import duty was lowered to 2%. This was followed in April 1778 with a decree authorizing trade directly with France in colonial goods carried by Spanish ships and subject to a 6% export duty; goods brought from France also paid 6%. These arrangements allowed indigo and peltry to return to their traditional French markets while favoring Spanish (and Louisiana-owned) shipping and maintaining a tariff differential that favored the direct trade with Spain. In short, unable to bend Louisiana's economy to the *commercio libre* model, as a war-time measure Spain allowed the colony's commerce to return to its pre-Spanish pattern.³¹

As the end of the war came into view, Spain ratified these arrangements with a decree of 1782 that was a mercantilist solution to the problem of Louisiana's trade: commerce carried in nominally Spanish ships to and from Spain under favorable tariff treatment; commerce with French ports where a Spanish Consul resided in nominally Spanish ships paying 6% duties on goods exported thence and imported hence, and trade with the French West Indies under similar stipulations. As John Clark observed: "If Spain could derive no direct commercial benefits from Louisiana, at least the colony could be strengthened in its role as a buffer by diverting its commerce to an ally of Spain."³² In the end, most of the commerce authorized in 1782 returned to the French West Indies because French merchants preferred to send their goods and ships to Cap Français (Cape Haitian), St. Domingue's great free port where return cargos of high value were available. Louisiana's relatively small market and export trade were more efficiently serviced in this way, at least until the wars of the French Revolution interrupted this commerce.³³

31. CLARK, *supra* note 1, at 222-24. Spain did arrange for the royal tobacco monopoly to purchase Louisiana tobacco, providing an outlet for that product and a boom of a few years' duration in its production. Brian E. Coutts, *Boom and Bust: The Rise and Fall of the Tobacco Industry in Spanish Louisiana, 1770-1790*, 42 *AMERICAS* 289-309 (Jan. 1986).

32. CLARK, *supra* note 1, at 224.

33. *Id.* at 224-29; GAYARRÉ, 3 *HISTORY OF LOUISIANA*, *supra* note 28, at 153-56. The terms of the 1782 decree were in part set to benefit Gilbert St. Maxent, Bernardo de Galvez' father-in-law, who aspired to monopolize Louisiana's Indian trade and thus force out the English companies (Panton Leslie & Co., John Forbes, James Mather) that controlled it east of the Mississippi, an area now once again Spanish because of the Anglo-Spanish treaty of 1783, although also claimed by the United States under its treaty of 1782 with Great Britain. For the British companies, see WILLIAM S. COKER & THOMAS D. WATSON, *INDIAN TRADERS OF THE SOUTHEASTERN SPANISH BORDERLANDS: PANTON, LESLIE & COMPANY AND JOHN FORBES & COMPANY, 1783-1847* (1986).

All of which is to say that the French Louisiana's commercial "institution" (patterned behavior sanctioned in part by laws) was too economically logical to be transformed to fit even the new Spanish "free trade" institution that the Spanish Crown was creating for its Atlantic empire between 1765 and 1789. In this confusion of institutions, the older French economic pattern won out, forcing Spain to change its laws so that they more nearly described the economic reality of La Luisiana.

III. SLAVERY³⁴

When Spain acquired Louisiana in 1763, its officials found a slave system (or institution) with one law, the Code Noir of 1724, but at least two regimes of practice that roughly corresponded to how many enslaved Africans and Native Americans were held by each owner. Owners who held one to perhaps five slaves seem generally to have treated them as lesser members of the household, more or less in line with the paternalistic provisions of the Code Noir of 1724, the legal framework that supported slavery. The other regime was the harsh disciplinary one of the staple-oriented plantations where gangs of fifteen or more slaves often labored under overseers, and masters who did as they pleased in terms of providing for the physical needs of their chattels, demanding labor, and disciplining them; that is, the Code was often ignored, especially when market conditions worsened as they had in the early 1760s. Although encouraging slave couples to have children, both sorts of masters did not allow parents to marry in the Catholic church and were willing to break up common-law families if it suited a whim or financial need. Carl Brasseaux has argued that the French colony's attorneys general treated the master-slave relationship as a domestic matter (that is private law), only intervening when harm was done to the chattel of third parties or abuses provoked scandal or rebellion that could not be overlooked. The result was that flight because of abuses—that is, *marronage*—(as well as passive forms of resistance) was common, especially in the New Orleans area where the larger plantations and slave gangs were found. Brasseaux argues further that an unusually strong episode of *marronage* in 1748 frightened the larger slave holders into

