



# The Emergence and Evolution of Slavery Legislation in Antebellum Louisiana

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## **Abstract**

Louisiana emerged from the periphery of the American colonies to form a powerful commercial and economic center. The state's development of sovereignty, wealth, infrastructure, and legislation relied heavily on the unsalaried labor of Enslaved individuals. The chattel slave market particularly shaped the state's government structure and character. Slavery legislation developed with the influence European legal traditions. Beginning with the enactment of the French *ordonnance*, *Code Noir*, and finally the Spanish *oartacion*. These legislative forces influenced the drafting and enactment of the Louisiana's first Civil Code in 1808. This Code married the ideals of French, Spanish, Roman, and English legal traditions. It established Enslaved individuals position as subordinate, expendable property. This legal commodification of human beings occurred over centuries and continues to persist as a barrier for equality and justice for all. The legal legacy of slavery legislation in the United States continues to impact the field in the present moment.

"Now dis' is the truth what I tells you and what my eyes has see.... And de overseer always strip de men, and women naked in de field and whip 'em. For a woman what is pregnant, dey dig a hole in de ground and lay her over de hole and whip her. Dat's de way dey did my mama"<sup>1</sup>. Lydia Jefferson, born in nineteenth century Louisiana, recalled her experiences as an enslaved person in Avoyelles Parish, Louisiana. An overseer, or in Jefferson's account, "nigger driver", whipped her mother to near death days before her birth. Her mother died a few days postpartum. The overseer who murdered Jefferson's mother was not tried by a jury of his peers. The owner of the plantation, Willis Prescott, was not liable for compensating Jefferson's family and the case never made it to a court room.<sup>2</sup> Jefferson's accounts, in concordance with many others, detailed the horrific practices that were legally permissible in the nineteenth century. Jefferson experienced beatings, lashings, rapes, and domestic violence that was all legally protected under Louisiana's State Constitution. In antebellum Louisiana, the prominence of the chattel slave market shaped the structure and character of the state's legal system.

Louisiana's slave laws reflected the legal traditions of the various European powers that controlled the territory. Louisiana was first a French colony, then under control of the Spanish Monarchy, and finally purchased by the United States in 1803<sup>3</sup>. The slave code contained elements of both French and Spanish law. These legal systems are greatly influenced by Ancient Roman law; these similarities are present in the early forms of Louisiana's slave code, *Code Noir*.<sup>4</sup> The French and Spanish interpretations of Roman law differ, and the slave code reflects these changes as the land changed political powers. Under each European power, slave legislation drastically shifted in scope and character. This differentiated Louisiana's slave code from that of neighboring southern states and directly impacted the enslaved individuals that the law directly governed.

Louisiana's slave law originated in French colonialism in the Caribbean. The French purchased slaves in the Caribbean islands in the mid-17<sup>th</sup> century. For the first few decades, no formal legislation existed to regulate French slavery. Then in 1685, the earliest form of *Code Noir*, Louis XIV's 1685 *ordonnance*, established official instructions for legal and social conduct. Local administrators, including the Governor General and Councils of neighboring French territories, drafted the legislation to control the plantation economy of sugar cultivation in the Caribbean.<sup>5</sup> The *ordonnance* did not regulate domestic and urban slavery. It simply regulated the unsalaried labor utilized in the sugar plantation economy. The legislation allowed enslaved people to subsist from an allotment of land and created a day free from labor.<sup>6</sup> This allowed enslaved individuals the ability sell their excess profits at the Sunday market and accumulate a minimal amount of capital. Creating a sense of reciprocity between owners and the enslaved was essential to the Caribbean plantation complex. The code incentivized additional labor and commitment to working the land and provided the framework for further restrictive policies. Elements of this code were included in Louisiana's *Code Noir* in the eighteenth century.

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<sup>1</sup> Cook, Poteet. "'Dem Was Black Times, Sure 'Nough": The Slave Narratives of Lydia Jefferson and Stephen Williams.", 283

<sup>2</sup> Cook, Poteet. "'Dem Was Black Times, Sure 'Nough'", 285

<sup>3</sup> Schafer, Judith Kelleher. *Slavery, the Civil Law, and the Supreme Court of Louisiana Baton Rouge*, 2-4

<sup>4</sup> Schafer, Judith Kelleher. *Slavery, the Civil Law, and the Supreme Court*, 15

<sup>5</sup> Schafer, Judith Kelleher. *Slavery, the Civil Law, and the Supreme Court*, 51

<sup>6</sup> Schafer, Judith Kelleher. *Slavery, the Civil Law, and the Supreme Court*, 55

The first enslaved Africans arrived in Louisiana in 1719, and the *Code Noir*, or Black Code, regulating their legal status took effect in 1724.<sup>7</sup> It was the first of many legislative powers to formally control enslaved individuals in Louisiana. As the population of enslaved individuals in the British Colonies in North America dramatically increased, formal legal systems for controlling and suppressing resistance became essential to the political sovereignty of Southern slave states. The code covered the same eight social spheres as the 1685 *ordonnance*: religion, marriage, property-law, crimes and offenses, manumission, police control, care and maintenance, and civil disqualifications.<sup>8</sup> The law established the Roman Catholic Church in Louisiana and rewarded enslaved individuals who joined the faith. It recognized marriages between enslaved individuals, barred the sale of young children from their mothers, and allowed enslaved persons the legal power to prosecute their owners for maltreatment. Enslaved persons still could not testify in court, hold public office, own or inherit property, and engage in contracts. The code controlled many aspects of an enslaved persons life with an emphasis on sexual encounters between masters and enslaved persons.

