

'Race,' Legal Fiction and the Congress of Vienna: Unwitting Errors, Global Haunting
and the Continuing Legacy of a Dangerous Superstition in Today's World

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In September of 1799, after Britain's humiliating expulsion from the French colony of Saint-Domingue, General Thomas Maitland wrote to King George III on "the measures which out to be immediately adopted in Jamaica" so that the "valuable island" would be placed "in such a respectable state of security and defense as must naturally ensure the failure of any attempt that may be made against it, either by open force or concealed intrigue." The king was "already in possession of the latest intelligence" on "the measures which have been recently adopted there with a view to keep the Negro Chief Toussaint in such a disposition toward the British government as may ensure his not countenancing any attack on the island of Jamaica." "The arrangement," he "humbly [conceived] to be of a nature that can have in itself but very little stability as far as its minute stipulations go." "The principle and sole object as your Grace is well aware," he continued, "for which any connection was even entered into with that black Chief was merely as a precautionary measure [and] through this means to secure the island of Jamaica against attack," and whether or not the arrangement was "strictly adhered to" was immaterial. It was the governor of Jamaica's responsibility to maintain good relations with Louverture, and however much he might feel a sense of "degradation in holding any connection with a Negro," he would have to keep face to guard against making him his "inveterate enemy."

It would also be necessary to increase the military strength of Jamaica and this brought Maitland to a controversial topic. Although the "troops must for the present be

composed of Europeans,” it would be “impossible to carry on the Service without black troops” in the West Indies. “No other troops but black,” he wrote, “can act with effect or with a possibility of existing for any length of time.” However much the planters of Jamaica loathed the idea, the question was not whether black troops were “desirable in our colonies, but whether under the complete change in the system of war which has taken place there in consequence of the French Revolution, black Troops are not now necessary though themselves they may be absolutely considered an evil.” Jamaican colonists took an unusually strident position against black troops given the reality that they were the norm many regions of the Americas by the late 1799, when Maitland wrote. Nevertheless, the British government had capitulated to the demands of colonists as a condition for payment of defense expenditures. “In regard to the compact,” Maitland went on, “such a measure would undoubtedly be a breach of it,” but he could not “conceive that the sum saved to the government” was more important than “the necessity of making an arrangement for the permanent security of the Island of Jamaica.”

Regardless, there was ample evidence of “white troops not being able to repel a black invasion” in Jamaica’s past. “Your Grace must well recollect,” he emphasized, “how long a miserable banditti of three hundred Maroons occupied the whole military force in that island, and you cannot but bear in memory that at last they were got the better of by treaty and not by open force.” The solution to the temporary evil of black troops would be for the governor of Jamaica “to draw back quietly as circumstances and occasion might offer, first one and then both the West India Regiments now in the Bay of Honduras.” Effectively, for the sake of preserving Jamaica and the West Indies, the governor would have engaged Louverture in what amounted to ruse diplomacy and,

planters would have to put up with black troops until fortune presented a better option of getting rid of the evils of what Maitland variously referred to as the “revolutionary System of France” or the “French mania.”

Fortune arrived with the *Coup d'État du 18 Brumaire An VIII* and Napoleon Bonaparte's rise to power on what was 9 November 1799. By 13 December 1799 (23 *Frimaire An VIII*), yet another constitution was promulgated – the fourth one since 1791. On Christmas Eve, the twenty-nine, handpicked conservative councilors who would make up the newly formed Council of State were secretly sworn in. In a letter dated Christmas day 1799, Bonaparte, as First Consul, made peace overtures to George III. “The war that has ravaged four regions of the world for eight years, shall it be eternal,” his letter opened. “Why are the two most enlightened nations of Europe, more powerful and stronger than required for their independence and security,” he wrote, “sacrificing commercial good, domestic prosperity and the happiness of families for dreams of grandeur in vain.” “These sentiments,” he continued, “cannot be foreign to the heart of your Majesty who governs a free nation and whose sole aim is to preserve happiness.” “Through the abuse of their power” he concluded, France and England had been the source of “exhausting misfortune for all peoples” and all the civilized nations could but want “the end of a war that engulfed the entire world.”