34. POWELL, *supra* note 9, at 224-58, 274-76 (covering the ground sketched in this part of the essay). Powell sees a three-sided struggle between slaves defending what had become their customary rights to work and gather on Sundays and holidays and otherwise look to their own interests and then those rights that Spanish laws conveyed and the great planters who wished near absolute power over the slave institution (but sometimes contradicted themselves when responding to particular situations) and the career bureaucrats sent to govern Louisiana, men who supported slavery and would overlook some abuses by masters but never fully ignored Spanish laws.

tightening disciplinary practices after a decade and a half when discipline had been relatively less severe because no slaves could be imported to replace losses. Governor Pierre de Rigaud, Marquis de Vaudrieul's regulations of 1751 embodied that tightening. A second outburst of *marronage*, coupled with thefts, produced another crackdown in 1764.³⁵ In the law, flight as well as violence directed at white persons were punishable by heavy flogging and even execution, as the Superior Council might decide. No owner wanted to lose a slave, but the larger holders seem to have been willing to inflict the most savage punishments against *marronage*, and other forms of resistance, because they believed that terror was the most effective way to manage slaves for maximum productivity. Small holders, especially if outside of the plantation zone around New Orleans, seem to have tried to avoid reporting their slaves to the authorities lest judicial process result in the loss of valuable assets. All of which is to say that the institution of slavery in French Louisiana was another site of the French "freedom," that is license, that D'Abbadie and Ulloa and other Spaniards observed in the mid-1760s. It was also an institution that had no answer to the problem of *marronage* except to continue to tighten laws that restricted slave movements off the plantations and punishments when they did, a strategy that made slavery even less tolerable as customary rights of nocturnal assembly and weekend dances, self-employment, and the right to sell goods slaves produced during their "free time" were withdrawn, usually temporarily.³⁶

After at first allowing a continuation of the existing slave regime while he dealt with the leaders of the insurrection and other matters, O'Reilly decreed the abolition of the Code Noir and its replacement with Spanish slave laws (November 25, 1769). Like the Code, Spanish laws stipulated minimal allowances of clothing and food, restricted flogging and other punishments (ideally only inflicted via legal process, a change from the Code), required baptism, and made limited provisions for families. However, the two systems differed sharply in their views of the slave. The Code Noir did not recognize the slave as anything more than animated or movable property. The Spanish laws affirmed a legal and spiritual personality, if of lesser status and value than those of Europeans.

35. Carl A. Brasseaux, *The Administration of Slave Regulations in Louisiana, 1724-1766*, 21 *LA. HIST.* 147-51 (Spring 1980); POWELL, *supra* note 9, at 224-25 (for 1764).

36. GILBERT C. DIN, *SPANIARDS, PLANTERS, AND SLAVES: THE SPANISH REGULATION OF SLAVERY IN LOUISIANA, 1763-1803*, at 4-39 (1999) [hereinafter DIN, SLAVERY]. Each crackdown seems to have lasted only briefly because slave owners took different approaches to *their* slaves or had an economic interest in allowing them to work on Sundays and holidays or realized that taking away these privileges might provoke rebellion. Too, those days were used to raise crops in the gardens most planters provided, saving the planter money on food for his chattel.

Informed by Roman Catholic reforms from the 16th century Council of Trent, the Spanish code also ordered baptism and religious instruction and that slave couples, especially those with children, should be married in the Church and not separated thereafter. Families were to be kept together until the children reached teenaged years, after which they might be sold apart from their parents. Slaves had the right to take “cruel” masters to court and limited rights to testify against them; a slave accused of a crime could have an attorney (a white representative, usually not a trained lawyer) for his/her defense, provisions not found in the Code Noir. Manumissions, restricted in the Code Noir by the requirement that each case had to be approved by the Superior Council (even for testamentary manumissions), were more readily available under the Spanish code by simple notarial act. Famously, Spanish law allowed self-purchase (*coartación*) and the purchase and freeing of other slaves by enslaved persons, who had property rights never recognized in the Code Noir. The laws also outlawed Indian slavery, a potential issue in a colony where some slaves were Native Americans and others were descendants in the maternal line. Finally, Spanish law required that the buying and selling of slaves be done by notarial act, evidently not a legal requirement in French Louisiana. However, punishments for violence against whites, rebellion, and *marronage* were no less severe than they were in the Code Noir, if now mediated by the requirement of court proceedings that offered the slave limited protection against arbitrary action.³⁷ Subsequent Spanish governors all supported and inflicted strong punishments except for a brief aberration under Bernardo de Gálvez (below).

