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The influence of Roman law on the Louisiana law of slavery between 1803 and 1857, especially after 1825, seems more profound than a closer look suggests. Prior to the Louisiana Purchase, France imposed the Code Noir on its colonies in 1685 and 1724, and Spain imposed the Codigo Négro on Louisiana in 1777 and 1784. Both France and Spain borrowed from Roman law in writing their codes when it furthered the imperial ambitions of these two major European powers. When Louisiana became an American possession, the leading citizens of the new territory found themselves in a position to make their own laws, and they chose to protect the institution of slavery by using those aspects of Roman law that furthered the security of slavery and by discarding those that did not. Especially in the writing of laws concerning the manumission of slaves, they chose to include superficial elements of Roman law, while creating a fundamentally new system of slave law.

The most important survival of Roman law in the law of slavery in antebellum Louisiana was the concept of redhibition. Originally developed by the Romans to protect purchasers of slaves from the shoddy practices of Roman slave traders, the implied warranty—a warranty of quality given to the purchaser—meant that buyers of slaves found not to be as represented at the time of the sale could have the sale legally rescinded and the slave returned to the seller or could have an adjustment of the price to reflect the diminished value of the slave.[1] Louisiana legislators retained redhibition throughout the antebellum period because Louisiana was a major slave importer in the domestic slave trade. Many slave sales involved two transactions—the initial sale by the slave owner to the trader and a subsequent sale by the dealer to a new owner. These two transfers often took place in different states. As expected, the law of slave sales favored the seller in exporting states, such as Virginia or Maryland, and favored

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1. The definitive work on the Roman law of slavery is William W. Buckland, The Roman Law of Slavery (1908). On redhibition, see Judith Kelleher Schafer, *Guaranteed Against the Vices and Maladies Prescribed by Law: Consumer Protection, the Law of Slave Sales, and the Supreme Court in Antebellum Louisiana*, 31 Am. J. Legal Hist. 306-21 (1987). For a new interpretation of the French and Spanish slave codes, see Thomas N. Ingersoll, *Slave Codes and Judicial Practice in New Orleans, 1718-1807*, 13 L. and Hist. Rev. 23-62 (1995).

the purchaser in slave importing states, such as Louisiana. The number of slaves brought into Louisiana greatly exceeded those sent elsewhere for sale during the antebellum period, and, therefore, state lawmakers retained the Roman-law heritage in slave sales because it benefitted the interests of the slaveholding class. Other features of Roman slave law, such as those that granted slaves the capacity to own inherited property, make loans, and pay debts, were inconsistent with the interests of Louisiana slave owners, and therefore lawmakers never integrated them into territorial or state law after the Louisiana Purchase.[2]

Roman and Louisiana slave law differed in a fundamental way. While slaves at Roman law might have been of any race or ethnicity—originally they were captives taken in the wars of the Roman Empire—in American Louisiana race and slave status became inseparably intertwined. Thus, although there was a higher percentage of slaves as compared to free people in Rome—thirty-five to forty percent at the end of the Republic to about thirty-three percent in the American South at the height of slavery—the two systems of bondage had vastly different theoretical foundations. While in Rome, slave status had little to do with race, background, or education—"a misfortune that could happen to anyone"—skin color had become the crucial factor in determining slave status in Louisiana by 1803.[3] The association of race with slave status in Louisiana insured that regulations and restrictions upon emancipation would develop very differently, making manumission much more difficult than in Rome.

Although Louisianians had made slaves of American Indians in the Spanish period, by the time of the Louisiana Purchase the law presumed Indians to be free. In 1820, Judge François-Xavier Martin, the presiding judge of the Supreme Court of Louisiana wrote the decision of *Ulzere v. Poeyfarré*,[4] declaring that Indians could not be enslaved in Louisiana. His decision confirmed what was already a fact: that slave status in Louisiana included only those of African origin, although not all of African origin were slaves. The Superior Court of the Territory of Orleans had held in the 1809 decision of *Adele v. Beauregard* that a legal presumption existed that mulattoes were presumed to be free and Negroes were presumed to be slaves unless proven otherwise.[5]

Slaves in Rome were often well educated by Roman standards, and many worked as doctors, artisans, and businessmen. Allowing education and

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2. Andrew Fede, *Legal Protection for Slave Buyers in the U. S. South: A Caveat Concerning* Caveat Emptor, 31 Am. J. Legal Hist. 322 (1987); Buckland, *supra* note 1, at 190-91; Leonard Oppenheim, *The Law of Slaves—A Comparative Study of the Roman and Louisiana Systems*, 14 Tul. L. Rev. 384 (1940); A Digest of the Civil Law Now in Force in the Territory of Orleans Tit. VI, Chap. III, Sec. III, Art. 78, at 358 (1808) [hereinafter Digest of 1808].