However confident he felt after the coup, he was soon taken down a peg. His overture was coolly received at Downing Street and pointedly rebuffed on New Years Day 1800. Citing long-established diplomatic traditions, George III declined to communicate with him directly. The reply was, instead, forwarded under Foreign Secretary William Grenville's hand to Charles Talleyrand. Grenville emphasized that the

original causes of the war had not “ceased to operate.” The “system” that led to France’s “present miseries” enveloped Europe in “tedious and distinctive warfare, commenced and prosecuted ... on principles long since unknown to civilized nations.” So long as that “system,” which had disrupted the “stability of property” and “social order” prevailed in France, there could be no peace.

Countless studies have been produced on the French Revolutionary and Napoleonic Wars, but there has not been any recognition or discussion of the ‘social order’ question as a causal factor. This paper seeks to shed light on the social order question, a question that not only was inextricably bound to notions of stability of property, but was also a major international factor that shaped strategic aim in the period. It was precisely revolutionary France’s emancipation of slaves and extension to equal civil rights that Britain referenced as disrupting the stability of property and social order, and it was seen as such an infraction and threat to economic security that it not only was just cause for war, but its reversal, by any means necessary, an unconditional demand for peace.

Here, it is important to understand that diversity is not new and, in its historical manifestations, it was by no means exclusive to the American colonial world or Europe’s encounters in the eastern Mediterranean or Indian Ocean. It rebounded back to Europe over the long Eighteenth Century in various forms and was not confined seaport towns or states with formal colonial empires.ⁱ In 1785, the immigration of some fifty *indiennes* from Pondichéry to work specifically with cotton textiles was encouraged and a community grew in the town of Thieux. In a continental Europe, marked by the

tremendous mobility, social mobility and integration of sizeable populations of people of color, diversity could not be easily rolled back and the demand for such led atrocities.

Such social mobility had led to substantial integration in Europe and the emancipation and extension of civil rights, not just to people of color, but newcomers in revolutionary France should be seen as an apex of a much longer evolution. Debates about on the “status of persons” were amongst the most heated in the National Constituent Assembly, especially those concerning free people of color held between 12 and 15 May 1791. While the Rebwell Amendment of 15 May 1791 granted rights to free people of color whose parents were free, it intensified racial conflict in Saint-Domingue, where the population was “prospering at a faster rate than their white neighbors.”ⁱⁱ Equally important was the National Constituent Assembly’s 13 May 1791 decree that no laws concerning “the status of unfree persons” would be considered by the Constitutional Committee. As John Garrigus has shown, Saint-Domingue was a particularly litigious colony, where under the Ancient Regime, free people of color and slaves alike were able to leverage the legal system to their advantage. Thus, for a population long marked by a relatively high level of legal consciousness, French revolutionaries in Paris, effectively, collapsed the legal regime – under which slaves enjoyed legal personality, paths to freedom and protections and where free people of color enjoyed equal civil rights – and replaced it with nothing. Exercising economic warfare from below, on the night of 22-23 August 1791, slaves set essential colonial commodity crops ablaze in the sugarcane-producing North Province. Though destined to be amongst the shortest lived in history, the French Constitution of 3 September 1791 only aggravated the situation by excluding the colonies from the Constitution altogether. Title VII, Article 8 stated explicitly: “The

colonies and French possessions in Asia, Africa and America, although they are part of the French Empire, are not included in the present Constitution.” This left slaves to the unfettered whims of their masters without means of recourse and, not surprisingly, they proved resourceful in helping the new lot of metropolitan citizens feel their crisis of rights. The panic stricken letters flowed into local committees of commerce made this all too clear. In November of 1792, three hundred souls signed a petition, estimating the damage at more than 500,000,000 *livres* and made it clear that the commercial outlook for France was bleak. The employment of 24,000 sailors was jeopardized because there were too few colonial commodities to supply the carrying-trade for the retrade business in Europe.

