

MONTESQUIEU IN THE CARIBBEAN

The Colonial Enlightenment between *Code Noir* and *Code Civil*

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The physiognomies of governments can be best detected in their colonies, for there their features are magnified, and rendered more conspicuous.¹

—Alexis de Tocqueville, *The Old Regime and the Revolution* (1856)

[R]esistance is never in a position of exteriority in relation to power.²

—Michel Foucault, *The History of Sexuality: An Introduction* (1976)

For all the influence French thought has had in promoting innovative scholarship in the rest of the world, French historians have by and large neglected to cultivate their own garden insofar as colonial history is concerned. Tocqueville's suggestion that colonialism yields a magnified picture of the true tendencies of the state is just now beginning to bear fruit on the other side of the Atlantic. In France itself, however, an apparent failure to integrate the experience of empire into French history generally has deprived the profession of an important opportunity.³ To the best of my knowledge, not a single major scholar of the French Revolution has produced important work on colonial history. The prognosis for postrevolutionary history is only slightly more encouraging. Conversely, those French historians who actually *have* spent time in the colonial archives display little evidence of sustained interest in the dynamics of metropolitan history. In some instances this lack of interest

stems from a conscious decision to privilege the “agency” of subject populations who for long went without a written history of their own. Considered as a whole, the history of the French empire remains a classic example of a *dialogue des sourds*.

This neglect is both puzzling and deeply rooted in French culture. Empire and its attendant phenomena, including slavery, were a major concern of the philosophes and their nineteenth-century successors. This is to say nothing of such canonical modern intellectuals as Albert Camus, whose novels and short stories are at once unequaled models of colonial writing and acute explanations for the failure of such writing to take hold in French consciousness. In recent years a spate of successful novels and films about former French colonies from Martinique to Algeria to Vietnam has produced an unmistakable cultural efflorescence, fueled by immigration and the tensions associated with a rapidly changing demographic profile.⁴ In the face of these contemporary reminders of a remarkably rich and endlessly fascinating heritage, French historical writing seems determined to preserve the insularity and lack of adventurousness that have consigned colonialism and the foreign to a distinctly marginal place.

THE POSTMODERN AND THE POSTCOLONIAL

The polarization between “domestic” and “overseas” history so characteristic of the French situation is only one manifestation of a more disquieting problem that transcends national boundaries. Anglo-American historians have also failed by and large to engage Tocqueville’s argument about the relationship of colony to metropole. This failure has much to do with the influence of postmodern thought on the writing of colonial history in recent years, an influence that has tended to push in two closely related directions.

First, postmodern thought has directed attention away from the study of formal law and institutions in favor of constantly multiplying “sites” of nongovernmental, “immanent” authority. The paradigmatic thinker in this respect is of course Foucault, whose famous injunction to “conceive of sex without the law, and power without the king” has become a rallying cry of the burgeoning school of “postcolonial” studies in the United States and in Britain.⁵ Foucault’s unveiling of what he termed the “juridico-monarchic” image of power and its continuing stranglehold on postabsolutist understandings of society seemed to discredit an older historiography centered on the institutional and bureaucratic workings of the colonial state. “Our historical gradient,” he wrote,

carries us further and further away from a reign of law that had already begun to recede into the past at a time when the French

Revolution and the accompanying age of constitutions and codes seemed to destine it for a future that was at hand.⁶

The impulse to “expel” law from history resonated perfectly with the postcolonial determination to restore “agency” to the “subaltern” populations of the European empires.⁷ But despite all the focus on indigenous resistance to the imposition of metropolitan authority, it is not at all clear that recent scholars of empire have listened to Foucault’s warning that “there is no binary and all-encompassing opposition between rulers and ruled at the root of power relations.”⁸ Indeed, it may be precisely because of its categorical emphasis on resistance that postcolonial writing has largely failed to do justice to Foucault’s nuanced but elusive thesis: “[R]esistance is never in a position of exteriority in relation to power.”⁹

In an interview published after the first volume of *The History of Sexuality* appeared, Foucault sought to mollify the anti-institutional thrust of his theory, claiming that he did not mean to say the state is irrelevant.¹⁰ This may be true, but it skirts the ways in which Foucault’s essentialist concept of the “juridico-monarchic sphere” and his reduction of law to prohibition vastly oversimplified the legal history of the Old Regime.¹¹ The same could be said for a second direction in which postmodern thought has tended to push the study of law and colonialism in recent years. Less directly tied to Foucault, the view that “the Enlightenment project” consisted in the effort “to develop . . . universal morality and law . . . for the rational organization of everyday social life” has overtaken postmodern and postcolonial studies to an even greater degree than the “normalization of power” thesis.¹² The Enlightenment is said to have imposed a “homogeneous,”¹³ “totalizing discourse”¹⁴ of universalism and rationality on the rest of the world. This imperialist, abstract “fiction” is often contrasted with the “heterogeneities” of the local, the particular and the concrete, values at the expense of which the Enlightenment project is feared to have triumphed. “It is part of the embarrassment of [Enlightenment] bourgeois ideology,” writes Terry Eagleton, “that it has never really been able to reconcile difference and identity, the particular and the universal.”¹⁵

In the face of this barrage of accusations, the *philosophes* themselves appear more often than not as the disembodied, protomythic founders of modernity than as objects of local, particular, and concrete historical investigation. It would be unreasonable to expect scholars who are primarily interested in the technologies of power in the nineteenth and twentieth centuries to undertake detailed, archival investigations into the work of eighteenth-century intellectuals. But given all of the talk about Enlightenment universalism and rationalism,

it is striking that discussion about the *philosophes* and their legacy remains at such a high level of abstraction, as though epigrammatic assertions about the nature of eighteenth-century thought suffice to account for something mysteriously called the “project of modernity.” A similarly detached posture has characterized treatments of what the Enlightenment may have had to say about the forms of colonialism it actually *did* know (as opposed to those it supposedly made possible, or at least helped to justify, in a later age).

In this context, Montesquieu’s influence as a theorist of colonial law during the final decades of the Old Regime assumes an unexpected importance. If this is not a role historians often associate with Montesquieu, that may be partly because it provides a useful corrective to the postmodern vision of Enlightenment legal theory as antithetical to the principles of local custom and the particular. It is true that many of the *philosophes* and *physiocrats* saw in the more than 360 customary traditions of the Old Regime an ingrained recipe for legal archaism and political obstructionism. But for Montesquieu, those same traditions represented the wisdom of a society that had agreed to tailor its laws to satisfy the diverse interests of culturally autonomous regions.¹⁶ Customary law appeared all the more significant against the backdrop of the “foreign” imports with which it was hopelessly entangled: Roman and canon law. In the *Persian Letters*, he asked:

Who would think that the oldest and most powerful kingdom in Europe has been governed for more than ten centuries by laws which were not made for it? If the French had been conquered it would not be hard to understand, but it is they who have been the conquerors.¹⁷

With characteristic irony, Montesquieu thus advocated one particular strand of Enlightenment legal theory, the one that glorified local, homegrown law over both archaic and “superstitious” laws, in the face of a much more vocal strand of criticism that championed uniformity over custom.¹⁸

For reasons having as much to do with the iconic status of the Civil Code in French political culture as with postmodern images of the Enlightenment, codification and uniformity have been traditionally portrayed in Weberian terms as going hand in hand: “right reason” and the “logically abstract” vindicating the universalist values of a polity dedicated to the rights of individual persons rather than the interests of particular groups and regions.¹⁹ But to a generation of legal reformers in prerevolutionary Saint-Domingue, the greatest of France’s eighteenth-century colonies, the contradictions inherent in a code of customary laws were not quite so apparent. This was not a mere failure of insight,

but rather a reflection of a peculiar legal sensibility that created and sustained its own canons of coherence and legitimacy. In the 1770s and 1780s a group of colonial jurists approached the daunting task of codifying French law *outré-mer* through the hallowed prism of Montesquieu’s radically contextual legal sociology. Under the aegis of a project carried out in the name of universal applicability and conformity, timelessness and centralization, these jurists sought to create a space in which to carry out a politics of the local and the particular, the contingent and the historical.²⁰ In their writings, it is possible to detect the contours of a latent polarization *within* Enlightenment legal theory itself, a paradoxical synthesis of custom and uniformity that has been largely erased from legal-historical memory.