3. Alan Watson, Roman Slave Law 3 (1987) [hereinafter Watson, Roman Slave Law]; Alan Watson, Roman Law and Comparative Law 116 (1991) [hereinafter Watson, Roman Law].

4. Ulzere v. Poeyfarré, No. 468, 8 Mart. (o.s.) 155 (La. 1820). *See also* Seville v. Chrétien, No. 21, 5 Mart. (o.s.) 275 (La. 1817).

5. Stephen Webre, *The Problem of Indian Slavery in Spanish Louisiana, 1769-1803*, 25 La. Hist. 117-35 (1984); Ulzere v. Poeyfarré, No. 468, 8 Mart. (o.s.) 155 (La. 1820); Adele v. Beauregard, 1 Mart. (o.s.) 183 (La. 1810).

employment at a level much higher than simple manual labor meant that fewer obstacles to manumission existed in Rome because freed slaves already had a place in society. Being a slave in Rome did not inspire the assumption that servile status went hand-in-hand with a lack of intelligence, education, or integrity. Nor could Roman citizens distinguish between slaves and free people merely by sight. The justification for enslaving Africans in Louisiana rested on an assumption of inferiority. Since most Louisiana slaves performed manual labor on the state's plantations and farms, few received even the most rudimentary education. Indeed, by 1830 the Louisiana legislature made it a crime to teach slaves to read and write.[6] This restriction served to reinforce Louisianians' belief in the racial inferiority of slaves.[7]

Finally, whereas emancipated slaves in Rome became Roman citizens, a highly prized designation, emancipated slaves in Louisiana did not become Louisiana citizens. Ultimately, Chief Justice Roger B. Taney addressed this question on a national level in the fateful decision of *Dred Scott v. Sanford*:[8] "[T]hey (blacks) are not included, under the word 'citizen' in the Constitution, and therefore claim none of the rights and privileges which that instrument provides for and secures to the citizens of the United States."[9]

How did a person acquire slave status in Rome and in Louisiana? Initially, the most frequent way in Rome was conquest by the Roman army—which reduced captives to slave status, an action seen as less heinous than execution. Birth to a slave mother also conferred slave status under the Roman system. Occasionally, the Romans used enslavement as a punishment for certain crimes, such as evading military service. But in Louisiana, black skin implied slave status unless proven to the contrary. Children born to a slave mother also became slaves. Africans taken aboard slave ships bound for the Americas almost always spent the rest of their lives as slaves. Although Roman law envisioned perpetual servitude, by the fifth or sixth century, the grandchildren of former slaves gained freedom, as did the children of slave mothers and free fathers.[10]

Roman slaves could gain their freedom in three ways, all of which reflected the tolerance of Rome to manumission. The first of these, *manumissio censu*—manumission by census—occurred when a slave's owner allowed a slave to register as a Roman citizen on the census. Census takers did not ordinarily enroll slaves on the census; therefore, enrollment meant that those included had

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6. 1830 La. Acts § 3, at 96 (An Act to Punish the Crimes Therein Mentioned, and for Other Purposes).

7. Watson, Roman Slave Law, *supra* note 3, at 9. 1830 La. Acts § 3, at 96 (An Act to Punish the Crimes Therein Mentioned, and for Other Purposes). Alan Watson, Slave Law in the Americas (1989).

8. Barry Nicholas, An Introduction to Roman Law 75; Dred Scott v. Sanford, 60 U.S. (19 How.) 393, 404 (1857).

9. *Dred Scott*, 60 U.S. (19 How.) at 404.

10. Watson, Roman Law, *supra* note 3, at 39; Joseph Declareuil, Rome the Law-Giver 135 (1926).

the highly prized status of free citizens of Rome. Another rather informal way to free a slave in Rome, *vindicado in libertatum*, occurred when a slave claimed to be a free person wrongly held as a slave. In a hearing before a magistrate, a slave's owner would not mount a defense. The court would, therefore, declare the individual free. The third and most formal way to free a Roman slave was by will, *manumissio testamento*. At times, slaves designated to be freed in their owners' will had to fulfill certain conditions, such as serving the heirs for a period of time or paying a designated amount to the heirs. Until a slave met the conditions, Roman law termed them *statuliberi*, that is, a slave who although not yet free, had acquired the right to be free at a later time.[11]

Although Roman slaves could not own property, most owners allowed their slaves to administer the *peculium*, a fund granted by a slave owner for a slave's use. Since slaves could engage in commerce, they could increase the amount of the *peculium* by careful management, and in some cases, raise enough money to purchase themselves. Slaveholders often encouraged this practice because it stimulated slaves to work diligently to gain their purchase price and because slave owners could buy other slaves of the same value. More importantly, a *peculium* gave a slave self-respect as well as an important incentive to work hard and serve the master well.[12]

