
ANOTHER LEGAL TRANSPLANT: THE APPLICATION OF THE ROMAN LAW OF SLAVERY IN THE UNITED STATES – THE UNIQUE CASE OF THE STATE OF LOUISIANA

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Introduction

The title of this article connotes a description of the application of the Roman law of slavery in the present State of Louisiana, only one of the fifty federated States comprising the United States, and a small one at that. Accordingly, the article will first explain why the Roman law of slavery was applied in great part only in Louisiana, and second, will describe the application of one aspect of the Roman law of slavery in that State. Because of space limitations, the article will focus on the area of the manumission or emancipation¹ of slaves.

Why the Roman law of slavery applied only in Louisiana

The present State of Louisiana, along with many other states of the United States, was part of the immense Louisiana Territory that was sold by France to the United States in 1803.² However, Louisiana has a legal history differing from all of the other states in the American Union, including those that were also part of the Louisiana Territory.³

This territory was not, of course, an English possession, but rather was owned first by France (1682-1762), then Spain, (1762-1800), and then France again (1800-1803) before being sold to the United States.⁴

The territory in mid-America sold by France, unlike the British colonies clustered along the Eastern seaboard, was sparsely populated. A relatively

1 The word "manumission" is the term generally used when discussing the freeing of slaves under Roman law. In the United States, the term emancipation was used in the common law to describe the act. For the sake of consistency, manumission will be used when Roman law is being discussed, and the use of emancipation will be limited to a discussion of the practice under common law.

2 When the United States purchased the Louisiana territory, it covered 924,217 square miles: F. Bond, *The Louisiana Purchase: An Historical Sketch from the Files of the General Land Office* (1933). Reprinted in Commemoration of the One Hundred and Fifteenth Anniversary of the Louisiana Purchase (1955).

3 Today this territory comprises the states of Louisiana, Arkansas, Missouri, Iowa, Minnesota (West of the Mississippi River), North Dakota (except the North East corner that was held by the British), South Dakota, Nebraska, most of Kansas, Oklahoma (except for the area known as the panhandle), Montana and parts of Colorado.

4 The dates of the treaties do not always coincide with the periods of actual administration. See generally, Francois Xavier Martin, *The History of Louisiana from the Earliest Period* (1882) and Joe G. Taylor, *Louisiana, A History* (1964) for a description of these historical events.

numerous population could be found only in the Southern part of what is now the state of Louisiana, centered in the main in the city of New Orleans.⁵ For this reason, after the Louisiana purchase in 1803, the Louisiana Territory was divided. A small section of the southern, most heavily populated part, became the Territory of Orleans (1805-1812) and then the State of Louisiana (1812 to the present). Since 1812, the year that statehood was granted, the word Louisiana describes only the present state, not the entire Louisiana Territory. The present state of Louisiana, along with the rest of the Louisiana Territory, was governed then by three distinct legal regimes, imposed by the French, the Spanish and finally the Americans.

Because in its early history the entire Louisiana Territory was a French or Spanish possession, the law applied there was civil law, the law prevailing in France and Spain and their colonies. However, as we have seen, the major part of the Louisiana Territory outside of the present state of Louisiana was very lightly populated. It was occupied, after the Louisiana Purchase in 1803, by American settlers from the East. Because of this, the civil law was discarded there in favor of the common law, with which this new population was familiar.

The civil law remained in force, at least in part, only in the present State of Louisiana.⁶ This civil law included the civil law of slavery, which at least in its Spanish form, unquestionably derived largely from the Roman law of slavery. Thus, the law of manumission of slaves in the major slave-holding areas of the United States was heavily influenced by Roman law only in the present state of Louisiana. The remainder of the United States was governed by common law, including the common law of slavery.⁷

Roman law influence on the method of emancipation in Louisiana: The French Period (1682 - 1760)

Although the Spanish had explored part of the area first, Spain apparently set up no claim to the region. The vast expanse known as the Louisiana Territory was thus taken possession of first by Robert Cavalier, Sieur de la Salle in

5 In 1800, the population of the Louisiana Territory was approximately 36,000 people. Approximately 30,000 were located in the Southern part of the present state of Louisiana, with New Orleans being the most populous center: see G.A. McGinty, *A History of Louisiana* (1949).

