

Honos alit artes

**Studi per il settantesimo compleanno
di Mario Ascheri**

L'ETÀ MODERNA E CONTEMPORANEA
Giuristi e istituzioni tra Europa e America

**a cura di
Paola Maffei e Gian Maria Varanini**

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Slaves Poisoners: Resistance to Slavery and the Invention of the Inner Enemy (French Antilles, 19th Century)*

by Marco Fioravanti

In this essay I wish to contribute to the study of disobedience rights, by analyzing instances of resistance against the domination and slavery in the French Antilles during the restoration period. This age was the backdrop for quite a number of significant slave revolts; not just in the French colonies, but also within the English and Spanish colonies, such as Jamaica, Cuba, the Barbados islands or the Bermudas¹. The uprisings occurred coincidentally during a phase of French history that witnessed a booming slave trade, although it had been formally abolished following the congress of Vienna.

It's a well-known fact that slaves left little or no accounts about their living and working conditions. However, thanks to sources like manuscripts (case transcripts, legal colonial administration documents) and printed material (colonial law, legal doctrine, memoirs and letters) at least a partial judicial and political picture of segregationist ideals are available. Legal cases; at least some of them, played an important role in the greater order of French colonial judiciary and its relations with the motherland, providing insight. Furthermore, the recorded reaction of intellectuals, politicians and jurists, in France, to events in the Caribbean, allows to comprehend how the colonial problem was perceived by the dominating class in France and how they perceived the relation between «us and the others»². Hence, the approach has been that of rethinking the judi-

* This article grew from a speech in an International Conference on *Right of Resistance: Theory, Politics, Law (16th-21th century)*, Brunel University, London, 8th-9th February 2012, with the participation of Mario Ascheri, who helped to shape these reflections with his usual intellectual curiosity. On the same subject see my *Domestic Enemy: Poisoning and Resistance to the Slave Order in the 19th Century French Antilles*, in «Historia constitucional», 14 (2013), <<http://www.historia-constitucional.com>>, pp. 503-524.

Abbreviations: Archives Nationales, Paris (AN); Archives Nationales d'Outre-Mer, Aix-en-Provence (ANOM); Archives départementales de la Martinique, Fort-de-France (ADM); Bibliothèque Nationale de France, Paris (BNF); *Code de la Martinique*, 8 v., Saint-Pierre 1767-1822 (*Code de la Martinique*).

¹ M. Craton, *Empire, enslavement, and freedom in the Caribbean*, Oxford 1997.

² See T. Todorov, *Nous et les autres. La réflexion française sur la diversité humaine*, Paris 1989; E.W. Said, *Orientalism*, New York 1978; E.W. Said, *Culture and Imperialism*, New York 1993.

cial history of France – beyond the “national myth” established during the Third Republic – by bearing in mind and including those excluded from citizenship, like the slaves and the free blacks.

Free blacks – who had an intermediate *status* between whites and slaves and were merchants, farmers, landowners, also slave-owners – at the beginning allied themselves with the whites, but later they joined the slaves, both victims of discrimination and prejudice of colour. However, this prejudice was just one of the features of the wider racial issue of modern times: racism continued to cut across barriers of colour³.

The forms of resistance observed among slaves, were plenty already in the XVIth century, both collective and individual (sometimes passive forms of resistance), such as: suicide, armed uprising, escape, infanticide and denial to respect the colonial laws⁴. «The institution [of slavery] was brought down not because it had ceased to be productive and profitable, but by great political convulsions, class struggles and acts of resistance»⁵.

The most widespread and hard to repress forms, for the colonial government were *marronage* and poisoning. The former, involving escape from plantations and the creation of hidden, independent communities within forest areas or mountains where fugitives could stay, in some cases for long periods (as in Brasil and Jamaica), was violently stifled by amputating legs, burning bodies alive, severing ears and by cutting the Achilles' heel. The poisoning of men and cattle by slaves, spread especially in the French Caribbean, was prosecuted by creating special tribunals.