THE DIALECTIC OF THE COLONIAL ENLIGHTENMENT

Associated to varying degrees with the monarchy and its colonial bureaucracy, the jurists of Saint-Domingue also identified passionately with a “creole” *parlementaire* tradition that toyed repeatedly in the eighteenth-century with the possibility of autonomy from France.²¹ This tradition found expression in a veritable deification of what the colonists typically called “local knowledge” (*connaissances locales*). Shorthand for a kind of secondhand, native legal sensibility to which only creole lawyers could stake claim, local knowledge was the centerpiece of the jurists’ effort to construct a theory of colonial society that would underwrite their demands for autonomy from the metropole.²² At its most basic level, the colonial Enlightenment consisted in the “crystallization of a fatal distinction between metropolitans and creoles.”²³ The jurists of Saint-Domingue cultivated this distinction with a dedication bordering on the obsessive, knowing that it was their single most powerful weapon in the campaign to organize the legal life of the colony around the principle of local custom. If there was a “dialectic of Enlightenment” to be found in the eighteenth-century French colonies, then, its parameters must surely be located in the relationship between creole self-consciousness and the jurisprudence of the particular.

The language of colonial autonomy clearly bore a strong family resemblance to the judicial rhetoric of provincial resistance to the monarchy, a subject that has spawned a whole industry of secondary works on the Old Regime. Beginning well before the Fronde (1648–53) and extending even beyond Maupeou’s ill-fated muzzling of the Parlement of Paris (1771–74), French magistrates repeatedly frustrated attempts to unify and standardize the laws of the metropole. Moreover, it is worth noting that many members of the colonial elite originally hailed from commercial centers, such as Bordeaux, that were also

strongholds of *parlementaire* resistance in the early modern period.²⁴ But the possible connections in this regard, though tantalizing, take us beyond the subject at hand.²⁵ For however much metropolitan magistrates may have had in common with their colonial counterparts, the two groups were set apart by a complicated legal and political gap that transcended the issue of physical distance.

Montesquieu neatly symbolized this gap at a number of levels. To begin with, he bore witness to a traditional metropolitan distrust of the colonists, a skepticism especially evident among the ranks of the Bordeaux judiciary. In Montesquieu's view, France would never be able to rely on the loyalty of a population that felt victimized from all angles by the *exclusif*, that much despised metropolitan monopoly on trade with the colonies.²⁶ Montesquieu's notorious antislavery polemics furnished an even sharper thorn of contention, for the obvious reason that without slavery the entire system of colonial trade would amount to little more than a minor enterprise. The colonial magistrates were not necessarily ardent apologists for the Caribbean labor system, but as plantation owners they generally had enough of a financial stake in slavery to view *De l'esprit des lois* as an especially unwelcome form of interference.²⁷ Or did they? For somehow despite these formidable barriers, Montesquieu found an audience in the colonies that seemed utterly to dwarf his rather muted reception in France itself.

The paradox is a revealing one and serves, in its own right, as a concentrated repository of the contradictions of colonial law. From the perspective of the colonists, however, Montesquieu's overwhelming appeal is not very difficult to explain. Though they could hardly turn a blind eye to the chapters on slavery, the creole jurists were able to impose an adamantly selective reading on the book as a whole. And in this regard they were hardly the last exemplars of an approach to which *De l'esprit* has always been vulnerable, chopped up as it is into so many digestible sections, false starts, and half-baked ruminations. The book's manifest celebration of discontinuity and eclecticism helps to account in part for its ironic fate in the Caribbean, where Montesquieu's opening appeal—"not to judge, by a moment's reading, the labor of twenty years; to approve or to condemn the entire work, and not just individual sentences"—clearly fell on deaf ears.²⁸

To say that the colonists' reading of *De l'esprit* was selective, of course, is not to imply that it lacked an internal coherence. Montesquieu's theory of *moeurs* furnished this coherence in all its needed quantities, and then some. Once translated into English as *mores* (which is derived from the Latin *mores*), the term is stripped of all the connotations that make it such a suggestive concept in the original language.²⁹ This is because the word *moeurs* bore an intimate connection to the Continental tradition of

customary law. Roughly half of part 3 of *De l'esprit des lois* is an extended sermon about the perceived tendency of legislators to "confuse" law with either *moeurs* or manners. For Montesquieu, *moeurs* were prepolitical and hence immune to sudden changes and excessive tinkering by the science of legislation. Inescapably local in character, they were a function of the climate and terrain of a region.³⁰ "The difference between laws and *moeurs*," he wrote, "is that laws rule the actions of the citizen, [whereas] *moeurs* rule more over the actions of man."³¹ In contrast to manners, which were external in nature, *moeurs* expressed the inner character of a person, that vaguely ineffable essence that seemed to elude all but the greatest of legislators.

On the other hand, while laws and *moeurs* were separate categories, they were not to be seen as unrelated.³² Nor were the environmental sources of *moeurs* to be confused with mechanistic causes.³³ For if that were so, then legislators would have to give up all hope of influencing the customs of a nation in a positive direction, a hope Montesquieu was determined not to surrender. In a free country, where the laws necessarily bear a strong connection to *moeurs* and manners, it was sufficient for legislators to "inspire other *moeurs* and manners" if they wanted to bring about reform:

In general, people are very attached to their customs; to deprive them forcefully of their customs is to make them unhappy; thus one must not change customs, but rather engage people in changing their customs themselves. Any penalty that does not derive from necessity is tyrannical. The law is not a pure act of power; things indifferent by their nature are not part of its jurisdiction.³⁴

Montesquieu rather glosses over the precise manner in which these incentives are to be generated, perhaps because he knew that the line between gentle inducement and coercive pressure was hard to distinguish. But he insisted that the line was real, and that any nation choosing to flout this distinction was a despotic one, its people no better than slaves.

Not surprisingly, the subject of slavery filled the other half of the same section that discussed *moeurs*. Sandwiched between the books on climate and the soil, Montesquieu's reflections on slavery formed an integral component of his theory of customary law, which is yet another reason for wondering how the colonists managed to exploit the latter without also stoking the fire of the former. Montesquieu's emphasis on the varieties of slavery clearly provided one way out of this dilemma: political servitude was not the same thing as civil or domestic slavery, though all three tended to reinforce each other in the state of despotism. More reassuringly, from the colonists' perspective, the ideology of custom *itself*

generated a loophole by which to justify the New World labor regime. Slavery was contrary to both nature and civil law, but “there are countries where the heat weakens the body, and so impairs one’s courage, that men are only brought to carry out onerous duties by the fear of punishment; in these countries slavery is less shocking to reason.”³⁵ Where this was the case, however, political servitude was sure to follow.