Gilbert Din’s study of slavery under the Spanish regime shows that from 1770 onwards, the Cabildo and the owners of large numbers of slaves (represented by the *regidores*) repeatedly tried to get the restoration of the Code Noir, primarily via police regulations aimed at restricting the customary freedoms of slaves and preventing runaways while increasing the power of masters.

Their first and almost successful attempt took place in 1773-1778. Concerned about fugitive slaves, the Cabildo wanted to create a fund to

37. Hans W. Baade, *The Law of Slavery in Spanish Louisiana, 1769-1803*, in *AN UNCOMMON EXPERIENCE: LAW AND JUDICIAL INSTITUTIONS IN LOUISIANA, 1803-2003*, at 280-304 (Judith Kelleher Shafer & Warren M Billings eds., 1997) (showing that Spanish slave law embraced those aspects of Roman law that favored the slave (as noted here), whereas French Code Noir favored the master (*id.* at 284), clarifies O’Reilly’s allowing and then revocation of the Code Noir (*id.* at 285-86), and by citing cases shows that Spanish emancipation law was applied in New Orleans); DIN, *SLAVERY*, *supra* note 36, at 43; HALL, *supra* note 3, *passim* (painting a more favorable picture of French-slave relations and the Code Noir and argues that the Spanish regime was not more favorable to the slave).

support a slave-hunting patrol and compensate masters whose chattel might be maimed, killed, or executed because they had deserted their plantations. Governor Luís de Unzaga insisted that the Cabildo call a meeting of “notables” before approving the creation of that fund and passing ordinances for the fund and for finding runaways. The “notables” approved both, and the proposition was sent to Madrid for approval because it involved a tax.³⁸ Then Bernardo de Gálvez became governor, quickly not only marrying into the slave-holding elite but also, apparently, adopting its attitude toward blacks in general. Din suggests that he may have prodded Madrid to reply to the overture of 1773 with a decree of May 14, 1777, approving the proposed compensation fund, but only if contributions were voluntary. The decree also allowed the colony’s residents to draft new rules for the discipline of slaves and free blacks, supposedly to reduce the causes of *marronage*.³⁹ This was the opening that the planters seized. The Cabildo instructed two of its members to prepare regulations that restored the rights that Spanish law had taken from masters. The drafters took as their model the 1724 Code Noir, even naming their handiwork the “Code Noir ou Loi Municipale” and added a few provisions from the 1751 police regulations that had marked the previous height of the reaction to the lax regulation of slavery that had arisen prior to the indigo boom of the 1740s. Under the proposed rules, manumissions could only be with judicial approval, and self-purchase was to end. Virtually all of the ameliorative aspects of Spanish slave law were removed so that masters would again enjoy essentially unlimited rights over the bodies of their chattels. Presented to the Cabildo on October 16, 1778, the draft was circulated for comment in the district and then revised. The revision in turn was the subject of a meeting at which twenty-five of the largest planters were present. This body approved asking the Cabildo, the Governor, and then the Crown to respect the laws of the province and approve the revised draft. Thirty-three persons, including Governor Gálvez, signed the minutes of that

38. While waiting for a reply, Unzaga created a fugitive-hunting patrol of free persons of color under his own authority, in effect taking over the project, even to the point of trying to collect money to compensate owners whose slaves died as a result of the patrol’s activities. The next year he supported the local custom that allowed slaves to hire themselves out on Sundays without their owner’s permission, something that large planters opposed. And he supported slave property rights as well as *coartación*, which was just beginning to catch on among slaves in and near New Orleans. DIN, SLAVERY, *supra* note 36, at 58-61, 64 (property rights, the case of horses confiscated at Pointe Coupée in 1775), 65. For how the compensation fund worked, see *id.* at 62-65.

39. *Id.* at 71-75.

meeting on March 1, 1779. But Governor Gálvez did not forward the document to Spain and the initiative died.⁴⁰

For the next sixteen years, the great planters had to be content with seeking to regain their powers by trying to deal with the problem of *marronage*, which grew during Spain's war against Great Britain (1779-1783) and the subsequent economic booms. Repeatedly the Cabildo and planters tried to create a compensation fund and implement restrictions on slaves' customary practices and privileges.⁴¹ And although they identified Spanish "leniency" as a cause of slave unrest, they were not able to prevent the growth of emancipation by notarial acts, wills, and self-purchases; the protection of slaves' rights to property they accumulated by work on Sundays and holidays; and the rights of slaves when in court, including to seek sale away from abusive masters.⁴² Nor could the planters persuade governors Gálvez, Esteban Miró, or Francisco Louis Héctor, Baron de Carondelet to consistently use the police regulations they favored. Owners of few slaves, mostly in the outlying districts upriver from New Orleans, did not willingly pay into the fund, whose primary beneficiaries were the planters of the New Orleans area whose slaves, labor, and disciplinary practices, and paranoia, were the central problem. So while some aspects of Spanish slave law were being followed in the city and for those slaves bold enough to claim their rights under it, slavery on the great plantations and to a degree in the city continued to be controlled by the masters, whose attitudes toward their chattel and discipline followed the French