6 The retention of major parts of the civil-law system in Louisiana did not take place without a struggle, as both President Thomas Jefferson and the man he appointed Governor of the Territory of Orleans, William C.C. Claiborne, strongly favored the adoption of the common law in force in the rest of the United States. For an artful summary of the events leading to the eventual adoption of important parts of the civil law in Louisiana, see A.N. Yiannopoulos, "The Civil Codes of Louisiana 1. Historical, political and legal background of the Codification" in *Louisiana Civil Code*, 2005 Vol. I, XVI.

7 See generally, Alan Watson, *Slave Law in the Americas* (1989).

1682, in the name of France.⁸ The original basis for the law of slavery in Louisiana was the French *Code Noir*, a version of which was adopted for Louisiana in 1724.⁹ The original *Code Noir* of 1685 contained two particularly relevant provisions. One allowed owners over twenty years of age the unencumbered right to manumit their slaves; the second provided for automatic manumission for the slave appointed by testament as a testamentary heir, executor, or a guardian of the master's children.¹⁰

Roman law, as we know, contained relatively few restrictions on manumission, as did the original *Code Noir*,¹¹ the provision for automatic manumission by appointment to certain testamentary positions is remarkably similar to the rule on this subject formulated in Justinian's *Corpus Iuris Civilis*.¹² These generous provisions of the *Code Noir* did not remain for long, however, and were not included in the 1724 version put into effect in Louisiana.

The freedom to manumit in the original *Code Noir* had been drastically changed by an ordinance of 24 October 1713, reenacted on 13 June 1736. The *Code Noir* for Louisiana in 1724 included harsh provisions similar to those in the ordinances.¹³ These stricter provisions of the law governing manumission seem to have been even closer to Roman rules than are the provisions of the original *Code Noir*. Under the Roman law from the time of Augustus to Justinian's compilation, a statute required that owners under twenty who wished to manumit had to present a just cause for manumission in front of a council, which had to approve the manumission.¹⁴ Under the Louisiana *Code Noir* slaves could be emancipated in Louisiana only by owners who were at least twenty five years old. Furthermore, they could be freed only after obtaining the consent of the Counsel Superior, for reasons decided legitimate by him.¹⁵

In addition, an Ordinance of 1736, which applied to Louisiana, is said to have effectively abolished manumission by testamentary appointment of a slave as

8 See Yiannopoulos, *supra* note 6, at XIV.

9 The original *Code Noir* for the islands of French America was adopted in 1685. Hans W. Baade, "The Gens de Couleur de Louisiana: Comparative Slave Law in Microcosm" 18 *Cardozo L. Rev.* 535 (1996). A *Code Noir* for Louisiana was promulgated in 1724. The French text of the *Code* is in 4 *Publications La. Historical Society* 75 (1908).

10 *Id.*, Baade at 540.

11 Alan Watson, *Roman Slave Law* 23-24 (1987).

12 *Code Just.* 6.27.5.1, 6.27.5.1a, 6.27.5.1b.

13 See Baade, *supra* note 9, at 540-541.

14 Augustus the first Emperor, or Princeps, as he preferred to be called, was the first to place serious limits on manumission, perhaps as part of the general campaign to return Roman society to its republican values. Justinian had certain aspects of the *lex Aelia Sentia* retained, by requiring a number of witnesses to effect certain manumissions. See Barry Nicholas, *An Introduction to Roman Law*, A.M. Honore & J. Raz (eds.), (1908). See also, Watson *supra* note 11 at 34.

15 See Baade, *supra* note 9 at 541.

heir.¹⁶ This was a cutting back of a provision governing automatic emancipation in the original and Louisiana *Code Noirs*. As noted, this concept of automatic manumission was first fashioned in Justinian's *Corpus Iuris Civilis*.¹⁷

The source of the *Code Noir*, whether largely Roman law or mainly codified island custom, is the subject of a debate among scholars.¹⁸ Actually, there is a third opinion, namely that the provisions of the *Code Noir* were derived from French precedents and practices regulating vagabonds, beggars, apprentices, children and wives.¹⁹ We need not enter into this debate, for two reasons: First, the author arguing that the *Code Noir* comprised largely island custom concedes that the area we are interested in, manumission, is the most Romanized area of the *Code Noir*,²⁰ secondly it seems clear that the unaltered *Code Noir* applied exclusively only during French hegemony, a period where law of emancipation was of much less importance in terms of its use than the Spanish Period that followed, as we shall see.