The loophole in Montesquieu’s theory of slavery was thus not entirely open. But it would suffice for a colonial audience that, after all, had more to do with its time than think of ways to resolve the ambiguities of the Enlightenment. Faced with a choice between the letter and the spirit of Montesquieu’s text, colonial jurists were quite happy to opt for the latter and to leave textual exegesis to the academy. In so doing, they were not only acting in accord with an ancient legal tradition—privileging the *mens* (spirit) rather than the particularity of the laws³⁶—but also shifting the ground of political debate in the colonies. Familiarity with local *mœurs* became not simply the foundation of “good” law but a prerequisite for the very ability to speak about colonial law. In the process, law itself came to be defined not in terms of a set of doctrines, still less in terms of an aggregation of ordinances and decisions, but rather in terms of a legal sensibility, an *esprit*. To reflect this spirit was to display authentic proof of one’s “*créolité*.”³⁷

One of the first and most important creole jurists to take up this battle cry was Emilien Petit, a distinguished member of the Saint-Domingue judiciary.³⁸ In his *Droit public, ou Gouvernement des colonies françaises*, Petit described three “general principles for the government of the colonies.” The second item on this list of cardinal virtues read: “a knowledge of local places and laws must be the basis of all administration.” In Petit’s view, the colonies were in the potentially despotic hands of unenlightened bureaucrats “chosen in Europe.” For these officials, local knowledge was a kind of experience they “do not even suspect to be necessary, an experience that none of them brings to the place, and that they can only acquire by means of a period of residence they are not permitted.”³⁹ Petit went on to suggest a number of policies, including the establishment of indigenous *conseils d’administration*, which would ensure the harmonious adjudication of colonial disputes. “These principles,” he concluded, “are neither foreign nor contrary to the legislation of France for the government of its provinces, nor even [to the legislation] for the government of its colonies.”⁴⁰

As this last comment suggests, Petit was willing to go only so far with his criticisms of the existing order. A royalist at heart, he believed that “the choice of laws to transmit to the colonies, [and] their adaptation to the local, belong solely to the sovereign legislator.” Moreover, said Petit, the king was fully cognizant of the peculiar conditions of colonial life,

conditions that made his overseas possessions “so different from the objects of legislation in the ancient parts of the kingdom.”⁴¹ Other jurists were less certain that the scope of the problem was confined to ignorant agents chosen by the Ministère de la Marine. The unofficial leader of this motley band of radicals was Michel René Hilliard-d’Auberteuil, whose *Considérations sur l’état présent de la colonie française de Saint-Domingue* was published in 1776. D’Auberteuil was actually born in France where he was educated as a lawyer before moving to Saint-Domingue to ply his trade as a colonial *avocat*.⁴² But his sometimes vituperative attacks on the royal bureaucracy and his passionate defense of colonial autonomy earned him a prominent place in the creole legal community of Saint-Domingue.

The *Considérations*, suppressed in both France and the colonies by an *arrêt du conseil* of 1777,⁴³ did more than any other single work of the colonial Enlightenment to advance a jurisprudence of *créolité*. It consisted of a series of polemics predictably centered on “the difference that exists between the climate of Saint-Domingue, the *mœurs* and undertakings of the colonists [on the one hand], and the climate of the interior of France [on the other].”⁴⁴ Like Petit, d’Auberteuil insisted that eliminating metropolitan “ignorance of the local” was a precondition of positive legal reform. But he went further in his analysis of the underlying problem, invoking language that was scarcely distinguishable from Montesquieu. Laws are legitimate only by virtue of an organic connection to the local community from which they spring.

Usages and customs, which derive from [the law of nations] (*droit des gens*), are dictated by necessity: they owe their creation to the nature of climates; they are directed by local situations: thus it is absurd to try to establish Customs by means of fiction, and to seek the rule for one country’s usages in the usages of another. . . . Only local knowledge, which is acquired solely by means of long observation, can lead to good laws.⁴⁵

In a later age, this passage would have been vulnerable to charges of plagiarism.⁴⁶ In prerevolutionary Saint-Domingue, on the other hand, regurgitations of *De l’esprit des lois* ran little risk of saturating their market. Between the “*mœurs* of Creoles” and “those of Frenchmen transplanted in the Colony,” in short, there was no room for negotiation: only polarization.⁴⁷

To be fair to d’Auberteuil, he was not entirely uncritical of Montesquieu’s formulation of custom, nor was he afraid to challenge the *philosophe*’s theory of slavery. In a remarkable passage of the *Considérations*, he accused Montesquieu of confusing questions of “law” with questions of “fact” (“*il a presque toujours jugé le droit par le fait*”).

Montesquieu turned his gaze to the “thrones of Asia,” saw despotism and slavery enshrined in law, and concluded fallaciously that climate was the culprit. In fact, said d’Auberteuil, the regimes of such frosty northern countries as Sweden, Denmark, and Russia proved that political servitude and personal bondage were hardly the exclusive fates of the Southern Hemisphere.⁴⁸ But even while criticizing *De l’esprit des lois*, d’Auberteuil claimed fidelity to what he saw as the essential tenets of Montesquieu’s system:

One can oppose Montesquieu with the authority of his own principles, and use him to contradict himself: *the more one is struck in a forceful and lively manner* [by the influence of a hot climate], he says, *the more important it is that this impression be received in a suitable manner*. All that is needed to contain the passions is the eternal power of reason, and in countries where they are at their liveliest, it is all the more important to sustain the empire of the law (*loi*); thus these countries are not made for despotism.⁴⁹

If this passage may not have inspired confidence in d’Auberteuil’s capacities as a professional philosopher, it nonetheless serves as a good illustration of the inability of colonial jurists to articulate *créolité* independently of Montesquieu’s overshadowing framework.

Even more refined critics of *De l’esprit des lois*, such as the Abbé Raynal and Malouet, were unable to break free from the spell of *moeurs*. Consider the case of the *Essai sur l’administration de Saint-Domingue*, a book first published in Paris in 1785 and then five years later in an extracted “creole” edition (in both cases under Raynal’s name). Malouet, a lawyer who resided in the colony as an administrator in the 1770s, is suspected of having played an important role in producing this work, which incorporated scattered materials from the *Histoire philosophique et politique . . . des deux Indes*.⁵⁰ Raynal’s famous *Histoire*, read the anonymous preface to the 1790 edition, lacked the “horde of local knowledge” that could be found in the present work.⁵¹ Closely following the creole party line about the need for a “local jurisprudence”⁵² in the colonies (“It is not possible that the laws and customs of France are all good in America”),⁵³ the *Essai* indirectly faulted Montesquieu for simplifying the character of creole society. Good and bad qualities were always found “mixed and confused,” without either predominating over the other; thus it was foolish to suppose that the resident of Saint-Domingue is “happy or sad, intelligent or stupid, . . . lazy or active.” Nonetheless, the *Essai* went on to say, “the climate, the style of life, of work, and of industry necessarily have general and uniform influences on this diversity of types.” It was therefore legitimate to speak of the particular “habits of the Colonies.”⁵⁴

As this same book demonstrated, the adulation of Montesquieu in Saint-Domingue could go so far as to reach frankly racist levels. Expressing impatience with the sentiments of “philosophy and humanity” even while denouncing slavery as contrary to natural law, the *Essai* argued that blacks were better off under French control than as the “absurd victims” of African “despotism.”

Sugar, coffee, and indigo . . . can only be cultivated by negroes; and I believe that until these people can raise amongst themselves a Montesquieu, they will more closely approach the condition of rational men by becoming our laborers than by remaining subject in their country to the excesses of brigandage and ferocity.⁵⁵

Though other colonial jurists were not nearly as inflammatory about the matter as this, the *Essai*’s approach to the Caribbean labor regime was typical of creole writings: first the condemnation of slavery in the name of *jus naturale*, then its qualified defense in the name of environmental “necessity” and local custom, and finally a closing statement or two about the need to restrain the more savage of the slaveholders.⁵⁶ In this sense the *Essai*’s invocation of Montesquieu had a perverse sort of logic to it, in that *De l’esprit des lois* seemed to have inaugurated the Enlightenment tradition of equivocating on the issue of black bondage.