The realities of economic armageddon also help explain the path to war in 1793. Here, we might be reminded of what François Crouzet called the “Americanization” of trade: “This ‘Americanization’ of trade and industry was the most pronounced for countries which owned a colonial empire,” but its influence was progressively extended farther and farther east. Accordingly, the interdependency to the global economy (rather than “Atlantic world”) meant that any form of disruption to the flow of critical colonial commodities, especially sugar – whether the result of hurricane, international war or slave revolt would have a ripple effect through the entire chain of trade. It cannot be emphasized enough, that to follow the path of the French re-trade business in sugar, coffee and indigo before 1790, is to follow that path of French troops from 1792 to 1812. Between 1730 and 1790, the amount of French sugar returned to French ports jumped from 60 million to 180 million pounds annually. While Britain consumed the sugar that it produced between its home market and its colonies, “the *raison d’être* of the whole

French sugar business was the re-export trade.” By the 1770s, 70 percent of French sugar was re-exported. Indeed, some 87 to 95 percent of all sugar arriving in Marseille between 1740 and 1775 was re-exported to Alpine Italy, the Italian Peninsula, Spain and the Levant. From the second quarter of the eighteenth century, French trade in the Levant overtook European competitors, and French sugar and coffee supplanted the older Egypt trade in these commodities. From 1750, in the Levant, France’s share increased to 65.1% compared to Britain’s 15.2%. Even more telling of the importance of the trade in West Indian colonial goods, before 1769, textiles, chiefly from Languedoc, accounted for 80% of French exports to the Levant. When textiles fell off 40% sharply in the 1780s, this space was taken up by West Indian sugar and coffee re-exports, which increased to 30% and the dyestuffs indigo and cochineal grew to 15%.

The realities of global economic entanglement were also evident in Central and Eastern Europe. Most of the West Indian sugar, coffee and indigo returned to France, arrived in the ports of Bordeaux and Nantes as well as Le Havre. In the year 1786, some 97 percent of sugar returned to Bordeaux was re-exported. By 1789, coffee had overtaken sugar as France’s leading colonial commodity re-export. In 1752, Hamburg imported 16,158 barrels of sugar, 1,804,346 pounds of coffee and 125,038 pounds of indigo from France, more than Amsterdam and Rotterdam combined.ⁱⁱⁱ In 1790s Hamburg, the sugar refining business was the largest, employing between 15,000 and 16,000 workers, across small enterprises. Between 1750 and 1807, the number of sugar refineries rose from 365 to 428. It was from Hamburg, that French West Indian sugar, once refined, went on its second re-export into Central Europe, the Scandinavian countries and to Russia, one of Hamburg’s most reliable customers.

Dependent, at rock bottom, on the willingness, coerced or otherwise, of slaves of African descent to cultivate and produce these colonial commodities, the French global economy rested in the cradle of a Caribbean social volcano that began to erupt in 1789. It was abundantly clear by 20 April 1792, when the National Convention declared pre-emptive war on Austria, that there would be no return of significance to re-trade across the Rhine. Accordingly, the consequences of the slave uprising spilled out well beyond France and the West Indies. Indeed, it is the most important event of the period that allows us to understand economic warfare in metropolitan Europe between 1793 and 1812. Paul Cheney also suggests that “[t]he sudden collapse of Atlantic trade after the uprising in the colonies in 1791 led to a profound reorientation of the French economy, which culminated in the ‘Continental System,’ by which Napoleon tried to blockade the entire continent of Europe and fix terms of trade to France’s advantage.” What France experienced, however, was not a reorientation, but a collapse of her global economic system. Reorientation hinged on regular and copious supplies of the requisite colonial goods, and this was a stability that France simply didn’t have after August 1791. From the perspective of warfare, at least, we may need to rethink the divide between the so-called Revolutionary wars and the Napoleonic wars.

Driven by the uprising in Saint-Domingue, yet well before France’s Declaration of War on 1 February 1793, British policy changed 180 degrees under the tutelage of heretofore abolitionists Pitt and Grenville. “When the price of colonial produce skyrocketed after the slave revolt in Saint-Domingue,” as Geggus write, “bounties on the re-export of sugar were withdrawn and for the first time foreign sugar and coffee were admitted into British ports (for re-export) duty free. It was Lord Hawkesbury, the West

Indian planter turned President of the Board of Trade and who later as Foreign Secretary under Addington would negotiate the Treaty of Amiens, who made the case to Pitt.

France's foreign trade would be 'massively deranged' as a result of a loss of Saint-Domingue and if Britain were to keep them cut-off, she 'could reduce prices [of colonial commodities] at home and recapture her [lost] foreign dominance of the European sugar trade.' As early as January of 1792, more than a year before war was declared, Britain amended its sacred navigation acts to allow re-trade of French commodities.