It is common knowledge that the French *Ancien régime* had some special jurisdictions within its pyramidal magistrature and court structure. As far as the *police*⁶ was concerned, the task of keeping order and subjects under control was the duty of the *prévôts*, agents of military police, and the *prévôts des maréchaux*, who had both, military and judicial authority to make sure that the law was respected in the countryside and could suppress those who committed acts of vagrancy, desertion or incited popular unrest. The *prévôts* were responsible only for illegalities committed by vagabonds and soldiers in the countryside, to the point that the justice they exercised may be defined as “rural justice”. More specifically, the *ordonnance criminelle* of 1670 – that defined matters related to penal procedures of the *Ancien régime*⁷ – main-

³ W.E.B. Du Bois, *Il Negro e il ghetto di Varsavia* (1952), in «Studi culturali», 1 (2004), 2, pp. 355-370, with *Presentazione* by P. Capuzzo; W.E.B. Du Bois, *Sulla linea del colore. Razza e democrazia negli Stati Uniti e nel mondo*, a cura di S. Mezzadra, Bologna 2010; see also *The Origins of Racism in the West*, ed. by M. Eliav-Feldon, B. Isaac, J. Ziegler, Cambridge-New York 2009.

⁴ G. Debien, *Les esclaves aux Antilles françaises (XVII^e-XVIII^e siècle)*, Fort-de-France 1974, pp. 393 ff.

⁵ R. Blackburn, *The American Crucible. Slavery, Emancipation and Human Rights*, London - New York 2011, p. 25.

⁶ See P. Napoli, *Naissance de la police moderne. Pouvoir, normes, société*, Paris 2003.

⁷ A. Laingui, *Introduzione a Code Louis, II, Ordonnance criminelle*, Milano 1996; J.-M. Carbasse, *Histoire du droit pénal et de la justice criminelle*, Paris 2009, pp. 208 ff.; P. Cipolla, *La giustizia della spada. Origini e ideologia dell'Ordonnance criminelle, 1670*, *Prefazione* di N. Picardi, Roma 2011.

tained these jurisdictions as special, with all criminal acts committed by vagabonds being attributed to the competence of the magistrates. The sentences were particularly harsh and no sort of appeal was possible, according to the Colbert penal order. These tribunals, along with other similar specialized organs were suppressed by the revolutionary regime only to be re-introduced in the napoleonic era. The re-introduction occurred to clamp down on political crimes, including banditry, to be understood as a modern form of the crime committed by vagabonds during the *Ancien régime*.

The priority of the Napoleonic regime in the colonies was to re-integrate colons, give them back their property, respecting their property rights, especially versus the slaves who were freed during the revolutionary phase. But Martinique, occupied by England between 1794 and 1802 and then again from 1809 to 1814, did not see the abolition of slavery⁸.

Following the Congress of Vienna, the chances to opt for special courts was limited with the entry into force of the 1814 Charter. Article 62 established that no-one could be taken away from his natural judge and left no space for the creation of special commissions or tribunals. However the constitutional documents still had in them legislation providing for the creation of special jurisdictions, called *cours prévôtales*, composed by civil and military magistrates (article 63), to be instituted *post factum*, in violation of the judge's principle of naturalness, to pursue political crimes (rebellion and sedition) as well as social crimes (vagrancy and deviation)⁹.

During the Restoration period, despite the acclaimed intention to get away from the Napoleonic model of special jurisdictions and lack of guarantees, there was a return to legal practices that dispensed with ordinary procedures. More generally, in the eighteen hundreds, considered by doctrine to be the century of justice by exception and political processes, one notices a considerable mixture of law and politics. An emblematic example of the management of law during the Restoration period and key to this research was the establishment in France, between 1816 and 1818, of the *cours prévôtales*, created to «rassurer les bons français», exterminate «l'hydre révolutionnaire» and the «tyrannie napoléonienne»¹⁰ and, less rhetorically, to repress the crimes committed by social outcasts and deviants, last but not least those committed by Napoleon's disbanded troops.