THE CUNNING OF “LOCAL KNOWLEDGE”

Behind the deification of *connaissances locales*, of course, lay some very worldly interests. Those interests were affected by the application of Parisian customary law and royal legislation to the colonies, a policy that constituted the cornerstone of the monarchy’s effort to “reduce” the Caribbean islands to manageable form. Before the assumption of full-scale control by the monarchy in 1685 (the year the *Code Noir* was promulgated), the colonies had been governed by a relatively anarchic mix of mercantilist and renegade elements. The colonial courts, it was said repeatedly, had failed to exercise care in the observation of the King’s ordinances. Only a strict, “point-by-point” application of the laws of the monarchy could safeguard the principle of juridical certainty and stability.⁵⁷

For the jurists of Saint-Domingue, on the other hand, this policy had to be seen as the source of all manner of troubles. Raynal’s and Malouet’s *Essai* provided a useful, occasionally sardonic laundry list of these complaints:

Litigation [in the colonies] bears on objects of interest absolutely foreign to those that occupy us in France. Thus it seems that in

preserving the spirit of our Laws and customs, they should have been combined and modified according to the cases and types appropriate for a Colony; because a proprietor is not a *bourgeois*, a plantation is not a small farm, nor a fief; Negroes are hardly peasants, credits and mortgages no longer have the same character, partitions among direct or collateral inheritors can not be subjected to the same subdivisions. You annihilate manufacturing if you divide the land, Negroes, and buildings into four or five parts; the majority are not even susceptible to partition.⁵⁸

Both Hilliard-d'Auberteuil's *Considérations* and Petit's *Droit public* set forth remarkably similar litanies of grievances.⁵⁹ This was far from coincidental, for the magistrates and lawyers of Saint-Domingue were the principal spokespersons for the colony's large plantation owners, most of whom were heavily indebted to metropolitan merchants for past supplies of slaves and luxury goods. Indeed, many of the *conseillers* who sat on the two high courts (*Conseils Supérieurs*) of Saint-Domingue were themselves proprietors of vast sugar, coffee, and indigo estates.

This background helps to explain why the jurists invested so much of their energy in devising particularized and technical legal arguments about the "contradictions" of colonial law. The laundry list of complaints in the *Essai* is only a terse allusion to these arguments, which filled the better part of d'Auberteuil's two-volume *Considérations* (recall that the latter work was subtitled "Ouvrage politique et législatif").⁶⁰ Behind the notion that "Negroes are hardly peasants," for example, lay a confusing jumble of customary landlord-tenant law and the doctrines of the Roman law of slavery.⁶¹ It hardly needs saying that this comment reflected concerns about the ability of masters to control their slaves with an unfettered hand. The phrase "credits and mortgages no longer have the same character" was shorthand for a complicated set of distinctions between "mobile" and "immobile" property and the conditions under which creditors could seize either kind from insolvent debtors. This was not a minor concern for colonial proprietors who often faced the possibility of losing their slaves in unrelated actions brought by metropolitan merchants for the recovery of overdue loans.⁶² Finally, reference to the "annihilation" of "manufacturing" advertised profound anxieties about the application of the Parisian customary law of inheritance to large plantations. The *coutume de Paris*, argued the jurists, reduced profitable estates to irrational proportions, favored inexperienced, absentee landlords at the expense of creole proprietors, and generally disrupted the flow of the plantation economy.⁶³

Little wonder, then, that colonists saw Parisian custom as "barbarous in America."⁶⁴ In a society "without laws"⁶⁵ it was only natural for legisla-

tors to derive their rules à la Montesquieu from "the sky and its influence, the soil and its products."⁶⁶ The colony's positive law seemed to offer nothing more than a hopeless mass of contradiction and confusion. But for all the resonance of *moeurs* in Saint-Domingue, localism was never the only reaction to this state of affairs. Nor could it be, for weighty interests required the mediation of legal institutions, and those institutions demanded clear and unambiguous rules upon which to base their decisions.⁶⁷ The metropolitan administration was clearly unwilling to indulge the party of local custom in these matters, but it was no more satisfied with the status quo than its feisty critics in the Caribbean. Indeed, the difficulty of drawing sharp lines between agents and opponents of the monarchy in the colonies was such that one pamphlet could address the king in the following terms: "Sire, your court is creole."⁶⁸ As in France, the royal administration *outré-mer* was never one unitary entity acting according to a set of coherent and consistent motives.

For these and other reasons, the impulse to systematize went hand in hand with the impulse to particularize. Perhaps even more than their counterparts in the metropole, the lawyers of prerevolutionary Saint-Domingue could sense the paradoxical nature of the impending age of codification. Among them was a savvy student of Montesquieu named Moreau de Saint-Méry, a creole jurist who would become the prophet of this new age and all of its unfolding contradictions.

FIXING THE COLONIAL CODE

Several attempts to syncretize custom and uniformity were made as far back as 1716, 1738, and 1758. Emilien Petit, author of the previously discussed *Droit public, ou Gouvernement des colonies françaises*, was hired in 1761 to "collect together" and "perfect" the laws of the colonies.⁶⁹ He produced several manuscript volumes for colonial codes in the fields of civil procedure and criminal law that were never published.⁷⁰ Petit was also involved with the establishment in 1761 of a "Commission for the Legislation of the French Colonies." The immediate goal of this commission seems to have been the compilation of a compendium (*recueil*) of colonial laws, not a code per se. Even so, the monarchy seems to have thought better of the idea after it had taken hold in the colonies: in 1768, another *arrêt* was issued suppressing the king's own commission.

What was it about the project of a colonial compendium, the prelude to a code, that might have resulted in such embarrassingly self-defeating policies? One possible answer is hinted at in the preface to Petit's *Projet d'ordonnance criminelle*, which lays the evils of colonial jurisprudence at the feet not simply of metropolitan law *per se* but also the colonial courts whose task it was to register and administer that law.⁷¹

"Codification," R. C. Van Caenegem observes, "was historically a weapon against the judiciary."⁷² From this perspective, the monarchy's seeming inability to move forward with a colonial code owed as much to a power struggle between creole magistrates and bureaucratic agents as to the incoherence and contradictions of colonial laws. Only by going over the heads of the colonial magistrates altogether could the monarchy side-step this conflict, but such an approach must have seemed unrealistic so long as all the knowledge necessary to construct a code of laws was held by figures such as Petit. What was needed was a member of the judiciary who did not so identify with that institution that he would see in the idea of a colonial code nothing more than a plot to wrestle discretionary power away from the hands of local tribunals. A creole judge who also harbored ambitions to wield authority in metropolitan politics would be the perfect candidate.

Born in Martinique in 1750, Moreau de Saint-Méry was the heir to a long and proud tradition of family service in the colonial judiciary.⁷³ After leaving his native island in 1768 to pursue a law degree in Paris, he returned to the Antilles in 1774 fully expecting to become a barrister in Martinique. But a shortage of funds forced him to disembark instead at Cap Français, then the bustling commercial capital of Saint-Domingue. In 1776, as an *avocat* attached to the *Conseil Supérieur* for the colony's northern district, he started to put together a massive collection of manuscript legal documents that an earlier creole jurist, discouraged by the effort's massive scope and unrelenting tedium, had left unfinished. When the Marquis de Castries became minister of the Marine in 1780, he retained Moreau to complete research on this project and to begin the task of transforming the compendium into a code. In short, Moreau was finally involved in redacting the great colonial panacea that had been the monarchy's goal for decades. The first of six volumes of the *Loix et constitutions des colonies françaises* was published in 1784 and distributed to an initial group of 30 illustrious subscribers, the first of whom was the king himself. The next year Moreau was appointed to a much-coveted seat on the colonial bench.