40. *Id.* at 76 (citing all the provisions), 76-79 (denoting the politics and why Gálvez did not send it to Spain). Din believes that Bernardo cooperated with the planter interests until the planter members of the Cabildo, thinking that power was shifting to that body, tried to assert control over the charity hospital as their counterparts on the Superior Council had done. But that was one of the Governor's powers. *Id.* at 88 (Din's summary: "In the end, Gálvez did little either to fulfill royal instructions or to satisfy the major slaveholders."); see also POWELL, *supra* note 9, at 234-36 (following Baade in describing the *Loi Municipale* project as "a slaveholder's *Fronde*, a transparent effort . . . to wrest back the slave owner power that O'Reilly had taken from them ten years earlier."); Baade, *supra* note 37, at 290-93 (reviewing Gálvez' ruling in *Surtray v. Jenkins* (where he seemed to side with the argument that the Code Noir remained in force), his possible motives (or excuses) and the Cabildo's project, drafted by one of the men, Joseph Ducros, who had been given authority to enforce existing law (including the Code Noire) during the first months of O'Reilly's administration).

41. DIN, SLAVERY, *supra* note 36, at 79-80 (1779), 85-87 (c. 1781-82), 89-94, 99-100, 116-18 (1780s), 141-45 (1792).

42. KIMBERLY S. HANGER, BOUNDED LIVES, BOUNDED PLACES: FREE BLACK SOCIETY IN COLONIAL NEW ORLEANS, 1769-1803, at 17-51 (1997) (discussing the various methods of emancipation and their temporal and other patterns) (see especially 28, fig.1.2, *Type of Manumission by Sex, New Orleans, 1771-1803*); HALL, *supra* note 3, at 266-74 (discussing the high rate of emancipations in Pointe Coupée during the Spanish period and the probable destruction of additional documentation by persons wishing to hide African ancestors).

institution as it had developed in Louisiana before 1769. That is, the confusion of slave institutions continued.

On two occasions—November 25, 1776, and May 31, 1789—the Spanish government issued orders for the good treatment for slaves while affirming some of the restrictions that planters wanted. In both decrees, adherence to the Catholic Church’s views about marriage was enjoined along with mild treatment of slaves and respect for Sundays and holidays as days of rest. At the same time, strong punishments were ordered for anyone selling liquor, guns, and gunpowder to slaves or buying stolen goods from them.⁴³ And governors Miró and Carondelet both issued decrees that attempted yet again to regulate slavery by repeating the need for good treatment and by ordering stern punishments for infractions.⁴⁴

The Pointe Coupée conspiracy of 1795⁴⁵ revealed that the memory of the Superior Council had not vanished. Although the authorities in Pointe Coupée arrested the plotters before they could act, fear of a Haitian-style uprising caused the Cabildo’s Francophone members to try to extend their authority into the countryside as if the body were still the Superior Council. Although opposed by a Spanish *regidor*, they followed the lead of the *procurador general* (general prosecutor) in appointing four assisting witnesses (*testigos de asistencia*) to go to Pointe Coupée to take

43. DIN, SLAVERY, *supra* note 36, at 68-69, 125-30. The instructions were dated November 25, 1776, but not delivered to Gálvez until April 1, 1777. He did not publish it. The decree of 1789 was published in 1790, provoking a protest from the Cabildo, especially its provisions that every plantation of a certain size have a chaplain, that single slaves be segregated by sex in work and in living arrangements, and that marriages take place in the Church, not just by consent of the masters and parties. While continuing to favor “mild” treatment of slaves, Governor Carondelet allowed most of the decree’s provisions to remain unenforced. The Cabildo chose not to comment on the severe punishments also contained in the decree. *See also* GAYARRÉ, 3 HISTORY OF LOUISIANA, *supra* note 28, at 301-05.