⁸ See R.H. Schloss, *Sweet Liberty. The Final Days of Slavery in Martinique*, Philadelphia 2009, pp. 46 ff.; N. Schmidt, *La France a-t-elle aboli l'esclavage? Guadeloupe, Martinique, Guyane (1830-1935)*, Paris 2009, pp. 33 ff.

⁹ See A. Paillet, *Les Cours prévôtales (1816-1818)*, in «Revue des deux mondes», 81 (1911), t. 4, pp. 123-149; D.P. Resnick, *The White Terror and the Political Reaction after Waterloo*, Cambridge (Mass.) 1966, pp. 83-99; P. Alvazzi Del Frate, *Il giudice naturale. Prassi e dottrina in Francia dall'Ancien Régime alla Restaurazione*, Roma 1999, pp. 187 ff.; J.-P. Royer et al., *Histoire de la justice en France du XVIII^e siècle à nos jours*, Paris 2010, pp. 626 ff.; J.M. Donovan, *Juries and the Transformation of Criminal Justice in France in the Nineteenth and Twentieth Centuries*, Chapel Hill (NC) 2010, pp. 55 ff.

¹⁰ Quoted by Royer et al., *Histoire de la justice*, p. 626.

The competence of the *cours prévôtales* was related to armed revolt, seditious meetings, subversive writing but also assassinations and violent thefts on the great country roads. Although the main reason for the establishment of the *cours prévôtales* was in order to ensure the repression of political crimes, in reality the large majority of cases they pursued were common crimes. These special jurisdictions left one of the worst memories in the history of french justice and were suppressed in France in 1818, but, with some slightly modified forms, remaining in force overseas.

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

Already in 1811, during the English occupation, a conspiracy by free blacks and slaves had been organized in Martinique and put down through the creation of a special tribunal. Particularly significant for our understanding was a slave revolt – *revolte du Mont Carbet* – that broke out on October 1822, when about thirty slaves got together in an attempt to occupy the city of Saint-Pierre in Martinique. The insurgents were captured by the army after a month of clashes, when they had already injured seven owners and killed two of them. The participation of the French army and “mixed” companies, of white colons and free Blacks, helped to isolate the thirty or forty odd slaves who rebelled. The Sentence of 1822 condemned the slaves to severe punishment after they had been tortured during the legal procedure including twenty one death sentences and ten life sentences¹¹.

The colonial grip over Martinique tightened after the revolt, in order to avoid another uprising, but above all because of the fear of a growing economic and social power of the free Blacks and the possibility of their allying with the slaves. Although many free Blacks had participated in suppressing the revolts, they were still perceived by the white colons as natural allies of the slaves and enemies of the colonial government. An important account of this kind of mindframe and thinking is provided by Pierre Dessalles, an owner of plantations on the island, who believed that the free Blacks wanted to destroy the social and legal system of Martinique; not just by using their economic power but also through poisoning. Parts of letters written by this colon are exemplary. In a letter he underlined the importance of slavery and why it needed to exist: «les gens de couleur, les nègres ne croient aux vérités de la religion, ils n'ont guère qu'une chose en vue et qui fait frémir; c'est la destruction des blancs et le renversement du gouvernement»¹². A few years later, in 1825, he

¹¹ ANOM, Fonds ministériels, EE. 722/46, *Dossier François-Xavier Donzelot*; F. Thésée, *La Révolte des esclaves du Carbet à la Martinique (octobre-novembre 1822)*, in «Revue française d'histoire d'outre-mer», 80 (1993), pp. 551-584; F. Thésée, *Le général Donzelot à la Martinique. Vers la fin de l'Ancien régime colonial (1818-1826)*, Paris 1997; G. Manceron, *Marianne et les colonies. Une introduction à l'histoire coloniale de la France*, Paris 2003, p. 84; E. Dorlin, *Les espaces-temps des résistances esclaves: des suicidés de Saint-Jean aux marrons de Nanny Town (XVII^e-XVIII^e)*, in «Tumultes», 27 (2006), pp. 37-51; Schloss, *Sweet Liberty*, pp. 93-99.