Yet, even after the British occupation of Saint-Domingue in 1793, a November 1794 report produced by Barings Bank of London cited several obstacles to commerce with the colony and indicated that there was "very little, if any, encouragement for business at this period." "The first object for an European house," the opening paragraphs of the report explained, "is a house at St. Domingo in whom entire confidence can be placed." "Ships on freight," Barings explained in their concluding opinion, "depends altogether upon the extent of engagements with the planters; if they are considerable the ships will always have employ in carrying out stores from Europe and bringing home the produce in return, but if a full cargo cannot be secured at all times when the ships return from the Island it is a business not worth following." "The ultimate fate of the Island of St. Domingo," the report concluded, "must be decided before it can be prudent to engage in the *Commerce de Negrier*." Accordingly, the various facets of the Atlantic trade were not profitable unless they formed "a part of a general plan or system" that led to returns of critical colonial commodities. Yet, British aims seem to have been regaining dominance of the European re-trade market and key to this was 'social order' in the West Indies.

Whatever the concerns of the maritime bourgeoisie, it was soon clear to the class that came to power across the Channel in 1792 that the only way France would be able to hang on to Saint-Domingue was by moving towards colorblind liberty, equality and fraternity. Well before France declared war on Britain and the Dutch Republic on 1 February 1793, planters and others disgruntled about the prospect of racial equality and the abolition of the slavery and the slave trade began to offer-up the colony to British protection in late 1791. Amongst other reasons cited, the Declaration of War mentioned several violations of the 1786 trade agreement between Britain and France, but it also charged that Britain “likewise welcomes the leaders of the rebels of the French western colonies.” Indeed, it was also between February and April 1793 that the British government and Saint-Domingue planters reached an agreement whereby the later “promised to protect the slaveholders’ rights pending the restoration of the monarchy in France.” With few other options and in need of protection themselves, the Commissions of Saint-Domingue extended an emancipation offer to ‘black warriors who will fight for the Republic’ on 21 June 1793. By 11 July of 1793, emancipation was extended to their families. Finally, at the “festival of liberty” on 25 August 1793, six hundred black soldiers presented Commissioner Sonthonax with a demand for general liberty, which he could not refuse. ‘It was commendable of them to see an example that will mark an epoch in our annals,’ he wrote in a report to the National Convention, “which will surely be followed throughout the islands of America.” Maitland noted in his letter to George III, that from the outset of the revolution in France, that the governors of the various colonies were given increased emergency powers. When word reached his offices in 1791 of the uprising in Saint-Domingue, it was with these powers the Governor Effington of Jamaica

declared ‘a common cause’ with planters of the French colony and sent naval assistance. In September 1793, British expeditionary forces disembarked to courteous welcome at Jérémie and Môle Saint Nicolas.

Indeed, the Convention had begun drafting a new constitution in the fall of 1792 and the colorblind society that following the 4 February 1794 decree that installed general emancipation in France and her territories, abolished the slave trade and set forth civil equality confirmed in the egalitarian principles of the second Declaration of the Rights of Man and Citizen and the Constitution of the Year I (24 June 1793). “All men are equal by nature and before the law,” read paragraph three of the new Declaration, and in accordance with paragraph thirty-three, “resistance to oppression is the consequence of the other rights of man.” Under the Constitution of the Year I, foreigners who had reached twenty-years of age were eligible for citizenship after living in the Republic for only one year or if they married a French woman, acquired property, adopted a child, supported an elderly person or were just deemed by the legislative body to be deserving of such. It further, gave “asylum to foreigners who, in the name of liberty, are banished from their homelands, and refuse it to tyrants.” Although it was suspended in “favor of revolutionary government ... until the peace,” its egalitarian principles remained in effect in practice. The Constitution of the Year III (22 August 1795) altered the form of government, creating the Directory, but it confirmed the colorblind egalitarian principles of the previous laws. Its general provisions provided for “no superiority among citizens other than that of public functionaries, and that only in relation to the performance of duties,” and there were significant public functionaries of color, such as Jean Baptiste-Belley and Toussaint Louverture, serving in these years.