Although the French explorers named the new French possession for Louis XIV, the Sun King's rays apparently were not bright enough to reach the far-off territory named for him. The colony received little support during his reign. In 1718, however, the regency government of the Duke of Orleans established New Orleans and initiated what is said to be one of the largest state sponsored colonizing projects in history. Under his grand design about 13,000 colonists set sail, not all voluntarily, for New Orleans.²¹

Despite the auspicious beginning, the demographic figures graphically demonstrate the failure of the project, a failure that caused one historian to label his chapter on the French colonial period "A Study in Failure".²² By 1731,

16 *Id.* at 540, 541.

17 See *supra* note 12.

18 Professor Alan Watson, *supra* note 7, maintains that the institution of slavery generated the legal need to develop formal legislation. In his view, the French draftsman turned to the already established Roman rules. Vernon V. Palmer, "The origins and authors of the *Code Noir*", 56 *La. L. Rev.* 363 (1995) disagrees with Watson's view "[t]hat codification succeeded in the Articles only because the Romans prepared the path". Instead Palmer argues that the *Code Noir* was drafted by the Governor-General and the Intendant of the Antilles who followed royal orders to examine and incorporate previous ordinances and judgments rendered by the three Sovereign Counsels on the islands of Martinique, Guadeloupe and Saint Christophe. Most recently, Watson responded to Palmer's comments in "The origins of the *Code Noir* revisited", 71 *Tul. L. Rev.* 1041 (1997).

19 Mathé Allain, "Slave policies in French Louisiana", in *Louisiana Purchase Bicentennial Series in Louisiana History VI the French Experience in Louisiana 174*.

20 See Palmer, *supra* note 18, at 380: "[T]here are, in this writer's opinion, perhaps only two instances, those dealing with the slaves's peculium and the modalities of his manumission, where Paris seems to have made unambiguous use of or allusion to Roman law rules." Palmer later states that "[t]hese additions look Roman, but they are only touch ups to the strong manumission policy earlier ...".

21 See generally, Taylor, *supra* note 4.

22 *Id.*

905 white settlers, approximately 200 French troops, 3659 black slaves and a few dozen Indian slaves and free people of color were estimated to comprise the entire population of what is now metropolitan New Orleans.²³ In 1776 the new Spanish masters of Louisiana made an attempt to carry out the first effective census. This census reported that New Orleans contained a population of 6,169 people at that time. Free blacks were so few that they were not counted separately.²⁴ The paucity of these figures demonstrates, at least in a numerical sense, the lack of importance in the first French Period of the law of manumission.

Roman influence: The Spanish Period (1768-1803)²⁵

The importance of the Spanish Period for the law of manumission has been alluded to. During this time the population of freed slaves in New Orleans and the entire territory rose dramatically.²⁶ Roman aspects of the Spanish law applied in Louisiana were responsible in large measure for this increase. There is no doubt that the new Spanish administration provided unique methods for emancipation in the Territory of Louisiana, resulting in a significant growth of the free black population during Spanish rule. In discussing the law of slavery that applied in Louisiana during the period of Spanish rule, one must note that here also there is a difference of opinion among scholars. An ambiguity arises because the first effective Spanish governor of Louisiana, Alejandro O'Reilly, re-enacted the French *Code Noir* on 27 August 1769 when he took control of the colony for Spain.²⁷ There are at least two points of view. The first, that Governor O'Reilly by his proclamation confirmed and perhaps guaranteed the continuing applicability of the French *Code Noir* for Spanish Louisiana.²⁸ The

23 Thomas N. Ingersoll, "Free blacks in a slave society: New Orleans 1718-1812" 48 *Wm. & Mary Q.* 173, 175 (1991): "By 1731, only 905 settlers, about 200 French troops, 3,659 black slaves and a few dozen Indian slaves and free blacks remained in the town center or in nearby plantations scattered among the cypress groves and swamps where metropolitan New Orleans stands today." The author gives as his source Glen R. Conrad *The First Families of Louisiana II*, 57-64 2 vols. (1970).

24 *Id.* The figures are based on a census by co-governors Antonio Ulloa and Charles Aubury on 22 May 1766: see *Archivo General de Indias, Audencia de Santo Domingo*, Microfilm in the Historic New Orleans Collection, 2585: 1-22v.