Roman law placed few restrictions on manumission. Only actual owners of slaves could free them, and owners could not free their slaves to defraud their creditors. Additionally, slave owners could not free slaves under the age of thirty, and a manumitting slaveholder had to have attained the age of twenty-five. By the eighth century, manumission by will had produced so many freed men and women that the law prohibited slave owners from freeing more than a certain proportion of their slaves by testament: one-half if they owned up to ten slaves, one-third if they owned no more than thirty, and one-fourth if they held up to 100.[13] Finally, Roman law had a predisposition *in favorem libertatis*—in favor of freedom. Although the courts in antebellum Louisiana used that term in a few decisions, the overwhelming culture of slavery in Louisiana did not favor emancipation.[14]

As Professor Baade's excellent work demonstrates, the laws of France initially placed few restrictions on manumission in their colonies. Slave owners over the age of twenty could free their slaves practically at will, or they could

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11. Watson, Roman Slave Law, *supra* note 3, at 24-25, 34; Watson, Roman Law, *supra* note 3, at 42, 116. Although entirely different in origin, emancipated slaves in the United States had their names on the United States Census by first and last name, gender, age, and color, as did whites, although this did not confer citizenship. Slaves were only listed under their owners' names by age, gender, and color, but not by either given names or surnames. Declareuil, *supra* note 10, at 131-32; Oppenheim, *supra* note 2, at 392-93.

12. Oppenheim, *supra* note 2, at 390-91; Watson, Roman Slave Law, *supra* note 3, at 95-96.

13. Declareuil, *supra* note 10, at 132-33; Oppenheim, *supra* note 2, at 392-93.

14. For example, see Cuffy v. Castillon, No. 225, 5 Mart. (o.s.) 494 (La. 1818); Marie Louise, f.w.c. v. Marot, No. 2748, 8 La. 475 (1835).

achieve enfranchisement by designating slaves they wished to free as heirs, executors, or guardians of the owners' children, duties only free people could perform. However, the 1724 Code Noir required governmental permission to free a slave. It also invalidated manumission by instituting a slave as an heir. Additionally, the 1724 Code Noir raised the age of the manumitting owner to twenty-five and required legitimate reasons for manumitting slaves to be presented to the Conseil Supérieur, the governing body of the colony. No provision for self-purchase existed, as the code prohibited slaves from owning property or contracting in their own names.[15]

Spanish law borrowed more heavily from those aspects of Roman law that were not hostile to freedom for slaves. Slaves could purchase themselves and their families, and Spanish law allowed them a *peculium* to use for this purpose. The requirement for official permission and a justifiable reason for emancipation disappeared in Spanish Louisiana. Owners emancipated more than 1,000 slaves in the thirty-three active years of Spanish rule.[16]

Although Pierre Clément de Laussat reenacted the Code Noir of 1724 during the twenty days that he took over Louisiana for France, the subsequent possession of Louisiana by the Americans threw the law for slaves as well as for free people into confusion. Although the Code Noir prohibited self-purchase and manumission without governmental consent, for manumission went on much as usual between 1804 and 1807, with approximately fifty slaves gaining freedom each year, for a total of 200 in four years. None of the records of these emancipations include any evidence of governmental permission or justifiable reasons for manumission.[17]

On June 7, 1806, the legislature of the Territory of Orleans enacted a comprehensive Black Code. Principally concerned with the discipline and regulation of slaves, the Black Code did not specifically mention manumission. It did, however, prohibit slaves from owning any property: "That as the person of a slave belongs to his master, no slave can possess any thing in his own right, or dispose in any way of the produce of his industry, without the consent of his master."[18]

The 1806 Black Code contained an ominous warning for free persons of color. Section 40 of the Black Code warned:

> That free people of colour ought never to insult or strike white people, nor presume to conceive themselves equal to the white; but on the contrary that they ought to yield to them in every occasion, and never speak or answer to them but with respect . . .[19]

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15. Hans W. Baade, *The Law of Slavery in Spanish Luisiana*, *in* Louisiana's Legal Heritage, 48-49 (Edward F. Haas ed., 1983).

16. *Id.* at 51, 60-61, 68-70.

17. *Id.* at 72-73.

18. 1806 La. Acts § 15, at 158 (An Act Prescribing the Rules and Conduct to Be Observed with Respect to Negroes and other Slaves of This Territory) [hereinafter Black Code].

19. *Id.* § 40, at 188-90.