On the fifth anniversary of the abolition of slavery, a celebration was held in Paris. In his address, Etienne Laveaux said: 'In our colonies everything is French. This system of absolute unity makes our disconcerted enemies go pale with rage.' This was the 'French mania' that Maitland railed against, a sentiment that was shared by other critics of the revolution. Instead of reforming their system by borrowing from the long established common law of Europe, Edmund Burke charged the French with behaving like a bunch of recently freed "Maroon slaves." In an August 1792 letter to his wife, Edward Gibbon remarked: This total subversion of all rank, order, and government could be productive only of a popular monster, which after devouring everything else, must finally devour itself. Effectively, colorblind liberty, equality and fraternity in the France and her colonial empire is also what the British, in no small part, meant by "the revolutionary system of France." This sentiment was not confined England, and could be heard in the in young United States of America. Nathaniel Cutting "wrote with disgust of those revolutionaries 'in France and elsewhere,' who sought to destroy 'the finest colony on earth' with 'their leveling principles.'" "Behind the Jeffersonian Republican rhetoric of revolution," as Simon Newman explains, there emerged "an increasing fear of both the revolutionary ideology and the social reality of France and Saint-Domingue in the late 1790s and early 1800s." The prospect of revolution as slave uprising sent panic through the American South and, in the North, Republicans "began violently excluding black Americans" from annual 4th of July celebrations. This was an international evil, a threat to the interests of the other slave-owning powers and expanding numbers of socially mobile new Europeans of color was seen a threat to security.

This was an important characteristic of the climate when, in 1801, the new Prime Minister Addington reopened peace deliberations with France. He apparently agreed with Talleyrand that the “interests of the two governments is exactly the same – to destroy Jacobinism, especially, that of blacks.” As the new Foreign Minister, Hawkesbury would negotiate the Treaty of Amiens. Various interest groups wrote to him during the negotiations. Following a meeting with interested parties in London, on 27 October 1801, John Turnbull wrote on behalf of “planters, merchants and others” concerned with the Dutch settlements. It was “ardently to be wished that arrangement might be made for the different governments to maintain and support and if necessary to aid and assist each other in maintaining and supporting the most correct and proper subordination among the Negroes in all the colonies to which they shall or may belong.”

This was the international sentiment to which François Kerverseau appealed in his 21 November 1801 *Political and Military Observations* of Saint-Domingue. He emphasized the global significance of the social question, which was of “vital importance to the future and growing unhappiness of all colonial Europeans in the New World.”^{iv} “It is evident,” he wrote, “that without a solid Peace with England, crossing the great barrier of the ocean with such a large expeditionary force to Saint-Domingue” would be “an absolute impossibility.”^v Thus, there was a need to stress in negotiations that Saint-Domingue was not just a problem for France, but “a danger to all the Antilles.”^{vi} The situation there was a “crime without example” and such a “troop of ferocious beasts,” could not be allowed to exist. They represented a “terrible danger to all Europeans,” not just in the Antilles, but the Americas on the whole, which faced the prospect of overthrow by “African slaves.” From the moment an expedition arrived in the colony,

“the ministers, counselors of state, generals and officers of all grades of the civil and military hierarchy of France,” must wage, essentially, a propaganda campaign against “black and/or colored creoles.” The public had to be made conscious of their crimes, and he called for the nourishing of an “explosion of hate,” in such a way that the “burning and eruption of the volcano” would be inevitable. Either the “monster” would be exterminated or the “body,” namely the French or more broadly European body. It is next to this comment that one finds “NB,” the initials of Napoleon Bonaparte.

Thus, the Nineteenth Century opened with an international demand for the subjugation of people of color – a roll back of a half-century long era of mobility, social mobility and integration in metropolitan Europe, the Americas and elsewhere that culminated in the First French Emancipation – and a roll back by any means necessary. The social order question was an international problem and emerging cooperation on this issue was evident in the fact that the French kept the British government informed about the planned Le Clerc Expedition to Saint-Domingue. In a reported detailing the events, Captain Purvis of the ship *Royal George* wrote that their ship was approached by a French schooner from Brest, when they were three leagues from the island of Ushant. An officer came on board “very particular in his inquiry where Admiral Cornwallis was.” The French officer insisted on delivering the dispatches to Cornwallis personally. “In the course of conversation,” Purvis reported, “he said the combined fleet were to sail for the West Indies very soon, and that he understood the dispatches with which he was charged, related to that circumstance, and therefore he must wait off Ushant until had had an opportunity to deliver these personally to the English Admiral, that he might return with his answer.” Accordingly, to Cornwallis note, after being stranded for a bit Westward due