¹² P. Dessalles, *La vie d'un colon à la Martinique au XIX^e siècle. Correspondance 1808-1834*, présentée par H. de Frémont, s.l. 1980, p. 91 (4 luglio 1823).

kept on negatively stigmatizing the alliance between slaves and free Blacks, as being united in committing poisoning crimes: «on croit que le poison actuel vient des gens libres, qui donnent de mauvais conseils aux esclaves»¹³.

Significant differences may be noted if we compare the events in Martinique with those in ex-English colonies¹⁴. Just three months before the Martinique revolt, one of the most intense moments in the fight for abolition occurred in Charleston, South Carolina, where slave trade was one of the main business activities since the birth of the states, formalized in 1690 with the "Slavery Code" and with the Negro Act in 1740¹⁵. One of the most important slave uprisings occurred with the solidarity and support of the free Blacks: the revolt was led by Denmark Vesey, a free black, and with the participation of nine thousand slaves and ended with thirty five executions¹⁶. In South Carolina, as in all segregationist states, the racial and class hatred of the whites towards the slaves, who were considered as dangerous Jacobins, was also extended to the free Blacks. According to an 1822 article in Charleston, slaves and Free Blacks were the same, due to the danger they represented for the order of the land. Both categories were considered:

the greatest and most deplorable evil with which we are unhappily afflicted. (...) Our Negroes are truly the *Jacobins* of the country; that they are the *anarchists* and the *domestic enemy*; the *common enemy of civilized society*, and the barbarians who would, if they could, become the destroyers of our race¹⁷.

The same occurred in South Carolina, in Martinique and Guadalupe, white colons came to believe in a "theory" that the slaves and the free Blacks were constantly plotting against them and ready at any point to rise and end the colonial order: this was functional to the maintenance of a system of segregation¹⁸ and the creation of a "domestic enemy"¹⁹. The widespread fear was a result of the

¹³ *Ibidem*, p. 143 (18 febbraio 1825).

¹⁴ See Friedman, *A History of American Law*, pp. 85 ff.; for slaves revolts see H. Zinn, *A people's history of the United State*, New York 1980, cap. II, *Drawing the Color Line*, pp. 22 ff.; P.H. Blackman and V. McLaughlin, *Mass Legal Executions in America up to 1865*, in «Crime, histoire et sociétés / Crime, History and Societies», 8 (2004), 2, pp. 33-61.

¹⁵ See A.L. Higginbotham, *In the Matter of Color: the Colonial Period*, Oxford 1980; H.A. Johnson, *American Legal and Constitutional History. Cases and Materials*, San Francisco-London 1994; P. Finkelman, *American Legal History*, Oxford 1991, pp. 39-40; A. Galloway, *The Indian Slave Trade. The Rise of the English Empire in the American South, 1670-1717*, London 2002; J.H. Elliott, *Empires of the Atlantic World: Britain and Spain in America 1492-1830*, New Haven (CT) 2006, pp. 154-155.

¹⁶ See Denmark Vesey. *The Slave Conspiracy of 1822*, edited by R.S. Starobin, Englewood Cliffs (NJ) 1970; L.A. Walker, S.R. Silverman, *A Documented History of Gullah Jack Pritchard and the Denmark Vesey Slave Insurrection of 1822*, New York 2000, pp. 29 ff.; D.B. Davis, *Inhuman Bondage. The Rise and Fall of Slavery in the New World*, Oxford 2006, pp. 221 ff.

¹⁷ Quoted in Starobin (ed.), *Denmark Vesey*, p. 137.

¹⁸ J.-F. Niort, *La condition des libres de couleur aux îles du Vent (XVIII^e-XIX^e siècle): ressources et limites d'un système ségrégationniste*, in «Cahiers aixois d'histoire des droits de l'outre-mer français», 2 (2004), pp. 61-119.