The French Code Noir had also required emancipated slaves to show special respect for their former owners: "We command those enfranchised to show special respect towards their former masters, towards the widow and children of same, as any injury to them will be punished more severely than to another."[20] Perhaps drawing on Roman law, this provision echoes the respect Roman law required freed slaves to show to their former owners, called *obsequium*. Although ostensibly the same concept, Roman and French law required respect that reflected the gratitude of former slaves to the person who freed them, whereas the requirement in the American Black Code, an order to repect *all* whites, not just the ones who freed them, seems designed more to reinforce white superiority by keeping persons who were free but not white in their place.[21]

In 1807, Louisiana legislators passed a law specifically to regulate manumission. The first section demolished the most important right of slaves in Spanish Louisiana and departed from Roman law by abolishing the right of self purchase: "That no person shall be compelled either directly or indirectly, to emancipate his or her slave or slaves."[22] Although lawmakers kept the Roman law tradition of requiring slaves to be thirty years of age, the act of 1807 added the requirement that they must have demonstrated "honest conduct" for four years prior to the emancipation. Running away or committing a criminal act automatically disqualified a slave for manumission. These restrictions did not apply if a slave had saved the life of his or her owner or the owner's family.[23] The act of 1807 required manumitting slave owners to declare their intention to free a slave to a judge of the county and to guarantee that the slave had the age and conduct required for emancipation. Judges then had the duty to post a notice of the slave owner's intentions, and persons objecting to the emancipation had forty days to file opposition.[24] If not contested and if the judge ascertained that the emancipation would not defraud the slave owner's creditors (another borrowing from Roman law),[25] the emancipation could proceed. The act provided for a $100 fine if slave owners did not meet proscribed requirements. Manumitting slave owners had the obligation to support their freed slaves if they became ill or were otherwise unable to support themselves. Finally, the act required that persons seeking to emancipate their slaves by testament to abide by all of the requirements of the act of 1807.[26]

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20. Regulations, Edicts, Declarations and Decrees Concerning the Commerce, Administration of Justice, and Policing of Louisiana and Other French Colonies in America, Together with the Black Code § 63, at 126-27 (1724).

21. Black Code, *supra* note 18, § 40, at 188-90. Watson, Roman Law, *supra* note 3, at 43.

22. 1807 La. Acts § 1, at 80 (An Act to Regulate the Conditions and Forms of the Emancipation of Slaves).

23. *Id.* §§ 1-2, at 82-84.; Watson, Roman Slave Law, *supra* note 3, at 29.

24. 1807 La. Acts §§ 2-3, at 82-86 (An Act to Regulate the Conditions and Forms of the Emancipation of Slaves).

25. Declareuil, *supra* note 10, at 132.

26. 1807 La. Acts §§ 5-7, at 86-88 (An Act to Regulate the Conditions and Forms of the Emancipation of Slaves).

The Louisiana Digest of 1808, an attempt to put the existing law for the Territory of Orleans into written form, reiterated the limitations of the 1806 Black Code and the provisions of the act of 1807 concerning emancipation. The Digest of 1808 confirmed the legal disabilities of slaves in the territory, prohibiting them from "contracting any kind of engagement."[27] It also deprived slaves of the right to own any property: "He [the slave] can possess nothing in his own right and can transmit nothing by succession, legacy or otherwise; for whatever he possesses, is his master's property."[28] However, the Digest of 1808 did not deny slaves the right to sue for their own freedom:

> The slave is incapable of exercising any public office or private trusts, he cannot be tutor, curator, executor, nor attorney, he cannot be a witness in civil or criminal matters . . . He cannot be a party in any civil action either as plaintiff or defendant, except when he has to claim or prove his freedom.[29]

The Digest of 1808 contained three articles concerning the emancipation of slaves, all reiterating the act regulating emancipation passed by the territorial legislature in 1807. Article 25 allowed owners to free their slaves during their lifetimes or by testament, but the article required all such emancipations to follow the forms and conditions set by the legislature. Article 25 also forbade the Roman practice of emancipating slaves by instituting them as heirs or executors in slave owners' wills.[30] Article 26 followed the Roman restriction of forbidding the emancipation of slaves in fraud of creditors or slaves whose owners had mortgaged them.[31] Article 27 specified the only instance in which the territory could force slave owners to free slaves. If the legislature recognized a slave's meritorious act, the lawmakers could declare the slave free and compensate the owner for his or her appraised value. Article 27 also stated two instances which forced slave owners to sell their slaves. If two or more persons owned a slave and one of them demanded a partition of the property, the owners had to sell the slave and divide the proceeds. As in Roman law, if a court convicted slave owners of excessive cruelty toward their slaves, the judge could order the sale of a slave "to place him out of reach of the power which his master has abused."[32]

In 1825, Louisiana lawmakers approved the Projet of the Civil Code of Louisiana of 1825 (Civil Code of 1825) that reiterated and expanded the number of articles involving the emancipation of slaves from three to ten. In Article 184, the redactors of the Civil Code of 1825 copied Article 25 of the Digest of 1808.