The *Loix et constitutions* was an enormous collection over five-thousand pages in length documenting in minute detail the legal and administrative history of French colonialism in the Caribbean from its inception down to the eve of the Revolution. For the monarchy Moreau's work must have seemed the final step on the road to "fixing" a colonial code and thereby containing creole discontent in Saint-Domingue.⁷⁴ But as in the debates over the French constitution, two very different meanings could be ascribed to the notion of "fixation": a massive aggregation of the extant laws of the colonies, or a thoroughgoing systematization resulting in the promulgation of entirely new, more general

principles and rules.⁷⁵ The various attempts to codify French law *outrémer* had always wavered between these poles without seeming to settle definitively on either one. To compound the problem, Moreau himself seems to have viewed the *Loix et constitutions* in terms of a somewhat broader range of purposes than the domestication of creole agitation. Like his benefactors, Moreau was determined to streamline and simplify colonial jurisprudence "by more certain principles."⁷⁶ But just what Moreau understood by these "principles" was another matter altogether. In the preliminary discourse to the *Loix et constitutions*, he would think through the problems of colonial law in such a way as to give the project of codification a distinctly unexpected twist.

Moreau's primary insight was to recognize that "a conscious and universal reorientation of legal life" in Saint-Domingue would not succeed unless it was accompanied by a theory of colonial society consistent with the political culture of *créolité*. The preliminary discourse thus gives every indication of having been written for the domestic consumption of two very different audiences. At the same time, it reads like something of a manifesto for the imperial future of France, delicately weighing the implications of any shift in the systemic balance of power between metropole and colony. Acknowledging that the "specific Administration of the colonies" was but "a branch of the Administration of the Kingdom," Moreau nonetheless asserted that

it is not possible to link the colonies to this general system without their influencing that system in turn, and in a more or less appreciable manner at that. Thus, only the proper combination of this sort of action and reciprocal reaction can give rise to the greatest common good.⁷⁷

The concept of "reciprocity" was central to Moreau's understanding of colonialism: it distinguished his approach from the polemics of creole publicists on the one hand and the "false ideas" of metropolitan administrators on the other.⁷⁸ By tempering metropolitan "actions" with creole "reactions," the government of Saint-Domingue would be able to transcend the most intractable obstacle in the way of colonial reform: interest. "How many special and opposing interests to combine and to reconcile!" Moreau lamented. "Even when one believes one has prepared and calculated for everything, an obstacle often remains in the execution, and the project wisest in appearance is blocked."⁷⁹

Now that the colonial code was no longer a distant prospect on the horizon but a very real imperative, it was "more essential than ever that a deft hand guard the balance between the colonies and the metropole and allow it to tilt only in the direction of the State."⁸⁰ The key to maintaining this balance, Moreau argued, was to provide a set of principles

But is it not in the study of laws and of the history of this country that one must seek this prerequisite, absolutely necessary knowledge?⁸⁵

The circularity of this all too familiar argument was exceeded only by its ineffectiveness in addressing the concrete dilemmas facing colonial legislators. To Moreau this may not have seemed as grave a problem as in fact it was, for he correctly saw the *code des colonies* as involving a fundamentally political conflict between largely incompatible goals. Just as it was the task of colonial administrators to balance metropolitan "actions" against local "reactions," Moreau would use his preliminary essay to temper the discourse of codification—and its emphasis on uniformity and conformity—with the more palatable language of customary law.

The result was a prescription that, in seeking to appease both the impulse to codify and the pressure to customize, ultimately satisfied neither. Moreau was able to avert this problem only by leaving an even larger matter unresolved: the precise contours of the colonial code itself. For even as he slighted an innovative jurisprudential scheme in favor of relying on the existing body of colonial laws, Moreau spoke of the massive *Loix et constitutions* as the mere

base of the Edifice that we wish to raise. . . . It is this base that must serve as a repertory and as a prescription for the design of a new body of legislation; . . . it is a corpus of law anatomically presented . . . the careful study of which is made to precede all interpretation and reform.⁸⁶

Moreau clearly had more in mind by the phrase "colonial code" than simply compiling in meticulous detail the totality of colonial laws from 1550 to 1784. He wished no less than to "perfect" the legal framework of colonial life, to set it on thoroughly determinate foundations. But it was precisely this that the traditions and tensions of colonial politics would not permit.

The *Loix et constitutions* thus remained a hybrid, more than a random compilation and less than a formal code but finally something in between. As both an intellectual abstraction and as a concrete political document, the colonial code was perhaps destined to acquire the permanent status of a work-in-progress. But however incomplete, the *Loix et constitutions* set Moreau's career on a radically new course. It also helped set in motion a political dynamic that was to end only with the irreversible divorce between colony and metropole. Moreau struggled so hard to forestall, thereby bringing the dialectic of the colonial Enlightenment to a culmination. When that split began to appear immi-

that would "stabilize" the colonial system, a system "that has thus far resulted only in measures lacking a sense of interconnection."⁸¹ Not surprisingly, these principles were to be found in the province of legislation. Departing from the traditional mantra of creole lawyers, Moreau avoided a head-on confrontation with the *coutume de Paris* and argued instead that the primary problem of colonial legislation was administrative instability. The successive governors and *intendants* of Saint-Domingue had issued an endless series of "contradictory and multiple" decrees, leaving colonial law in a state of "continuous fluctuation" and uncertainty.⁸⁸

But Moreau did not take this confused state of affairs as a license to promulgate an entirely new body of laws for the colonies. Rather, it was necessary to proceed on the basis of already established policies that had been designed for "a People existing for more than a century." Then, reasoning by "relation" and "analogy," it would be possible to compare these laws with each other, examining them in light of colonial "*moeurs*" and "current events":

It is not that the legislation of the colonies can be perfected without new laws, but rather that such laws must be kept to a minimum; the objects with which they may concern themselves being but an extension of previously promulgated laws, the new regulations, properly speaking, will consist only in the natural development of the old ones.⁸³

With these words Moreau attempted to resolve the tension between the metropolitan and creole understandings of codification. Rather than an ambitious rationalization of law from the top down, Moreau's *code des colonies* would work from the colonial ground up, relying on those time-tested practices embodied in the "specific legislation of this superb province."⁸⁴

This formulation of the matter still left a number of issues undecided, however. To begin with, if the corpus of colonial laws had *already* been corrupted by the contradictory influences of arbitrarily issued administrative decrees, it was unclear precisely what principles would be used in sorting out the good from the bad in this "specific legislation." Moreau's only remedy was to reassert the received creole wisdom about the virtues of local knowledge, and the preliminary discourse accordingly rambles on for several pages in a discussion of the necessary relationship between law and the "*moeurs*," "climate" and "character" of a people:

Nothing can take the place of local knowledge. With the immortal Montesquieu, we submit that laws must always cater to the genius, *moeurs*, and essential needs of those for whom they are destined . . .

ment, even this most loyal and creole of colonial servants knew it was finally time to leave “an immense country populated with slaves, restrained by a handful of free men.”⁸⁷