25 Although the Louisiana Territory was transferred by Spain back to France in 1800, the French Government did not take possession of the territory until 30 November 1803, less than thirty days from the date set from the ceding of the colony to the United States. See Taylor, *supra* note 4.

26 The Census of 31 December 1806, *The Territorial Papers of the United States*, vol. 9 *The Territory of Orleans 1803-1812* ed., Clarence Edward Carter (1940) shows 2312 free blacks in Orleans Parish out of a total population of 17,001. The entire territory had a population of 55,534, of which 3,350 were freed blacks.

27 Hans W. Baade, "The Law of Slavery in Spanish Louisiana, 1769-1803" in *Louisiana's Legal Heritage*, 43, 44 & 54 (Edward F. Hass ed.) (1983).

28 See Schmidt, "Were the laws of France, which governed Louisiana, prior to the cession of the country to Spain abolished by the Ordinances of O'Reilly?", 71 *La. L.J.* 24, 25, 37 (1841); John H. Tucker, *Effect on the Civil Law of Louisiana Brought about by the Change in Sovereignty*, 2-24 (Society of Bartolus, Judicial Studies, No. 1) (1975). In the latter work, Tucker makes the following statement: "[T]he philosophical basis for the rule

second view is that later actions by Governor O'Reilly completely negated any official continuing applicability of the French *Code Noir*.²⁹

The first view, that the *Code Noir* continued to apply during Spanish rule, seems to have been effectively disproved, chiefly by the research of Professor Hans Baade and Kimberly S. Hanger. They have demonstrated convincingly that the judicial authorities of Spanish Louisiana applied Spanish law, including the Spanish law of slavery, during the period of Spanish rule.³⁰ The extent to which the Spanish law concerning manumission applied in Louisiana is based on Roman law determines whether Louisiana was governed by a Romanized law in this area during the crucial period of Spanish rule.

Some aspects of the *Code Noir's* treatment of manumission have been mentioned. It is clear that Spanish law in Louisiana made significant changes in this area, changes that to a great extent softened some of the more restrictive policies of the *Code Noir*. For example, it will be recalled that under the version of the *Code Noir* applicable to Louisiana, emancipation could take place only with the permission of the Counsel Superior, a permission that was granted only if the owner proved that the facts of his particular case justified emancipation.³¹ In 1769 Governor O'Reilly abolished the Counsel Superior. Since he did not designate any of the newly created Spanish governmental agencies to review emancipations, this meant that they became solely dependent on the will of the individual owner, rather than the judgment of an official of the state.³² This system of relatively unfettered emancipation is, as we have seen, typical of Roman law during long periods of Roman history; more importantly, it was the Roman law expressed in Justinian's *Digest*, the source of most of the Roman law received by Europe in the Middle Ages.³³

universally established that when there is a change of sovereignty, those civil laws of a private nature are not affected unless the new sovereign takes specific positive action to abolish them and to substitute those of the new sovereign There is no evidence to this date that the first Spanish governor, Don Alexander O' Reilly, ever took any such action with respect to the Custom of Paris and the Royal Ordinances specified as the law to apply to Louisiana ... for his ordinance of November 25, 1769 did little more than establish the government and courts for Spanish Louisiana, and the annex to that ordinance is little more than a petit code of civil procedure." This claim of course goes far beyond the continued applicability of the *Code Noir*.

29 See *infra* note 30.

30 See Hans W. Baade, "Marriage contracts in French and Spanish Louisiana: A study in 'notarial' jurisprudence", 53 *Tul. L. Rev.* 3 (1978) for the propositions that Spanish law was officially in force in the Louisiana Territory between 1769 and 1803, but that French law continued to be unofficially applied by the population outside of New Orleans. See also Baade, *supra* note 27, at 60-62, 67-70 and Kimberly S. Hanger, *Persons de Varias Clases y Colores: Free People of Color in Spanish New Orleans, 1769-1803*, at 27-28 and 37-49 (1991) (unpublished Ph.D. dissertation, University of Florida).