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27. Digest of 1808, *supra* note 2, art. 17, at 40.
28. *Id.*
29. *Id.*
30. *Id.* art. 26, at 42.
31. *Id.*
32. *Id.* art. 27, at 42; Oppenheim, *supra* note 2, at 388.

Under this article, emancipations had to follow the forms and conditions required by the legislature. Additionally, appointing slaves as heirs or executors could not free them.[33] Article 186 reinstated the requirement of the act of 1807 and the Digest of 1808, taken from Roman law, that slaves attain the age thirty years before their owners could free them. Article 186 also reinstated the requirement that slaves exhibit "honest conduct" for four years preceding the emancipation.[34] However, the next article waived the age requirement if a slave had saved the life of an owner or an owner's family.[35] Article 187 kept the procedure of emancipating slaves—judicial notice and a waiting period for objections.[36]

The Civil Code of 1825 introduced two entirely new provisions concerning emancipation that did not appear in the Digest of 1808. Article 189 stated that "[a]n emancipation once perfected, is irrevocable on the part of the master or his heirs."[37] This provision is strikingly similar to Roman law, which held that "[l]iberty, once effected, is irrevocable."[38] The other new provision, which first appeared in the act of 1807, presented another obstacle to manumission. Article 188 required emancipating owners to support freed slaves, should they prove unable to support themselves.[39]

For the first time in American Louisiana, the Civil Code of 1825 allowed slaves a right borrowed directly from Roman law, the right to a *peculium*: "All that a slave possesses, belongs to his master; he possesses nothing of his own except his *peculium*, that is to say, the sum of money, or movable estate, which his master chooses he should possess."[40] The Projet of the Civil Code of Louisiana of 1825 gave only a brief explanation for the addition of this article. "What is here proposed is by no means new. The Roman law contains similar dispositions; and we are here in the habit of permitting our slaves to enjoy what they acquire by their industry."[41] In practice, however, the acquisition of this right did little to change the position of Louisiana slaves. In ancient Rome, slaves engaged in commerce, doing most of the secretarial and clerical work. In some cases, the careful management of the *peculium* by a Roman slave provided a sum great enough for the slave to work at a trade. In this way, the *peculium* helped slaves in Rome overcome many of the legal disabilities under which they

33. La. Civ. Code art. 29 (1825).

34. La. Civ. Code art. 185 (1825).

35. La. Civ. Code art. 186 (1825).

36. La. Civ. Code art. 187 (1825).

37. La. Civ. Code art. 189 (1825).

38. La. Civ. Code art. 189 (1825). Buckland, *supra* note 1, at 485, 566. The Supreme Court of Louisiana upheld this provision in Maples v. Mitty and Sarah, f.w.c., No. 4985, 12 La. Ann. 759 (1857).

39. La. Civ. Code art. 188 (1825). 1807 La. Acts § 5, at 86 (An Act to Regulate the Conditions and Terms of the Emancipation of Slaves).

40. La. Civ. Code art. 175 (1825).

41. A Replication of the Projet of the Civil Code of Louisiana of 1825 14 (1937) [hereinafter Projet].

labored.[42] However, in American Louisiana the restrictions on the education, training, and physical mobility of slaves reduced the right of having a *peculium* to one of little importance in ameliorating the condition of Louisiana slaves. Although slaveholders had the obligation to pay their slaves for work performed on Sunday, many slave owners gave their slaves Sundays off; therefore, slaves lost the opportunity to accumulate any significant funds. One great exception to this is the case of John McDonogh, a wealthy New Orleans merchant. McDonogh allowed his slaves to work for wages at night and on Sundays. In 1842, he allowed eighty-four of his slaves to purchase their freedom. Before his neighbors knew his intentions, they gossiped that McDonogh was either a clever or a cruel master to inspire his slaves to work so enthusiastically for such long hours. By the time of his death in 1850, forty-one more slaves had purchased themselves with their labor, and his will provided for their emancipation.[43] However, the concept of the slave's *peculium* does not appear in McDonogh's will. Indeed, thousands of trial court and appellate cases involving slaves in American Louisiana make no mention of the *peculium*.[44]

The Civil Code of 1825 also granted slaves another new right, the right to contract for their freedom: "The slave is incapable of making any kind of contract, except those which relate to his own emancipation."[45] The redactors of the code explained:

> The object here proposed is to render a slave capable of making a contract for his own emancipation. At present, stipulations to this effect cannot be made; this difficulty ought to be removed . . . Besides, this amendment is in accordance with the provision that authorizes slaves to appear in court for the purpose of claiming their liberty.[46]

The right to contract for freedom, a legacy of Roman and Spanish law, in reality acted as a watered down version of its predecessors. Article 174 did not force slaves' owners to sell them, even if a slave managed to gather the purchase price, a difficult task since slaves could accumulate money and other movable property only with consent of their owners. Also, Louisiana slaves who attempted to purchase themselves found that as immovable property, they were bound by the same rules governing any transfer of real estate in the state, which required a written, witnessed, notarized, and recorded act of sale.[47] Oral

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42. Nicholas, *supra* note 8, at 70-71.