The early years of the French Revolution would make clear just how far Moreau had succeeded in effectuating a reorientation in the legal consciousness of the colonies.⁸⁸ After returning to France for the last time in 1788, Moreau threw himself into the flurry of political agitation on behalf of the Third Estate of Paris, successfully running for president of that estate’s Assembly of Electors. At the same time he preserved his bridge to the world of colonial affairs, serving as the outspoken leader of the Martinique delegation to the National Assembly while quietly lobbying for a royal nomination as *intendant* of Saint-Domingue. Only the stunning accusation that Moreau had called for emancipation of the slaves in a May 1789 speech before the Assembly of Electors kept him from rising even higher up the ladders of metropolitan and colonial politics. He was able to demonstrate the fabricated nature of the charge, but this did not prevent Moreau from becoming a pariah in the colonies.⁸⁹

Saint-Domingue would finally get its code, but only after a full-scale slave rebellion culminated in the establishment of an independent Haiti in 1804. That same year the long struggle to systematize the civil laws of France was finally brought to a close. In 1828, a diminutive volume entitled *Les Six Codes d’Haiti* was published in the new capital of Port-au-Prince. Modeled on the various Napoleonic codes, the volume contained within its slender covers that “unambiguous fixation of the law” that had always seemed to elude the French monarchy.⁹⁰ As for the new nation rising slowly from the ashes of old Saint-Domingue, codification was only the beginning of its sorrows.

AFTER POSTCOLONIALISM

The notion of a colonial Enlightenment gnaws at the modern conscience. For those who see in eighteenth-century thought a kind of ethical compass, associating the term “Enlightenment” with the legal philosophy of a slaveholding society seems inconsistent at best and morally dubious at worst. Philosophes such as Montesquieu and Raynal, according to this line of thinking, were prophets of individual autonomy and critical humanism, heroic progenitors of the abolitionist movement, not the instruments of legitimation for a creole culture that was willing to maintain its racist privileges at almost any cost.⁹¹

The great achievement of postmodern thought has been to unsettle this warm and fuzzy view of things. However uncomfortable it may be for us to recognize, the transatlantic political culture of prerevolutionary France did indeed generate a “colonial Enlightenment,” a move-

ment of ideas that looked for inspiration to the very same thinker who is so often identified with modern liberalism: Montesquieu. The colonists’ selective reading of him facilitated this paradox but does not fully explain it, since the dilemmas of colonial law were built into the logic of *De l’esprit des lois* itself. But postmodernism has triumphed in revising our picture of eighteenth-century thought only at the cost of imposing its own oversimplification, one that sees in the Enlightenment and its apostles so many dark harbingers of later tragedies. Often denounced as a hegemonic, totalizing effort to construct universal morality and law, the Enlightenment has been deprived of its complex character as “an event, or set of events . . . located at a certain point in the development of European knowledge.”⁹²

For this reason, the efforts of postmodern and postcolonial scholars to endow the particular and the peripheral with an inherently positive value—by way of reinforcing postmodernism’s negative image of the Enlightenment—make little historical sense. If anything, the experience of French colonial law in its formative period should make these scholars wary of attempts to organize politics around the principle of local knowledge. But that is hardly the point of understanding the Enlightenment as a contingent complex of events whose meaning, said Foucault, must be sought in “a series of historical inquiries that are as precise as possible.”⁹³ Perhaps, as more of this historicizing work registers with contemporary theory, the once harmonious chorus of “the Enlightenment” will give way to a cacophony of disparate voices. Foucault himself seems skeptical of this possibility; in his words, “[we] must try to proceed with the analysis of ourselves as beings who are historically determined, to a certain extent, by the Enlightenment.”⁹⁴ Be that as it may, to the extent that concepts such as the colonial Enlightenment continue to clash with and thereby complicate our sense of the moral content of eighteenth-century thought, they will serve a useful role.

There is another reason why we should persist in wrestling with historical incongruities of the sort afforded by Montesquieu’s posthumous Caribbean career. Though it remains a well-kept secret in France, colonial historians are the trustees of a valuable perspective on modernity. In Tocqueville’s version of this inheritance, the history of empire is a stage on which the authentic tendencies of metropolitan politics reveal themselves. “When I want to discover the spirit and vices of the government of Louis XIV,” he wrote, “I must go to Canada. Its deformities are seen there as through a microscope.” Liberated by the absence of “feudal traditions” in the colonies, “nothing prevented the central power from abandoning itself to all its natural inclinations.”⁹⁵ But Tocqueville was not the first person to exploit the colonies as both metaphor and laboratory for the Old Regime, nor did he fully exhaust their potential as a heuris-

tic device. Three years before the Revolution a jurist named François de Neufchâteau gave a speech before the high court for the northern district of Saint-Domingue in which he made the following claim: "It is a great advantage of the state of our colonies that they conduce more easily than the kingdom to the introduction of useful reforms."⁹⁶

Thus, eighteenth-century writers themselves seemed attuned to the possibilities of empire as a privileged locus of analysis wherein no shadow falls between the act and the intention. Unlike Tocqueville, who was more interested in identifying the "vices" and "deformities" of absolutism than in teasing out its virtues, Neufchâteau sought rather vainly to portray the New World as a streamlined version of the Old. For our purposes, though, the real excitement may lie in the space *between* these two complementary perspectives, a space in which the colonies can be seen to form islands of metropolitan history not quite real and yet not wholly imaginary either. And in that sense, scholars of the Enlightenment might do well to follow Montesquieu on a Caribbean voyage of their own.

NOTES

1. Alexis de Tocqueville, *The Old Regime and the French Revolution*, trans. Stuart Gilbert (Garden City, NY, 1955), p. 253. I would like to thank Daniel Gordon, Keith Baker, Peter Sahlins, James Whitman, Joe Zizek, Laurent Dubois, and Jonathan Schorsch for their comments on earlier versions of this essay.
2. Michel Foucault, *The History of Sexuality: An Introduction*, trans. Robert Hurley (New York, 1990), p. 95.
3. Two notable exceptions in the field of Enlightenment studies are Michelle Duchet, *Anthropologie et histoire au siècle des lumières: Buffon, Voltaire, Helvétius, Diderot* (Paris, 1971; reprinted Paris, 1995), and Tzvetan Todorov, *Nous et les autres: La Réflexion française sur la diversité humaine* (Paris, 1989).
4. One of the most prominent contributors to this phenomenon has been Patrick Chamoiseau, a writer from Martinique whose novel *Texaco* was awarded the Prix Goncourt, France's highest literary honor.
5. Foucault, *The History of Sexuality*, p. 91.
6. *Ibid.*, p. 89.
7. The term "expulsion" is used by Alan Hunt and Gary Wickham, *Foucault and the Law: Towards a Sociology of Law as Governance* (London, 1994), pp. 59-71. "Subaltern studies" is the label for a school of largely Indian historians who have approached the history of the British Empire from the perspective of landless peasant populations joining together to resist the Raj.
8. Foucault, p. 94.
9. *Ibid.*, p. 95.
10. Michel Foucault, *The Foucault Reader*, ed. Paul Rabinow (New York, 1984), p. 64.
11. This point is developed at length in Hunt and Wickham, *Foucault and Law*, pp. 39-71.
12. On the notion of an "Enlightenment project," see Jürgen Habermas, "Modernity—An Incomplete Project" in Patricia Waugh, ed., *Postmodernism: A Reader* (London, 1992), p. 165. While Habermas is not often thought of as belonging comfortably to the postmodernist camp, he is regularly invoked as authority for the "Enlightenment project" thesis in postmodern writings. See also Thomas Docherty, ed., *Postmodernism:*

A Reader (New York, 1993), p. 95; Peter Fitzpatrick, *The Mythology of Modern Law* (London, 1992), p. 44; and Hans Bertens, *The Idea of the Postmodern: A History* (New York, 1995), pp. 114, 118.