31 See Baade, *supra* note 9, at 541.

32 Baade, *supra* note 9, at 550.

33 See *supra* note 14.

However, possibly the most important modification made by the Spanish, and one that contributed to the number of freed slaves during the Spanish era, was the institution of *coartacion*, or self-purchase. This right was available in Louisiana. We have seen that Governor O'Reilly by ordinance effectively did away with governmental permission as a prerequisite to manumission. Although he made no specific legislative provision for the right of a slave to purchase his freedom, this right was enforced consistently during the period of Spanish rule.³⁴ Not only could slaves purchase their own freedom, they could do it for a price set by the court even though the master did not wish to manumit.³⁵

This right of self-purchase was based on the law of Castile and the Indies. It was a device said to be easily developed from Roman law.³⁶ In addition, to be effective, the right of self-purchase had to be combined with an analogue to the unique Roman institution of *peculium*, a separate fund administered by a slave, and often treated as belonging to the slave, although legally it was the master's property.³⁷ The right of self-purchase in Spanish Louisiana was complimented by recognition of the ability of slaves to accumulate funds of their own, often to be used for self-purchase.³⁸ These particular Spanish-law characteristics must have been to some extent influenced by greatly similar aspects of Roman law, based on uniquely Roman institutions.

In addition, the Spanish themselves claimed Roman roots for their law of slavery, and attributed a claimed "incomparably milder" treatment of slaves in Spanish territory to their judicious selection of Roman law sources. On 17 March 1974, the Council of the Indies adopted the conclusions of a report filed by the former Intendants of Caracas, Havana, and Louisiana. The report stated that the relative mildness of the Spanish system of slavery was due to "the wisdom of our national laws that by adopting only the benign parts of the Roman law, reduced the duties associated with slavery to the precise limits of necessity".³⁹

The admittedly self-serving report also states that one of the results of the mild nature of the law of slavery in the Spanish possessions compared to that applied in the possessions of France, Great Britain or Holland was the much

34 Baade, *supra* note 9, at 553-557.

35 *Id.*

36 Watson, *supra* note 18, at 53-56, explaining the process.

37 Watson, *supra* note 11, at 90-101.

38 Baade, *supra* note 9, at 546.

39 Informe del Consejo de Indies acerca de la obervancia de la Real Cédula de 31 de Mayo de 1789 sobre la educación, trato y ocupaciones de los esclavos, reprinted in Saco, *Historia de la Esclavitud de la Raza Africana en el Nuevo Mundo y en los Países*

more favorable ratio of freedmen to slaves found there.⁴⁰ Whatever the cause, they were correct in asserting that the proportion of freedmen to slaves was highest in the Spanish overseas territories.⁴¹ Furthermore, and more to the point, we have seen that the absolute number of freed slaves grew dramatically during the period of Spanish rule in Louisiana.⁴²

Roman influence: The American Period (1803-1864)

Between 1800 and 1803, the year of the Louisiana Purchase, the Louisiana Territory was once again owned by France, having been secretly transferred by the Spanish government back to the French in 1800.⁴³ However, the French government did not take possession of Louisiana until 30 November 1803, less than thirty days from the date set for the ceding of the colony to the United States, in accord with the terms of the Louisiana Purchase. Although the Colonial Prefect of the French Republic in Louisiana issued a proclamation reenacting the *Code Noir* of 1724 only three days before the surrender of the colony to the United States, the legislation was apparently disregarded. The benign features of Spanish law regarding manumission were applied until 9 March 1807 when an "Act to regulate the conditions and forms of the emancipation of slaves" was enacted by the Territorial legislature.⁴⁴ It followed the enactment of a *Black Code* of forty articles enacted on 7 June 1806. Finally, the enacted *Digest* of 1808, a document that was to ensure the continued applicability of the civil law in Louisiana, also contained various restrictive provisions regarding slavery.⁴⁵

In combination with provisions in the *Black Code* of 1806 and the *Digest* of 1808, the *Act* of 1807 dealing with emancipation severely cut back the more liberal provisions of the Spanish law of emancipation. The *Act* itself first did away with voluntary manumission and replaced it with a system that required judicial approval and was limited to slaves at least thirty years old whose four years of previous good conduct could be shown.⁴⁶ Obviously, there was an immediate decline in the voluntary manumission by *Notarial Act*, a popular method of emancipation under the Spanish system.⁴⁷ The *Act* also abolished

40 *Americo-Hispanos* 247-278 (1938) cited and discussed in Baade *id.* at 543, 544.
See Baade, *supra* note 39.

41 Baade *id.* at 546.

42 See *supra* note 26.

43 See *supra* note 3.

44 See *supra* note 27, at 72-73.

45 For a general discussion of these developments, see Judith K. Schafer, "Roman roots of the American law of slavery: Emancipation in American Louisiana" 56 *La. L. Rev.* 409, 413, 415 (1995).