to winds unfavorable for entering the Channel, he was able to meet up with the *Royal George* and receive the dispatches from the Commander-in-Chief of Brest, Admiral Villeret Joyeuse. On 2 November 1801, Cornwallis wrote that the Aid-de-Champ had indicated that “more than twenty sail of the line” would leave from Brest and that more ships were leaving “from Rochefort with the troops, were likewise going to the West Indies.” He attached a detailed of the French expeditionary forces, which showed some one thousand planned troops as well as Spanish ships to sail in what was the Le Clerc Expedition. All these materials were forwarded in a letter from Cornwallis to the Admiralty Office on 4 November 1801, before Le Clerc left Brest.

It was not long before news of the planned expedition spread in informed English circles and, here, again cooperation becomes clearer. As James Stephen duly underscored in his third letter to Henry Addington of 1802:

But if [Toussaint], and the people of St. Domingo in general, were weak enough to believe Great Britain, sincerely disposed of favor the cause of negro freedom in the West Indies, they much be already convinced of their mistake. They have seen the bar of our naval hostilities removed from the coasts and the harbours of France in order that naval armaments might proceed against them; before notice of the Peace [of Amiens], should put them on their guard; and this not only while they were observing strict neutrality towards us, but while our quarrel with the Republic was not yet definitively ended. They will know that the British Cabinet chose even to encounter some national anxiety rather than not acquiesce in a measure hostile to the negroes of St. Domingo.

Maitland also responded to news of a planned expedition and advised Addington on the probable situation of the Island after a “French force [arrived] from Europe.”^{vii} Even if Toussaint were gotten rid of, “the black power would still exist.” The British might suggest to the French in the “strongest terms,” that if “they adopt the line of more coercion” they may succeed, “but,” he emphasized, “without exterminating [a] great part of the present Negroes who they possess [this] will be of little use.”

Finally, Bonaparte’s comments leave little doubt about his policy aims and, here, the place on economic dislocation as a major driver of anti-immigrant and racial fever cannot be emphasized enough. In his often cited 1 July 1802 letter, Bonaparte closed encouraging Le Clerc to “rid us of these gilded Africans,” but this comment came at the end of a long discussion about centrality of Saint-Domingue to French international trade and commerce. The point of disarming of “the blacks,” and deporting their “principal generals” to France, was to do “more for the commerce and civilization of Europe.” The next paragraphs that precede the “gilded Africans” comment underscore the French “advantage” in “*les affaires d’Allemagne*” – the largest market in Europe – an impending peace with Turkey would give France access to the commerce of “*la mer Noire*,” and, finally, the Mediterranean advantage of the Italian peninsula. The one thing standing in the way of this program for economic hegemony was, in fact not the badly depleted British forces, but ‘gilded Africans.’

So, to close, it would seem that the unfortunate history of Napoleon’s reinstatement of slavery and the slave trade as well as complete roll back of civil equality that have garnered considerable scholarly attention was not his policy alone. It responded to an

international demand; it seems that it may well have been a condition for the Treaty of Amiens.

- One has to wonder about British aims also here given their own disastrous experience in Saint-Domingue.
- British ambassador to Paris, Charles Whitworth letters to Hawkesbury
- Briefly, what happened to people of color in metropolitan Europe
- **FIRST:** The most obvious difference between the previous governments of the French Revolutionary Era and the government that followed the *Coup d'État du 18 Brumaire* was that it was all white. While Jean Baptiste-Belley was out of office by 1797, representatives of color, who were still serving, like Pierre Thomany and Étienne Victor Mentor were pushed out. Mentor, in particular, had been a fierce advocate of equality in France and as the storm clouds of a coup began to gather, already there was a growing will to brutally discriminate, such as seen the Minister of Marine, Étienne Bruix's attempt to segregate the military in 1798-99. Bruix, as Mentor emphasized in his protest, had been a naval officer under the ancient regime and was "*créole et grand planteur de St.-Domingue.*" It had come to this attention from their complaint that some sixty "of color and black soldiers of all ranks" were billeted in deplorable conditions on the *isle d'Aix*.¹ The soldiers complaint offered a preview of what was being held in store for many more people of color.
- **Civil Code Project**

¹ Ibid, pp. 4-5.