43. Oppenheim, *supra* note 2, at 390, 401. Rice v. Cade, 10 La. 288 (1836), affirmed the rights of slaves to be paid for Sunday work. Arthur G. Nuhrah, John McDonogh: Liberal Slaveholder 54, 71-73 (1947); States of Louisiana and Maryland v. Executor of John McDonogh and the City of New Orleans, No. 2175, 8 La. Ann. 171 (1853).

44. *See* Judith Kelleher Schafer, Slavery, the Civil Law, and the Supreme Court of Louisiana (1994).

45. La. Civ. Code art. 174 (1825).

46. Projet, *supra* note 41, at 14.

47. Schafer, *supra* note 44, at 8.

contracts or promises by slave owners did not stand up in court, even if a slave had paid an owner the full purchase price. In the appeal of *Victoire v. Dussuau*, decided in 1816, the plaintiff presented witnesses who testified that they heard her mistress admit that Victoire had reimbursed her for her entire purchase price, but the defendant had refused to free her. Chief Judge George Mathews, writing for the court, declared that Victoire remained a slave: "[P]arol [sic] evidence ought not be admitted to establish the existence of the contract . . . because it tends to dispose of a slave."[48]

The Civil Code of 1825 for the first time also enumerated the rights of *statuliberi*, the Roman law term used to describe those who had acquired the right to be free at a future time. Under the Civil Code of 1825, those slaves with rights of *statuliberi* fell under the same disabilities as other slaves, except that their owners' heirs could not deprive them of their right to freedom.[49] Although the Louisiana Civil Code of 1825 prohibited slaves from inheriting anything, *statuliberi* could have inheritance pass through them to such of their descendants who may have become free before the probate of a will:

> The slave who has acquired the right of being free at a future time, is from that time, capable of receiving by testament or donation. Property given or devised to him must be preserved for him, in order to be delivered to him in kind, when his emancipation shall take place. In the mean time [sic] it must be administered by a curator.[50]

However, if slaves died without issue before acquiring freedom, the donation or legacy reverted to the donor.[51] The redactors of the Civil Code of 1825 also protected the right of the children of a female *statu liber* to her right to freedom:

> The child born of a woman after she has acquired the right of being free at a future time, follows the condition of its mother, and becomes free at the time fixed for her enfranchisement, even if the mother should die before that time.[52]

This provision could work against children of a *statu liber* becoming free in advance of their mother. In the 1820 case of *Catin v. D'Orgenoy's Heirs*, the *statu liber* Catin sued for the freedom of her children, born after Catin acquired the status of a *statu liber*, but before the condition to free her, the death of her master, occurred. Presiding Judge George Mathews, writing for the court, declared that the defendants could continue to hold Catin's children in slavery.

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48. Schafer, *supra* note 44, at 224-34. *See* Victoire v. Dussuau, No. 103, 4 Mart. (o.s.) 212 (La. 1816).

49. La. Civ. Code arts. 193-196 (1825). Buckland, *supra* note 1, at 286-88.

50. La. Civ. Code art. 193 (1825).

51. La. Civ. Code art. 195 (1825).

52. La. Civ. Code art. 196 (1825).

As Catin remained a slave until after the death of her master, the children remained in slavery as well.[53]

The most important protection of *statuliberi*, in Louisiana law, a protection only implied in Roman law, prohibited taking *statuliberi* out of the state to attempt to deny them their freedom. Article 194 granted *statuliberi* the extraordinary privilege of appearing in court to claim this protection "where there [were] good reasons for believing that it [was] intended to carry him out of the State."[54]

The Civil Code of 1825 allowed one informal method of emancipation for Louisiana slaves somewhat reminiscent of the Roman practice of *manumissio censu*, enrolling slaves on the census to grant them freedom and Roman citizenship. The Civil Code of 1825 offered a weak substitute, manumission by prescription for slaves over the age of thirty. Although slaves freed in this manner did not receive citizenship, their owners allowed them to live as free for ten years within the state or twenty years outside its borders. After the stipulated period ended, slave owners could not recover possession of them. Even with a willing owner, this method of emancipation could prove risky to slaves. Owners might change their minds just before the ten or twenty years ended. Additionally, if owners died before the specified time elapsed, the heirs could take possession of them, and hold them as slaves or sell them to pay the debts of the secession or to effect a partition of the property.[55]