¹⁹ A. Portelli (with A. Accardo), *Spia nel campo nemico: lo schiavo domestico come nemico interno*, in A. Portelli, *La linea del colore. Saggi sulla cultura afroamericana*, Roma 1994, pp. 59-75; see also Y. Debbasch, *Opinion et droit. Le crime d'empoisonnement aux îles pendant la période*

repeated revolts that occurred in that period in the islands nearby and the obsession which was to be found also in American colonial settlements, of a united poisoning campaign of whites by the slaves and free Blacks²⁰.

Poisoning as a crime was already regulated in Martinique by several local decrees during XVIII century. The local ordinance applied the death penalty for alleged guilty individuals and any accomplice²¹. However, only the ordinance dated 12 august 1822 formally instituted a *cour prévôtale* for the repression of poisoning crimes, which according to colonial administrators had shown a spiralling rise²². The governor of the island and the judges believed that the ordinary legal system was unable to meet the need to pursue and punish the perpetrators of such a serious crime, like poisoning. Despite the request from the Ministry of Justice to ensure legal procedure guaranteed and the individual rights laid out in French law, the extraordinary jurisdiction, composed of military and civil judges – recluded from among the elite plantation owners – without a permanent office, was operative until the end of 1826.

Furthermore, in Martinique and other central-american colonies like Jamaica, slave owners participated as non-professional judges in the hearings against slaves. Owners exercised their own private justice, based on the european *Ancien régime* method or rather a domestic justice that displaced state justice. Inside the plantations owners dictated the law for their slaves, it was a “disciplinary regime” that did not require the presence of a judge or procedures: «c’est le maître seul qui, lorsqu’il estime que son esclave a commis une faute, ordonne qu’il soit châtié, et fait exécuter le châtiment». The power exercised by the owners over the slaves was practically absolute – «la loi s’arrête au seuil de l’habitation»²³ – hence it being defined as domestic sovereignty²⁴.

Poisoning was a political crime and the confirmation of its nature can be derived from the fact that all those guilty of the crime belonged to the slave com-

esclavagiste, in «Revue française d’histoire d’outre-mer», 51 (1963), pp. 143 ff.; G. Leti, *L’empoisonnement aux Antilles françaises à l’époque de l’esclavage (1724-1848)*, in *L’esclave et les plantations. De l’établissement de la servitude à son abolition. Un hommage à Pierre Pluchon*, sous la direction de P. Hrodej, Rennes 2008, p. 211.

²⁰ See J. Savage, *Between Colonial Facts and French Law: Slave Poisoners and Provostial Court in Restoration-Era Martinique*, in «French Historical Studies», 29 (2006), 4, pp. 565-594; J. Savage, «Black Magic» and White Terror: Slave Poisoning and Colonial Society in Early 19th Century Martinique, in «Journal of Social History», 40 (2007), 3, pp. 635-662; Leti, *L’empoisonnement aux Antilles françaises* cit., pp. 209-227; Schloss, *Sweet Liberty*; M. Fioravanti, *Schiavi avvelenatori. Resistenze alla schiavitù e giurisdizioni penali straordinarie nelle Antille francesi della Restaurazione*, in «Giornale di storia costituzionale», 25 (2013), 1, pp. 13-34; C. Oudin-Bastide, *L’effroi et la terreur. Esclavage, poison et sorcellerie aux Antilles*, Paris 2013.

²¹ *Ordonnance du Roi, sur les vénéfices et poison*, in *Code de la Martinique*, I, pp. 215-222.

²² *Ordonnance du Gouverneur administrateur portant création d’une cour prévôtale pour la répression des crimes d’empoisonnement*, in *Code de la Martinique*, VIII, pp. 356-363; see also manuscript in ADM, *Cour royale de la Martinique*, 10 Septembre 1820 - 30 Novembre 1825, ff. 99-106. See Debbasch, *Opinion et droit*, pp. 137-188.