13. Docherty, *Postmodernism*, p. 445.
14. Joe Docherty, Espeth Graham, and Mo Malek, eds., *Postmodernism and the Social Sciences* (New York, 1992), pp. 2-3.
15. Terry Eagleton, "Nationalism, Irony, and Commitment" in Terry Eagleton, Fredric Jameson, and Edward W. Said, *Nationalism, Colonialism, and Literature* (Minneapolis, 1990), pp. 30-31. For a very similar view, see Chantal Mouffe, "Radical Democracy: Modern or Postmodern?" in Andrew Ross, ed., *Universal Abandon?: The Politics of Postmodernism* (Minneapolis, 1988), pp. 36, 38, 44. (My insertion of the term "Enlightenment" in Eagleton's quote is not an act of editorial discretion; the identification of the Enlightenment with "bourgeois ideology" is explicit.)
16. Joseph Goy, "Civil Code" in François Furet and Mona Ozouf, eds., *A Critical Dictionary of the French Revolution*, trans. Arthur Goldhammer (Cambridge, MA, 1989), p. 438.
17. Charles-Louis de Secondat, baron de Montesquieu, *Persian Letters*, trans. and ed. Christopher J. Betts (New York, 1973), p. 185.
18. For an additional perspective on Montesquieu as an enemy of the "abstract universalism of conventional natural law," see Donald R. Kelley, *The Human Measure: Social Thought in the Western Legal Tradition* (Cambridge, MA, 1990), pp. 219-222.
19. Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, trans. Ephraim Fischhoff et al., 2 vols. (Berkeley, CA, 1978), 2: 854.
20. My analysis of the marriage of uniformity and local custom is indebted to James Whitman's discussion of the "mingling" of custom and reason in eighteenth-century legal thought. See James Q. Whitman, "Why Did the Revolutionary Lawyers Confuse Custom and Reason?" *The University of Chicago Law Review* 58 (1991): 1326-27, 1367-68.
21. Throughout this essay the term "creole" is invoked in its original eighteenth-century sense to refer to persons of any race born in the Caribbean colonies. Occasionally I will use the phrase in a looser sense—as in "creole culture" or "*créolité*"—to refer to a movement of ideas organized around the principle of local custom, in which case the birthplace of the authors who express these ideas is less of an issue. Today the term is generally taken to mean any speaker of the various Creole languages.
22. For the notion of a "legal sensibility," see Clifford Geertz's essay "Local Knowledge: Fact and Law in Comparative Perspective" in his *Local Knowledge: Further Essays in Interpretive Anthropology* (New York, 1983), pp. 167-234.
23. Benedict R. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, rev. ed. (New York, 1991), p. 60.
24. See William Doyle, *The Parlement of Bordeaux and the End of the Old Regime, 1771-1790* (London, 1974), pp. 23, 102, 210-214.
25. An excellent starting point is Charles Frostin, *Les Révoltes blanches à Saint-Domingue aux XVIII^{ème} et XVIII^{ème} siècles* (Paris, 1975), pp. 342-379.
26. Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1800* (New York, 1997), p. 300; and idem, *The Overthrow of Colonial Slavery, 1776-1848* (New York, 1988), p. 48.
27. There were some important exceptions to this generalization. Moreau de Saint-Méry, whom I will discuss below, seems never to have owned property in slaves throughout his many years in Saint-Domingue, though he grew up on a slave plantation in Martinique.
28. Charles-Louis de Secondat, baron de Montesquieu, *De l'esprit des lois* in *Oeuvres complètes*, ed. Roger Caillois, 2 vols. (Paris, 1951), 2: 229 [hereafter Montesquieu, *De l'esprit des lois*]. (Unless otherwise noted, all remaining translations in this essay are my own.)

29. The recent Cambridge translation of Montesquieu uses the term "mores," whereas the much older, contemporary translation by Thomas Nugent used "custom." The problem with "custom" is that it makes impossible any distinction between *coutume* and *mœurs*, but "mores" seems such a flat term in English that I will use the original French word in the rest of this essay.
30. "The empire of climate is the first of all empires." Montesquieu, *De l'esprit des lois*, p. 565.
31. Ibid., p. 566.
32. Ibid., p. 571.
33. Ibid., pp. 574–75.
34. Ibid., p. 565.
35. Ibid., pp. 495–96.
36. Kelley, *The Human Measure*, p. 195.
37. I borrow this term from the title of Patrick Chamoiseau, Jean Bernabé, and Raphaël Confiant, *Éloge de la Créolité* (Paris, 1989).
38. For information on Petit, see the introduction by Arthur Girault to Emilien Petit, *Droit public, ou Gouvernement des colonies françaises*, Collection des économistes et des réformateurs sociaux de la France, (Paris, 1771; reprint, Paris, 1911), p. ix. Petit sat on one of the colony's two high courts (*Conseils Supérieurs*).
39. Ibid., p. 230.
40. Ibid., p. 232.
41. Emilien Petit, *Droit public, ou Gouvernement des colonies françaises*, 2 vols. (Paris, 1777), 1: 393. I have had to use two different editions of this work, but they are identical in everything except pagination. All further references to Petit's *Droit public* are from the two-volume, 1777 edition.
42. Frostin, *Les Révoltes blanches*, p. 21. See also the introduction by Lewis Leary to Michel René Hilliard-d'Auberteuil, *Miss McCrea: A Novel of the American Revolution*, trans. Eric LaGuardia (Gainesville, FL, 1958), pp. 6–11; and Gordon K. Lewis, *Main Currents in Caribbean Thought: The Historical Evolution of Caribbean Society in its Ideological Aspects, 1492–1900* (Baltimore, 1983), pp. 129–36.
43. Gabriel Debien, *Les Colons de Saint-Domingue et la Révolution: Essai sur le club Massiac* (Paris, 1953), p. 157.
44. Michel René Hilliard-d'Auberteuil, *Considérations sur l'état présent de la colonie française de Saint-Domingue*, 2 vols. (Paris, 1776–77), 1: 5.
45. Ibid., 2: 311, 316.
46. I mean this only partly in jest. Some sentences of the *Considérations* were literally copied word for word from *De l'esprit des lois*.
47. Hilliard-d'Auberteuil, *Considérations*, 1: 7.
48. Ibid., 2: 37.
49. Ibid., p. 38. Emphasis in the original.
50. For the argument that the *Essai* was compiled from passages of the *Histoire*, see the entry on Raynal in the *Biographie universelle, ancienne et moderne*, 52 vols. (Paris, 1811–28), 37: 182. For the (not incompatible) view that Malouet was the likely author, see Anatole Feugère, *Un précurseur de la Révolution: L'Abbé Raynal (1713–1796)* (Angoulême, 1922; reprinted Geneva, 1970), p. 364. Malouet and Raynal had been friends since well before the latter's return to France from exile in 1785.
51. The addition of these local details, read the preface, led "some persons" to doubt that Raynal was the bona fide author of the *Essai*.
52. Guillaume-Thomas Raynal, *Extrait d'un ouvrage intitulé: Essai sur l'administration de Saint-Domingue* (Port-au-Prince, Saint-Domingue, 1790), p. 30 [hereafter Raynal, *Extrait d'un ouvrage*].