Louisiana lawmakers steadily eliminated the vestiges of the influence of Roman law on the state's emancipation law after the writing of the Civil Code of 1825. In 1827, the Louisiana legislature softened the age requirement to authorize police juries, the bodies that governed parishes in Louisiana, to allow slave owners of native born slaves younger than thirty years to emancipate them.[56] Roman law held that, generally, a gift of freedom was not conditional,[57] but Louisiana lawmakers continued to place more and more onerous restrictions on emancipation. An act of 1830 required all newly freed slaves to leave the state within thirty days of their emancipation and required the manumitting owner to post a $1,000 security bond to insure the ex-slave's

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53. Catin v. D'Orgenoy's Heirs, No. 459, 8 Mart. (o.s.) 218 (La. 1820). *See also* Gaudet v. Gourdain, No. 364, 3 La. Ann. 136 (1848); Baker, f.m.c. v. Tabor, No. 328, 7 La. Ann. 556 (1852); Henriette, statu liber, v. Arroyo, Unreported Louisiana Supreme Court Case No. 3706 (1854).

54. La. Civ. Code art. 194 (1825).

55. La. Civ. Code art. 3510 (1825). For cases involving prescription, see Meilleur v. Coupry, No. 1726, 8 Mart. (n.s.) 128 (La. 1829); Carmouche v. Carmouche, No. 243, 12 La. Ann. 721 (1857); Eulalie v. Long & Mabry, No. 3237, 9 La. Ann. 9 (1854); Eulalie v. Long & Mabry, No. 3979, 11 La. Ann. 463 (1856); Euphrémie, f.w.c. v. Maran, f.w.c. & Noble, alias Jordan, Unreported Louisiana Supreme Court Case No. 6740, 6741 [filed 1860, decided 1865]. In 1859, the Louisiana Supreme Court held that prescription was abrogated by the 1857 act that forbade all emancipations. George v. Demouy, No. 5969, 14 La. Ann. 145 (1859).

56. 1827 La. Acts, at 12-14 (An Act to Determine the Mode of Emancipating Slaves Who Have Not Attained the Age Required by the Civil Code for Their Emancipation).

57. Buckland, *supra* note 1, at 483.

departure. Unlike slaves in ancient Rome, who could become Roman citizens, lawmakers in Louisiana felt that slaves freed in the state had no place in free society, and indeed, posed a threat to the institution of slavery.[58]

The following year the Louisiana legislature softened the requirement of leaving the state. Parish police juries could, by a three-fourths vote, allow emancipated slaves to remain in the state, and any slave freed for "meritorious conduct" could bypass the restrictions altogether.[59]

Despite these measures, the population of free persons of color continued to grow, from 16,710 in 1830 to 25,502 in 1840 to 17,462 in 1850. Part of the decline in 1850 resulted from strict enforcement of laws to prevent free persons of color from entering the state. Courts held those found in the state "in contravention of the law" guilty of a criminal offence. Courts then fined them (usually $25) and ordered them to leave the state within thirty days. Those not complying risked reenslavement. Lawmakers used contravention and deportation as one way to lower the population of free people of color in Louisiana; another technique, limiting emancipation, provided another.[60]

In 1852, the Louisiana legislature added another, more formidable obstacle to emancipation by requiring slave owners to send their freed slaves to Liberia and to pay $150 for each slave's passage. Former slaves not departing within twelve months of their emancipation risked reenslavement.[61] By 1852, almost all Louisiana slaves could claim to be American born, and many could claim to be natives of Louisiana, as the United States government had prohibited the

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58. 1830 La. Acts, at 90-94 (An Act to Prevent Free Persons of Color from Entering into this State).

59. 1831 La. Acts No. 46, at 98-100 (An Act to Amend the Act Entitled "An Act to Prevent Free Persons of Color from Entering into this State").

60. Ira Berlin, Slaves Without Masters: The Free Negro in the Antebellum South 136-37 (1974). 1842 La. Acts No. 123, at 308-18 (An Act More Effectually to Prevent Free Persons of Color from Entering This State). Contravention cases did not fall under the jurisdiction of the Supreme Court of Louisiana because before 1845, the court did not have criminal jurisdiction, and after 1845 its criminal jurisdiction extended only to capital cases. Constitutions of the State of Louisiana art. IV, sec. 2, at 503, tit. IV, art. 63, at 514 (Benjamin W. Dart ed., 1932). For prosecutions of contravention cases, see cases of the First District Court of New Orleans. State v. William Butler, f.m.c., No. 128 (July, 1846); State v. William Benjamin, f.m.c., No. 407 (November, 1846); State v. Louis Francis, alias Henry Eddington and George Henry Morgan, alias Dutch, f.m.c., No. 3031 (November, 1848); State v. Joseph Spencer, f.m.c., No. 4989 (May, 1850). One slave who pleaded guilty to contravention received a sentence of one year at hard labor in the state penitentiary. State v. Mary Ann Martin, No. 299 (September, 1846). The law required free people of color to register themselves, and failing to register was also a criminal offense often receiving a sentence of an hour or two in jail and a $25 fine. 1843 La. Acts No. 73, at 45-46 (An Act to Amend an Act Approved the Sixteenth March, 1842, Entitled, "An Act More Effectually to Prevent Free Persons of Color from Entering into This State, and for Other Purposes"). For prosecutions for failure to record, see these cases of the First District Court of New Orleans. State v. Thomas Powell, No. 10,876 (May, 1846); State v. Albert Carr, f.w.c., No. 1778 (January, 1848).