The primary difference between the 1685 *ordonnance* and 1724 *Code Noir* was the emergence of stricter policies on manumission, intermarriage, and concubinage. The 1724 legislation attempted to restrict marriages and sexual relations between masters and enslaved persons. Manumissions, or voluntary emancipations, could no longer be approved by the owner, but had to be presented before the *Conseil Superieur*. Manumissions could only be initiated by masters and mistresses over the age of twenty-five. If the council found the reasoning for the manumission to be legitimate, then the manumission could occur. This applied to children born to free whites and enslaved blacks. Free white parents could no longer emancipate their enslaved children. Cohabitation and marriage between whites and blacks was illegal and subject to fines and potentially loss of the slave.<sup>9 10</sup> The eighteenth-century Louisiana court system regulated many aspects of social interactions between owners and enslaved people. These restrictions attempted to prevent the creation of a third caste of mixed-race persons without a strict place in society. Louisiana's legislators did not instill legal protections, but enacted restrictions that limited the upwards mobility and emancipation of enslaved people.

Louisiana's 1724 *Code Noir* was heavily influenced by Roman law. In the Ancient Roman legal system, slaves had very limited rights within the legal system. They could not serve as jurors, defendants, plaintiffs, or witnesses. In stark contrast, Roman slaves had the right to self-emancipate and petition the courts to be sold away due to maltreatment.<sup>11</sup> This is indicative of the purposeful exclusion and restriction of enslaved persons in Louisiana. Enslaved individuals existed in the periphery of the Early American legal system with little to no civil rights or privileges. They were systematically excluded from legal institutions of power. Enslaved persons were only mentioned in the law when detailing restrictions. Their narratives were excluded from the archive by barring their testimonies and stories outright.

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<sup>7</sup> Palmer, Vernon V. *Through the Codes Darkly: Slave Law and Civil Law in Louisiana*, 65-67

<sup>8</sup> Palmer, Vernon V. *Through the Codes Darkly*, 52

<sup>9</sup> Palmer, Vernon V. *Through the Codes Darkly*, 60-65

<sup>10</sup> Schafer, Judith Kelleher. *Slavery, the Civil Law, and the Supreme Court*, 55

<sup>11</sup> Schafer, Judith Kelleher. *Slavery, the Civil Law, and the Supreme Court*, 11

Slave law rapidly evolved after the Spanish gained possession of Louisiana in 1763. Spanish law, though also influenced by Roman law, favored the treatment of enslaved persons. *Las Siete Partidas*, the governing body, oversaw the judicial proceedings relating to the rights of enslaved individuals. Under the Spanish government, enslaved people had the right to *coartacion*, or self-purchase. Enslaved persons could who proved the mistreatment of their masters were resold and removed from their master's possession. The *Partidas*, also regulated the price and process of self-purchase by ensuring that enslaved individuals purchased their freedom at market value.<sup>12</sup> The Spanish system favored the interests of enslaved persons to a greater extent than the French system, though both systems originated from interpretations of Roman law. Spanish law followed the principle of enslavement being an unnatural condition, allowed for a greater amount of mobility, and promoted decency in owner's treatment of their human property. Spanish law also did not include harsh restrictions on intermarriage and cross-racial sexual encounters.

The loosening of regulations under Spanish law displeased Louisiana's slave owning population, and members of the legislative body drafted a new code in 1778. They attempted to restore slave owners with the rights and privileges they lost with the enactment of Spanish law. The two councillors tasked with creating the legislation owned plantations and slaves. The Cabildo never sent the draft to Madrid for confirmation and the legislation never became formal law.<sup>13</sup> Though the draft never officially passed, it reflected the influence and power of the slave owning class. The Spanish slave laws gave enslaved people increased mobility in their condition. They had the legal power to judicially confront maltreatment and abuse. They could purchase their own freedom. None of these freedoms existed under the French Slave code, and Louisiana's slave owners later abolished these practices in the interest of maximizing agricultural output.

Despite its creation as a slave territory, Louisiana's economic expansion did not occur until the late 18<sup>th</sup> century. Under decades of Spanish rule, "Louisiana was little more than a frontier territory serving as a buffer between the expansionist Anglo-Americans and the riches of New Spain"<sup>14</sup> (33). In turn, the enslaved population was smaller, but also regulated under the less strict Spanish law. This highlights the contrast between the Spanish and English legal traditions and the impact of their distinct legacies. The economic development and establishment of Louisiana as a key export did not occur until the introduction of stricter English law.