53. Guillaume-Thomas Raynal, *Essai sur l'administration de Saint-Domingue* (Paris, 1785), p. xv [hereafter Raynal, *Essai*].
54. Ibid., pp. 6–7.
55. Ibid., p. ix.
56. See, for example, the parallel treatment of slavery in Hilliard-d'Auberteuil, *Considérations*, 1: 130–35.
57. "Arrêt du Conseil du Petit-Goave, qui ordonne l'exécution de la coutume de Paris, et des ordonnances de Sa Majesté, du 6 Mars 1687," in Médéric-Louis-Elie Moreau de Saint-Méry, *Loix et constitutions des colonies françaises de l'Amérique sous le Vent*, 6 vols. (Paris and Cap Français, Saint-Domingue, 1784–90), 1: 451.
58. Raynal, *Extrait d'un ouvrage*, pp. 26–27.
59. Hilliard-d'Auberteuil, *Considérations*, 2: 338–48; Petit, *Droit public*, 2: 167–84. It should be noted that Petit, in line with his royalist inclinations, was less polemical about the contradictions of colonial law.
60. The crux of this analysis was d'Auberteuil's discussion of the *coutume de Paris*. He measured the *coutume*'s articles against analogous provisions in Roman law and went on to point out areas of contradiction with the *Code Noir* of 1685. Hilliard-d'Auberteuil, *Considérations*, 2: 338–48. The rhetoric of this passage echoes François Hotman and the Renaissance humanist tradition.
61. See generally Emilien Petit, *Traité sur le gouvernement des esclaves*, 2 vols. (Paris, 1777).
62. Hilliard-d'Auberteuil, *Considérations*, 2: 331–33. See also Raynal, *Essai*, pp. 173–75.
63. Hilliard-d'Auberteuil, *Considérations*, 2: 333. Raynal, *Extrait d'un ouvrage*, p. 27. For a much more detailed analysis of these issues than I have space to provide here, see Edith Géraud-Lloca, "La coutume de Paris outre-mer: l'habitation antillaise sous l'Ancien Régime," *Revue historique de droit français et étranger* (1982): 207–59. Colonial animosity toward absentee landlords is also illustrated in Raynal, *Essai*, p. 174.
64. Raynal, *Essai*, p. 176.
65. Hilliard-d'Auberteuil, *Considérations*, 2: 336. See also Raynal, *Extrait d'un ouvrage*, pp. 29.
66. Hilliard-d'Auberteuil, *Considérations*, 2: 365–66.
67. Petit gave voice to this strand of thought in a series of questions: "How will justiciable parties be informed of the system of their judges? How will they know the laws that an adjudicator is obliged to follow? Where is the compendium of laws that each court prescribes for itself? Above all, where is the law that grants this freedom and this power to the judges who claim it on their own behalf?" Petit, *Droit public*, 2: 181.
68. Quoted in C. L. R. James, *The Black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution*, 2d ed., rev. (New York, 1963), p. 57.
69. Moreau de Saint-Méry, *Loix et constitutions*, 4: 440.
70. Emilien Petit, "Projet de *code civil* pour toutes les colonies," Anciens fonds français, Bibliothèque Nationale, Paris, ms. FR 12084; idem, "Projet d'ordonnance criminelle pour les colonies françaises de l'Amérique," Anciens fonds français, ms. FR 12085.
71. Petit, "Projet d'ordonnance criminelle." This manuscript is not paginated.
72. R. C. Van Caenegem, *Judges, Legislators, and Professors: Chapters in European Legal History* (Cambridge, 1987), p. 152.
73. In an autobiographical pamphlet published in 1790, Moreau noted that his family had been established in Martinique for more than 150 years. Médéric-Louis-Elie Moreau de Saint-Méry, *Mémoire justificatif* (Paris, 1790), p. 2. For biographical information on Moreau, see Anthony Louis Elicona, *Un colonial sous la Révolution en France et en Amérique: Moreau de Saint-Méry* (Paris, 1934); Augustin François, baron de Silvestre, *Notice biographique de M. Moreau de Saint-Méry . . . lue à la Société royale d'agriculture* (Paris, 1819); and the introduction to Médéric-Louis-Elie Moreau de Saint-Méry, *Description topographique, physique, civile, politique et historique de la partie*

- française de l'isle Saint-Domingue, ed. Blanche Maurel and Étienne Taillemite, 2 vols. (Paris, 1958), 1: vii-xxxvi.
74. Moreau's mandate read in part as follows: "The king . . . wishing to fix the jurisprudence of the Colonies by more certain principles, has ordained that work be done . . . towards a general code of the Colonies." M. Merlin, ed., *Répertoire universel et raisonné de jurisprudence civile, criminelle, canonique, et bénéficiale*, 5th ed., 18 vols. (Paris, 1827-28), 3: 63.
 75. Keith Michael Baker, *Inventing the French Revolution: Essays on French Political Culture in the Eighteenth Century* (Cambridge, 1990), p. 253.
 76. Merlin, *Répertoire universel et raisonné*, 3: 63.
 77. Moreau de Saint-Méry, *Loix et constitutions*, 1: vii-viii.
 78. The reference to "false ideas" is from François de Neufchateau, *Les Etudes du magistrat; Discours prononcé à la rentrée du Conseil Supérieur du Cap, le Jeudi 5 Octobre 1786* (Cap Français, Saint-Domingue, 1786), p. 56. Neufchateau's pamphlet appears in Bibliothèque Moreau de Saint-Méry, Centre des Archives d'Outre-mer, Aix-en-Provence [hereafter Bibliothèque Moreau de Saint-Méry], 87 MiOM 4.
 79. Moreau de Saint-Méry, *Loix et constitutions*, 1: viii.
 80. *Ibid.*, p. ix.
 81. *Ibid.*, p. x.
 82. *Ibid.*, p. xi.
 83. *Ibid.*, p. xii.
 84. *Ibid.*, p. xiii.
 85. *Ibid.*, p. xxi.
 86. *Ibid.*, p. xvi.
 87. *Ibid.*, p. xvii.
 88. The philosophy behind Moreau's *code des colonies* would live on in such works as Coquille-Dugommier's *Projet d'une constitution générale-coloniale* (St. Pierre, Martinique, 1790), which is in the Bibliothèque Moreau de Saint-Méry, 87 MiOM 14.
 89. For the details of this affair, see Elicona, pp. 26-76; and Moreau de Saint-Méry, *Mémoire justificatif*.
 90. Weber, *Economy and Society*, 2: 848.
 91. For a portrait of Montesquieu as the embodiment of a moderate, critical humanism, see Todorov, *Nous et les autres*, pp. 389-437. For the view that the Enlightenment catapulted individual autonomy to center-stage in the modern world, see Peter Gay, *The Enlightenment: An Interpretation*, vol. 1, *The Rise of Modern Paganism* (New York, 1977), p. 3.
 92. Foucault, *The Foucault Reader*, p. 43.
 93. *Ibid.* Foucault also argued that "we do not break free of [simplistic understandings] by introducing 'dialectical' nuances while seeking to determine what good and bad elements there may have been in the Enlightenment." *Ibid.* But there may be two separate issues at stake here, for it seems to me that discovering "nuances" within the Enlightenment—dialectical or otherwise—is an essential task. What must be avoided is the dogmatic mapping of these nuances onto polarized axes of good and evil, as Foucault correctly points out.
 94. *Ibid.*
 95. Alexis de Tocqueville, *The Old Regime and the Revolution, Volume 1: The Complete Text*, ed. François Furet and Françoise Mélonio, trans. Alan S. Kahan (Chicago, 1998), p. 280. I thank James Whitman for urging me to think more carefully about Tocqueville.
 96. Neufchateau, *Les Etudes du magistrat*, p. 58.