44. Miró’s decree upheld some of the traditional rights of slaves such as the right to work for themselves on Sundays and holidays and hold dances but tried to impose sumptuary laws and an end to concubinage on free women of color (DIN, SLAVERY, *supra* note 36, at 124-25). Carondelet’s slave regulations of July 11, 1792, enjoined proper food and clothing and generally mild treatment for slaves. His earlier *bando de buen gobierno* continued bans on importing slaves from the French West Indies or Jamaica (both places where revolutionary ideas might be spread). His *bando* of 1795 (issued after the Pointe Coupée conspiracy was put down) prohibited the customary slave gatherings that Miró had allowed and required plantation slaves to leave New Orleans by sundown, even if traveling with their owners’ permissions (*id.* at 135, 188). POWELL, *supra* note 9, at 255-56 (seeing the *bando* of 1795 as a capitulation to the slave owners).

45. JUAN JOSÉ ANDREU OCARIZ, MOVIMIENTOS REBELDES DE LOS ESCLAVOS NEGROS DURANTE EL DOMINIO ESPAÑOL EN LUISIANA 117-77 (1977); HALL, *supra* note 3, at 344-74; DIN, SLAVERY, *supra* note 36, at 154-76 (providing accounts of the plot, its discovery and investigation, and the sentences and circumstances), 174-75 (discussing what he sees as the errors of certain historians in evaluating what was, in fact, a serious but very local disturbance). Only the hysteria among some circles in New Orleans (notably the planters on the Cabildo) has made it seem more important than it was. DIN, SLAVERY, *supra* note 36, at 174.

part in the investigation of the plot and the summary punishment of those involved, and eight other men to more generally investigate who among slaves and free persons of color was insubordinate and ungovernable and should be expelled from Louisiana. Compensation to masters for slaves imprisoned or executed or expelled was left for another day. Asked to approve these initiatives (the planters had learned that much about their place in Spanish colonial government), Governor Carondelet refused to allow them. Instead, he sent the Intendent's legal advisor (*asesor*), Manuel Serrano, and a small group of soldiers, who duly completed the investigations and carried out the sentences that *he* approved. He did not send his own legal advisor, Nicolas María Vidal, because, like the Governor himself, Vidal had a reputation among the planters as friendly toward blacks.⁴⁶

Carondelet did follow up on another of the *procurador's* ideas. He ordered the Post commandants to conduct censuses of the slaves and free blacks in their districts who were known to be dangerous for public safety and to ask the slave owners if they would contribute to a compensation fund to cover the value of slaves expelled for that reason. Almost uniformly, the slave owners in the posts refused to pledge for a fund which was open-ended, and raised various objections to expelling slaves. The desire of the planters of Pointe Coupée for all the other planters of Louisiana to compensate them for slaves they were losing to execution and exile found no sympathy elsewhere.⁴⁷

The limitations that Spanish law placed on the jurisdiction and power of cabildos had been upheld once again in the face of another effort of the Francophone great planters of the New Orleans area to claim for themselves the jurisdiction and powers that the Superior Council had exercised. The protections of Spanish slave law continued until French Prefect Pierre Clément de Laussat briefly restored the Code Noir on December 17, 1803, just days before the transfer to the United States. However, Spanish slave laws (like the rest of Spanish civil law) continued in force until replaced by Louisiana's own Code Noir of 1806 and the Digest of 1808.⁴⁸

46. DIN, SLAVERY, *supra* note 36, at 154-67, 159-60 (citing the Cabildo's actions). Vidal had a free mulata mistress by whom he had three acknowledged daughters. Carondelet was suspect because his *reglamento* of 1792 had warned the masters to properly feed and clothe their slaves and generally treat them with a degree of leniency.

47. *Id.* at 169-73.

48. *Id.* at 230 (quoting Lassaut's lament about the pressure that the "members of the local government" put on him until he relented and had the law published on December 17, 1803).

IV. CONCLUSION

In conclusion, it can be shown that the imposition of the Spanish institutions of the Cabildo, *comercio libre*, and different slave laws initially produced varying degrees of confusion as both the Spanish governors and their new subjects—especially the socially and economically powerful planters of the area around New Orleans—tried to square them with existing customs and practices, that is, with existing institutions. Of the three, “free commerce” failed almost immediately and completely. The other two, intertwined as they were with questions of social order, produced something of a compromise because Spanish governors supported strong disciplinary measures even as Spanish law and practice in the city of New Orleans, if nowhere else, granted slaves rights and supported local traditions that offered small areas of personal freedom that some slaves were able to use even in the face of the desires of the powerful to have the sort of absolute control over black bodies that they had attained through the French Code Noir of 1724 and the Superior Council.