²³ F. Chauleau, *Étude sur la condition servile à la Martinique (1635-1848). Contribution à l’étude de l’ineffectivité juridique*, Thèse en Droit, Paris 1964, p. 178.

²⁴ Debbasch, *Au cœur du “gouvernement des esclaves”*, pp. 31-53.

munity on the island, so much so, that it was defined as a «class crime»²⁵. The colons, on the other hand, considered it to be a revolutionary act to the point that one plantation owner, in 1823 claimed that blacks, both slaves and free, who committed such crimes were comparable to the Carbonari in Europe, as they conspired by meeting secretly against the order of all things. This crime was perceived to be so dangerous for society that extraordinary measures were required to repress it, as the ordinary legal system according to widespread opinion, with its slow bureaucracy could not guarantee safety or suppression of the same:

il est donc nécessaire – we read on the preface of the law – de les poursuivre avec une célérité qui, en assurant leur punition, puisse frapper d’une terreur salutaire ceux qui seraient tentés de les imiter; Que la mesure la plus prompte et la plus efficace à employer pour parvenir à ce but est l’établissement d’une cour prévôtale²⁶.

The laws which regulated the attribution of poisoning cases to common courts for sentencing were suspended and a *cour prévôtale* took the place of the ordinary courts, with a jurisdiction that encompassed the entire territory of the Martinique colony. Court members were to travel to the place of crime as “itinerant” judges.

If a slave was unable to serve the master for the rest of his days due to the permanent sentence of a court, the owner had right to compensation. A related decree of great importance, was the colonial ordinance issued by the new Governor of Martinique, on December 1827, regarding fiscal norms, which required the payment of compensation to owners whose slaves were put to death. According to Joseph-Elzéar Morenas – envoy in Senegal as a botanist – the compensation owners got represented an aberrant rule of law, as sentences of the *cour prévôtale* were often directed towards older slaves, who, once condemned, would guarantee their owners a higher sum than their real value²⁷.

According to Morenas:

on se tromperait fort, si l’on croyait que ces cruautés reposent sur quelque principe de justice ou sur quelque raison d’utilité générale; elles sont commandées par l’intérêt particulier des principaux colons, qui savent très-bien soustraire leurs esclaves coupables au pouvoir de la justice quand cela leur convient, et qui du reste s’inquiètent fort peu qu’un innocent périsse ou qu’un coupable échappe²⁸.

Article 21, conformant with the penal law of the *Ancien régime*, required that both, the crime and the attempt to poison were to be punished with the death sentence. Accomplices – including the providers of toxic substances – were to be judged without appeal and condemned to death or afflictive punishment within twenty four hours. According to recent studies, more than a hun-

²⁵ Debbasch, *Opinion et droit*, p. 152.

²⁶ *Ordonnance du Gouverneur administrateur portant création d’une cour prévôtale pour la répression des crimes d’empoisonnement*, in *Code de la Martinique*, VII, p. 356.

²⁷ J.-E. Morenas, *Précis historique de la traite des noirs et de l’esclavage colonial, contenant l’origine de la traite, son progrès, son état actuel*, Paris 1828, p. 323.

²⁸ *Ibidem*, p. 329.

dred people were sentenced to decapitation and about the same number were given a life sentence after being whipped and branded²⁹. The use of the guillotine was not part of the practice, but as in the days of the *Ancien régime*, an axe was used by a slave, who himself was condemned to death and in this way avoided the execution of the sentence. Furthermore, with the ordinance of 1827, the colons, obsessed by the insurrection of the blacks, obtained the right to demand, for dangerous slaves, an order of expulsion from the island. Such a decision, in the form of an administrative act was used by the colonial government on numerous occasions as a sort of manner in which public order could be defended and preserved. In final analysis, the entire colonial legal order used racial pretexts for political ends and reasons of State. As has been observed: «la hiérarchie des castes et la séparation radicale entre blancs et noirs est jugée indispensable au maintien de l'ordre public colonial»³⁰.