- In the 22 July 1801 deliberations, the Council took up general promulgation matters. Giving his understanding of the purpose of “civil laws relative to persons,” Napoleon mentioned, first, the establishment of the “status of everyone in civil society.” Both leading jurist, Portalis and Cambacérès, suggested a delay between the promulgation and effective date of the Code, suggesting that it would help inspire public confidence and respect for all laws. Councilor Roederer, on the other hand, leaned on the Constitution to support Napoleon’s absolute legislative authority, which read: “The First Consul promulgates the laws.” To establish any delay was “ridiculous.” Boulay raised question of delay for colonies, but Napoleon responded that the laws would “be declared enforceable on the day of arrival.” He “invited” the editors “to vote with the councilors of state,” and given his constitutional authority to appoint and dismiss “the members of the Council of State, the ministers,” etc., it is no surprise that delay was rejected.
- In the 4 August 1801 deliberations Napoleon suggested that it might be a good time to consider the status of deportees, “hypothetically,” and assume that “they will be reunited on a vast expanse of land where they will form a colony.” Could “they be deprived of civil life outside their place of deportation,” but rendered civil life, only “in the country where they would be deported to”? This is important, because it offers an indication that the regime was anticipating massive deportations. These sections of the transcript are full of references to the “condemned” and

“mourir civilement.” Tronchet responded that “[f]ormerly, banishment for life from French territory carried with it civil death.” It would only be “exile” if the only effect was relegation to specific region. In his usual blunt terms, Emmanuel Crétet commented that the “civilly dead” can “never be heard;” “if he is deported, he is absent; if escaped, sentenced in absentia.”

- The consequence of permanent banishment from French territory and/or the stamp of deportation would be civil death. Full drafts of the proposed Code were in wide circulation in 1801. Book I: Of Persons set for that “every Frenchman shall enjoys civil rights,” but, again, French legal personality was dependent on the capacity to domicile in metropolitan France. “Every individual born in France of a foreigner, may, during the year which shall succeed the period of his majority, claim the quality of Frenchman,” but as Paragraph 9 stipulated, this was “provided, that if he shall reside in France” or “give security to become domiciled in France and establish himself there within a year.” Unless one possessed the legal capacity to domicile in the continental territory of metropolitan France, one could not possess French identity or, accordingly, civil rights. Also, in the Code’s sections on Persons were provisions for the loss of the “quality of Frenchman” for those “who have borne or shall bear arms against their country.” First, this was retroactive, and, second, would have applied to many soldiers of color who had first fought for racial liberty in the 1790s and/or were serving with Toussaint. It was also made explicitly

clear that “[s]entences to punishments,” that resulted in the deprivation of civil rights “shall imply civil death.”

- Reinstatement of slavery in compliance with British demands re Peace of Amiens
- **13 Messidor an X**
- “deportations”
- *gens du coulour blanc*
- Accordingly, by the close of the Napoleonic Wars the union of race and state emerged had emerged as a pillar of the modern nation-state.....

ⁱ Margaret Crosby-Arnold, *Hannibals At the Gates: Diversity, Economic Dislocation and Crisis in Revolutionary and Napoleonic Europe, 1750-1815* (forthcoming); Érick Noël, *Dictionnaire des Gens de Couleur dans La France Moderne* (Geneva: Droz, 2011); Jon Sensbach, *Rebecca’s Revival: Creating Black Christianity in the Atlantic World* (Cambridge, MA: Harvard University Press, 2005).

ⁱⁱ Jeremy Popkin, *You Are All Free: The Haitian Revolution and the Abolition of Slavery* (Cambridge: Cambridge University Press, 2010), p. 37, and John Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue* (Gordonville: Palgrave Macmillian, 2006), p. 172.

ⁱⁱⁱ Ibid.

^{iv} Ibid.

^v Ibid., p. 4.

^{vi} Ibid.

^{vii} Maitland to Addington, 26 November 1801 (The National Archive: FO/27/65).