61. 1852 La. Acts No. 315, at 214-15 (An Act Concerning the Emancipation of Slaves in This State).

importation of slaves from Africa into the Louisiana territory beginning in 1803.[62] Few African-Americans expressed the desire to become African-American-Africans, most had families and friends from whom they did not wish to part. Thus, slave owners who wished to emancipate their slaves without having to send them to Liberia flooded the legislature with petitions for individual exceptions to allow them to remain in the state.[63]

In 1855, the Louisiana legislature repealed the requirement of departure for Liberia. However, new restrictions passed the same year, turned emancipation over to the state courts. To free their slaves, slave owners had to sue the state in a district court. Emancipating slave owners had to prove that they held actual title to the slaves, that no one held mortgages on the slaves, that the slaves had never committed a crime, that they always behaved well and were of "sober habits" and "always respectful to white people," and that they could support themselves. Slave owners wishing to free their slaves had to post a $1,000 bond that their slaves would not become a public charge. A jury decided the fate of the slaves seeking freedom, and whether they could remain in the state.[64] From July 1855 to December 1856, the district courts of New Orleans freed hundreds of slaves with permission to remain in the state. In fact, juries did not deny even one slave permission to reside in Louisiana.[65] In 1856, the Supreme Court of Louisiana declared the act that allowed this method of emancipation unconstitutional on a technicality.[66] The same year in *Henriette v. Heirs of Barnes*, the supreme court stated its opposition to emancipation: "Its [emancipation's] tendency is to substitute a free colored population for the system of compulsory labor, which involves to such a vast extent the fortunes of our citizens and the production of our agricultural staples."[67] On March 6, 1857, the same day that

62. Joe Gray Taylor, Negro Slavery in Louisiana 35 (1963); Schafer, *supra* note 44, at 150.

63. For some individual acts of legislative emancipation, see 1853 La. Acts No. 200, at 163-64 (An Act to Enable Baptiste Dupeyre . . . to Emancipate the Slave Zoé, Without Removing Her out of the State); 1853 La. Acts No. 311, at 273-74 (An Act to Emancipate the Slaves Belonging to the Estate of the Late J.B. Cajus, of the Parish of Orleans); 1854 La. Acts No. 54, at 34-35 (An Act Authorizing W.C. Wilson to Emancipate His Slave David); 1854 La. Acts No. 55, at 35 (An Act to Authorize John Cousin, of the Parish of St. Tammany, to Emancipate the Slave Frances and Her Three Children). Some of these acts stated that the slaves could remain in the state "any law to the contrary notwithstanding," a repudiation of the legislature's own laws.

64. 1855 La. Acts No. 308, at 377-91 (An Act Relative to Slaves and Free Colored Persons).

65. Generally, in the First Judicial District Court of New Orleans, see Cyrille Labiche, f.m.c. v. State of Louisiana, No. 10,489 (1855) and Philip Claiborne, f.m.c. v. State of Louisiana, No. 10,683 (1855); in the Second Judicial District Court of New Orleans, see Jean Jacques Montreuil, f.m.c. v. State of Louisiana, No. 9,280 (1855) and Antoine E. Tremoulet v. State of Louisiana, No. 10,094 (1855); in the Fourth Judicial District Court of New Orleans, see Placide Forstall and William Bell v. State of Louisiana, No. 9,614 (1856) and Emile Outremont v. State of Louisiana, No. 10,060 (1856); in the Fifth Judicial District Court of New Orleans, see Seaborne Powell v. State of Louisiana, No. 10,997 (1856) and Jean Baptiste Jobert v. State of Louisiana, No. 11,030 (1856). *See also* Schafer, *supra* note 44, at 183 n.5.

66. State v. Harrison, No. 4464, 11 La. Ann. 722 (1856).

67. Henriette, alias Mary v. Heirs of Barnes, No. 3751, 11 La. Ann. 453 (1856).

Chief Justice Roger B. Taney read the *Dred Scott*[68] decision, the Louisiana legislature prohibited all emancipation.[69] Prohibiting emancipation seems the logical conclusion to the development of the Louisiana law of slavery in a direction so opposed to the Roman law of slavery.

68. Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1857).
69. 1857 La. Acts No. 69, at 55 (An Act to Prohibit the Emancipation of Slaves).