One of the main representatives of the judicial culture in the mid eighteenth hundreds, François-André Isambert, contributed with other jurists and politicians to abolish the extraordinary penal jurisdiction in the colonies³¹. Among the innumerable cases he assisted in favour of the black populations, his defense of a free Black woman, Marie-Louise Lambert was of particular significance. The lady was condemned by the *cour prévôtale* for having committed poisoning³². The importance of this case, compared to the hundreds of other poisoning cases that occurred in the twenties of the eighteenth century in Martinique is the exposure it received among jurists, politicians and journalists given the notoriety and ability of Isambert. The case echoed across the public opinion to such an extent that it actually contributed in abolishing the *cour prévôtale*, generating loud protests of the Creole community who viewed the act as a limitation.

The case in 1823 was for attempted poisoning of a slave owner by one of her slave women, Marie-Claire together with a young slave, called Joseph. Marie-Claire was accused of poisoning her owner, her maid, other people and cattle. The slave confessed her crime but affirmed that she had been advised by a friend, a free black woman, Marie-Louise Lambert. The latter, asked to appear in front of extraordinary jurisdiction court claimed that she had no relation with Marie-Claire, the slave and that she had never bought the poison used in the criminal act, but the pharmacist summoned to the hearing was never heard. The *cour prévôtale* sentenced the female slave to death while the male slave Joseph, was

²⁹ Morenas, *Précis historique*, p. 324; Leti, *L'empoisonnement aux Antilles*; Savage, *Between Colonial Facts and French Law*, p. 582 ff.; Oudin-Bastide, *L'effroi et la terreur*.

³⁰ Niort, *La condition des libres de couleur*, p. 85.

³¹ See the sources in AN, Lh 1336/16; AN, BB/1/144 à 147; BB/33/3 avril 1836; BNF *Département des manuscrits*, NAF, 13239 e NAF 23769-23772; see also J.-L. Halpérin, *Isambert, François-André*, in *Dictionnaire historique des juristes français. XII^e-XX^e siècles*, sous la direction de P. Arabeire, J.-L. Halpérin, J. Krynen, Paris 2007, p. 418; M. Fioravanti, *Le préjugé de la couleur. François-André Isambert et l'administration de la justice aux Antilles françaises pendant la Restauration*, in «Cahiers poitevins d'histoire du droit», 4 (2012), pp. 113-152.

³² See ADM, Série U, *Justice*, 7U, *Cour prévôtale, 1822-1826*; see also F.-A. Isambert, *Au roi en son Conseil. Requête pour Marie-Louise Lambert, négresse libre de la Martinique, détenue dans la maison centrale de Rennes*, Paris 1827.

viewed as a passive figure in the hands of Marie-Claire and was acquitted, given his young age, and given to his owner for disciplinary action, re-evoking yet again a form of private justice. On the other hand, Marie-Louise was condemned to be branded, whipped and life imprisonment as presumed accomplice³³.

According to colonial order Lambert had no right of defense, however Isambert wrote a defensive memoir that was sent to the King's council. According to him the colonial *constitution*, based mainly on the *Code noir* of 1685 and the following regulatory measures had been misapplied by the local legislation. Furthermore, the rapid judgment without guarantees, as issued by the law instituted by the *cour prévôtale*, did not allow defenders or any sort of advertising. The lawyer's written document underlined that the allegations towards the accused were not confirmed in the case, but the court had not expressed itself regarding the innocence or responsibility and had opted for a mid-way settlement, declaring the woman «fortement soupçonnée d'avoir conseillé l'empoisonnement et fourni le poison»³⁴. Isambert reminded in his written piece that the sentence was based on multiple sources of law, typical of the old French judicial regime still applied in the colonies, that applied the death penalty for taking part in poisoning crimes. The court however, opted for life imprisonment, as underlined by Isambert, due to the doubts regarding the guilt of the accused. The sentence had to be carried out on the same day of its issue. The 20 august 1823 the court said:

Quant à la négresse libre Marie-Louise Lambert, d'après les violens [sic] soupçons qui pèsent sur elle, la cour la condamne à être conduite par l'exécuteur au pied de l'échafaud pour y être fouettée et marquée, et être ensuite conduite sur le continent de la France, pour y être enfermé à perpétuité dans une maison de réclusion³⁵.