Two pivotal moments allowed for the state's rise to economic prosperity: the invention of the cotton gin and the Haitian Revolution. The cotton gin streamlined cotton production and allowed for easier production of short staple cotton. The Haitian Revolution halted the supply of high demand sugar on the international market. This growth is intrinsic to the growth of the plantation economy in Louisiana.<sup>15</sup> The work of enslaved people fueled the economic expansion of Louisiana and integration into global markets.

The continued success of cotton and the accumulation of wealth from the slave trade transformed Louisiana into a prosperous agricultural export economy. New Orleans, located at the base of the Mississippi river, became a major port city and center of commerce. New Orleans was integral to

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<sup>12</sup> Schafer, Judith Kelleher. *Slavery, the Civil Law, and the Supreme Court*, 3-5

<sup>13</sup> Palmer, Vernon V. *Through the Codes Darkly*, 57

<sup>14</sup> Aslakson, Kenneth R. *Making Race in the Courtroom: The Legal Construction of Three Races in New Orleans*, 31

<sup>15</sup> Aslakson, Kenneth R. *Making Race in the Courtroom: The Legal Construction of Three Races in New Orleans*, 31

the growth and exportation of the cotton and sugar industries. “During the antebellum era, because of the city’s location at the base of the enormous Mississippi River system, half of all the South’s cotton production routinely passed through the hands of New Orleans merchants on its way to textile manufacturers in the North and Europe<sup>16</sup>. The growth of the textile industries domestically and abroad directly influenced the expansion of Louisiana’s plantation economy therefore impacting the enslaved workforce. A rapidly growing cotton and sugar industry required more slave labor and more legal legislation to regulate an enlarged workforce.

By 1808, Louisiana, enacted its first Civil Code, entitled the Digest of the territory of Orleans. The Digest was the first article of modern legislation to include slave law.<sup>17</sup> This legislation detailed the inseparable nature of the slave trade with Louisiana’s social and economic society. It also legitimized the tightening system of enslavement in the territory. According to Louisiana’s Civil Code, “A slave is one who is in the power of his master, to whom he belongs. The master may dispose of his person, his industry and his labor, he can do nothing, possess nothing, nor acquire any thing but what must belong to his master”<sup>18</sup>. Enslaved people had little to no rights and privileges under the new law. This distinction tied enslaved people to property law. They had the same rights as any material object that may be owned, destroyed, disposed of, and abused.

This sentiment is also clear in the transcriptions of the Constitutional Convention of 1845. The convention sought to ratify Louisiana’s state Constitution and amend earlier versions of the document after the state’s establishment in 1812. The delegates disagreed on many policy issues. Factions formed between city dwellers and farmers, but all sides agreed on issues of formal slavery legislation. The delegates agreed that “Slaves shall be forever held and considered as immovable, and shall be regulated by the same laws as other immovable property”<sup>19</sup>. These regulations reflect the influence of English property law, and also are indicative of the importance and prominence of slavery in Louisiana. The delegates also created barriers that made amending the law extremely difficult. They wrote, “The relation of master and slave in this state shall not be abolished, unless a bill so to abolish the same shall be passed by a unanimous vote of the members of the general assembly<sup>20</sup>. Within this legislation slavery became instilled in the state law and constitution. It was a legally permissible practice that could not be easily removed from state legislation.

Beginning with its purchase and settlement, chattel slavery greatly shaped the political and economic sphere of Louisiana’s legal structure. Beginning with the *Code Noir*, Louisiana’s slave code evolved and changed as various European powers possessed the territory. Each power left a distinct influence that shaped the character of slave law. Louisiana’s slave code contained characteristics of French, Spanish, Roman, and English law. Spanish law favored the rights of enslaved individuals while English law reflected the economic prosperity and restrictive nature

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<sup>16</sup> Marler, Scott P. *The Merchants' Capital: New Orleans and the Political Economy of the Nineteenth-Century South*, 16

<sup>17</sup> Palmer, Vernon V. *Through the Codes Darkly*, 103

<sup>18</sup> Philadelphia Female Anti-slavery Society. *Extracts from the American slave code*, 1-3

<sup>19</sup> Louisiana. Constitutional Convention (1844-1845). *Journal of the proceedings of the Convention of the State of Louisiana: begun and held in the city of New Orleans, on the 14th day of January, 1845*, 243

<sup>20</sup> Louisiana. Constitutional Convention (1844-1845). *Journal of the proceedings of the Convention of the State of Louisiana*, 245

of property law. English law successfully designated human beings as immovable articles of property. This ideal was integral to the success of the state of Louisiana and appeared throughout the state's Constitutional Convention journal. The state allowed slave owners full autonomy and control over enslaved individuals. The legal legacy of slavery legislation in the United States continues to present severe consequences and lasting implications. The legal commodification of human beings occurred over the course of several hundred years, and the implications of the *Code Noir* will continue to be present and lasting in modernity.

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