46 *Id.* at 413.

47 Baade, *supra* note 9 at 558-561.

compulsory freedom purchase, that is, the ability of a slave to force the master to free him at a price set by the court. There is no doubt that many a "voluntary" manumission was effected by a grudging master because of the possibility of such a suit. The *Act* stated concisely that "no person shall be compelled either directly or indirectly to emancipate his or her slaves".⁴⁸

Furthermore, the *Black Code* of 1806 did not allow slaves to own property without their master's consent and disqualified them as parties to civil suits.⁴⁹ The *Digest* of 1808 added to the legal incapacity of slaves by depriving them of the right to enter into contracts of any kind. These provisions would seem to have eliminated completely the institution of self purchase. The Louisiana Supreme Court, however, ruled in 1816 that contracts of self-purchase were still enforceable.⁵⁰

The justification for the decision was somewhat unique, and representative of a controversy concerning the nature of the law of Louisiana during a long period of its early history as a part of the United States: The court ruled that contracts of self-purchase were still judicially enforceable by applying a provision of the *Siete Partidas*, an important part of Spanish law that was found to apply as supplementing law during most of the first half of the nineteenth century. This controversy is reflected in a major struggle between the Louisiana Supreme Court and the State Legislature that raged during those years.⁵¹

This debate concerning the applicability of the Spanish private law in Louisiana during the early American Period, while fascinating to the legal historian, is of limited importance here. Whatever the fate of Spanish private law was during this era, it has been noted that the more liberal Spanish legal provisions concerning slavery in general and emancipation in particular began to be severely cut back as early as 1807.⁵² This practice of bringing the Louisiana law of emancipation more in line with the stricter provisions of the common law

48 1807 *La. Acts* S 1, at 80, cited in Schafer, *supra* note 45, at 413.

49 1806 *La. Acts* S 15, at 158.

50 4 Mart. 212 (La. Sup. Ct. 1816).

51 Even after the passage of the *Civil Code* of 1825 the courts continued to apply the former Spanish laws. The legislature naturally objected to the flouting of its statutes demanding the courts not use these sources. Not until 1839 in the *Reynolds v. Swain* case, (*Reynolds v. Swain*, 13 La. [1839]) did the Louisiana Supreme Court agree that the legal sources from Rome and Spain had been abrogated in Louisiana unless the principle they embodied had already been confirmed by judicial decisions. The story of this struggle between the Louisiana Supreme Court and the legislature has been recounted in many places. See e.g., Shale Herman *et. al.*, *The Louisiana Code: A Humanistic Appraisal* 25-29 (1981).

52 Baade, *supra* note 9 at 580.

of the other slave-holding states continued, with some periods of inactivity, until emancipation was completely abolished by the legislature of 1857.⁵³

Conclusion

The progressive hardening of the requisites for emancipation occurred in all of the major slave-holding states in the decades prior to the Civil War, and Louisiana was no exception, particularly after the passage of the *Civil Code* of 1825, which temporarily ameliorated somewhat the earlier provisions alluded to.⁵⁴ Happily, this trend came too late to block the formation of a unique group of freed slaves in New Orleans known as the Creoles of Color. In 1860, it is said that although they represented only 2.2% of the population of free blacks in the United States, they possessed 88% of the accountable wealth among America's free blacks, including one fifth of all taxable property in New Orleans.⁵⁵ We have seen that the foundation for this group was laid during the Spanish Period of sovereignty in the Louisiana Territory.

This group represents a fascinating sub-culture, one about which much has been written. Among other things, they have participated in the local and national struggle for equality in the United States since the end of Reconstruction. Homere Plessy of the famous *Plessy v. Ferguson* case,⁵⁶ one of the first to challenge the doctrine of "separate but equal", was one of their number as are many of the civil-rights leaders in Louisiana today. It is satisfying to know that the Roman law of manumission, as applied by the Spanish, played an important role in their formation.

53 Act No. 69, *La. Acts* 55.

54 Schafer, *supra* note 45, at 415-422.

55 G.E. Martin, *The Creole Story: An Historical Handbook* 33-34 (1980).

56 *Plessy v. Ferguson*, 163 U.S. 537 (1896). This case dealt with one of the first segregation statutes to be challenged, one that required passenger railroads to provide separate cars for the races. It ended badly.