Although the condemned slave withdrew the accusations of complicity, the sentence was executed, with Lambert being whipped and transferred to the prison of Rennes, in France. After that, Isambert presented an appeal in 1826, at the supreme court which was not accepted, given that sentences of the *cour prévôtale* were not subject to appeal. However, regardless of the inadmissibility of the appeal, the colonial legal order based on the *Ancien régime* legislation, allowed direct appeals to the sovereign for revision or repeal of sentences. Isambert presented to the King's prosecutor and the island governor examples of many legal violations that had occurred during the hearings.

According to the lawyer the ignorance of the colonial legislator, specifically the governor, arose due to his lack of understanding of the possibility to legally clamp down on the crime of poisoning based on the ordinance of 1670, which itself provided limited guarantees, and other old penal laws still present in the colonies. Isambert wrote that if the debate had been public probably the

³³ *Séance tenue au bourg du Lamentin le 20 août 1823*, in ADM, Série U, *Justice*, 7U, *Cour prévôtale*, 1822-1826.

³⁴ ADM, Série U, *Justice*, 7U, *Cour prévôtale*, 1822-1826.

³⁵ *Ibidem*.

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

Once the appeal was pushed back at the supreme court level, in September 1826 Isambert got his assistant to present a request to the King's council asking for a review of the case judged in Martinique by the extraordinary jurisdiction: but such a request only achieved a partial response as the sentence was reduced to twenty years of imprisonment.

However «this defeat was also in some ways a victory»³⁶, as it got the attention of legal experts and intellectuals. The special jurisdictions introduced in Martinique had already generated perplexity among the liberal and radical legal thinkers and after the Lambert case, the criticism grew, especially through numerous written pieces in the newspapers and parliamentary question sessions. Following the protests in France and the doctrinal opposition against this kind of an exceptional legal system, the Navy Minister abolished the *cour prévôtale* in 1826. Nevertheless, the large majority of cases that involved accused slaves, remained regulated by the 1670 text and plantation owners kept on demanding the reintroduction of the special tribunal for the repression of poisoning crimes.

The case examined underlines how through the Restoration period, in the face of the growing establishment of a rule of law in France - despite its many contradictions - of a basically liberal system, an exceptional system of penal law persisted in the colonies and more in general a situation of judicial and political discretion, based on the suspension of constitutional freedoms, the prototype of "state of exception"³⁷.

With the end of the XVIII century and after the traumatic events of the revolution in Haiti, a greater conscience arose in and among the slaves as well as free blacks. The "spectre of Haiti" pushed the colonial governments to avoid in every way solidarity between slaves and free blacks³⁸. But the temporary union between white colons and free blacks – as a demonstration of how the "line of colour" also divided the blacks among themselves – based on interests of a strictly bourgeoisie nature, did not have the effect that had been hoped for, and exacerbated the enmity between white colons and blacks. This tension however, besides in certain cases, did not lead to an alliance between slaves and free blacks, some of whom kept, for a long time, a "white mask".

³⁶ Savage, *Between Colonial Facts and French Law*, p. 589.

³⁷ See *The Rule of Law. History, Theory and Criticism*, edited by P. Costa, D. Zolo, Springer 2007; U. Mattei, L. Nader, *Plunder. When the Rule of Law is Illegal*, Malden-Oxford-Victoria 2008; M. Hardt, A. Negri, *Commonwealth*, Cambridge (Mass.) 2009.

³⁸ C.L.R. James, *The Black Jacobins. Toussaint Louverture and the San Domingo Revolution*, New York 1938; see also S. Hegel, *Haiti, and Universal History*, Pittsburgh 2009.