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## Slavery and the Slave Trades in the Indian Ocean and Arab Worlds: Global Connections and Disconnections

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### *Free Soil in the Indian Ocean: French Slave Law on the Eve of Emancipation*<sup>1</sup>

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La Cour [royale de Paris], ... considérant que c'était une maxime du droit public en France que tout esclave qui touchait le sol français devenait libre ; ... dit que Furcy est né en état de liberté et d'ingénuité....<sup>2</sup>

... si le généalogiste prend soin d'écouter l'histoire .... [il apprend qu'] il y a « tout autre chose » : non point leur secret essentiel et sans date, mais le secret qu'elles sont sans essence ou que leur essence fut construite pièce à pièce à partir de figures qui lui étaient étrangères.<sup>3</sup>

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<sup>2</sup> Cour royale de Paris, Arrêt du 23 Dec. 1843, in *Cour royale de Paris, audience solennelle, renvoi de Cassation, Plaidoyer de M. Ed. Thureau, indien, de l'esclavage et de la traite des Indiens* (Paris: Imprimerie de J. Delalain, 1844), 45-46, hereafter cited as *Plaidoyer*.

<sup>3</sup> Michel Foucault, "Nietzsche, la généalogie, l'histoire," in *Dits et Ecrits vol II*. (Paris: Gallimard, 1971), 143.

In late December, 1843, the justices of the Cour royale de Paris heard arguments for and against the freedom of a man named Furcy, claimed as the slave of the heirs of Joseph Lory, a planter and slave smuggler with residences on both Ile Bourbon (now Réunion) and Ile de France (now Mauritius). This *cause célèbre*, attended by a large crowd and discussed avidly in the legal and abolitionist press, has been all but forgotten, at least in part because the minutes of the decisions of the Cour de Cassation and the Cour royale were destroyed in the fires of 1871.<sup>4</sup> Certainly contemporary forgetfulness – until very recently – of France’s historical relationship to slavery has contributed to the obscurity of Furcy and his contribution to one of history’s most dramatic political movements: the world-wide abolition of slavery.<sup>5</sup> That Furcy was non-white and lived most of his life as slave has also contributed to his invisibility in the historiography of French abolitionism.

Nevertheless, the Furcy case is very important and deserves historians’ attention for several reasons: 1) the case wrestles with the legal problem of race with regard to slavery and freedom; 2) in the decade following British general emancipation, and five years before French abolition, it contributes to a growing body of knowledge regarding South Asian labor and

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<sup>4</sup> The Cour de Cassation overturned the Cour de Bourbon’s decision on 6 May 1840. By curious happenstance, a hypothetical “volume 46” of the Enregistrement au ministère de la justice, des arrêts de la cour de cassation, corresponding to the years 1837-1841, if such a volume ever existed (it is omitted in the Archives Nationales inventory of these records) apparently disappeared from the collections long ago.

<sup>5</sup> Scholarship on the 19<sup>th</sup>-century anti-slavery movement in France has been relatively recent, certainly in comparison to attention to the British and American cases. See *Les abolitions de l’esclavage : de L.F. Sonthonax à V. Schœlcher, 1793, 1794, 1848: actes du colloque international tenu à l’Université de Paris VIII les 3, 4 et 5 février 1994*, ed. Marcel Dorigny (Saint-Denis, France: Presses universitaires de Vincennes; Paris : UNESCO, 1995), Serge Daget, *La Répression de la Traite des Noirs au XIX<sup>e</sup> Siècle: L’Action des Croisières Françaises sur les Côtes Occidentales de l’Afrique (1817-1850)* (Paris: Editions Karthala, 1997), Lawrence C. Jennings, *French Reaction to British Slave Emancipation* (Baton Rouge: Louisiana State University Press, 1988), and *French Anti-Slavery: The Movement for the Abolition of Slavery in France, 1802-1848* (Cambridge and New York: Cambridge University Press, 2000). None of these works mention the Furcy case.

migration, especially in the Indian Ocean region and its connections to France;<sup>6</sup> 3) the Furcy case represents a continuation of liberal metropolitan efforts to suppress and reign in what were seen as colonial anomalies and distortions of French law;<sup>7</sup> and 4) it confirmed at the highest levels of French judicial authority the continued valence of an age-old tradition that I call the Free Soil principle, which held that any slave who set foot on French soil was thereby freed.

In this paper I will focus primarily on the first and fourth of these: nineteenth-century French legal constructions of *race* and the *Free Soil principle*. As such, this paper contributes to an engaged social history of legal ideas. That is, I am interested not only in what legal ideas and principles held valence for formally trained jurists, such as the lawyers and magistrates, but also what we might call “vernacular law,” that is, legal understandings shared by common people without formal training but which influence formal legal culture. The term “vernacular law” is inspired by the writings of Rebecca Scott, who advances the term “vernacular political thought” to account for post-emancipation claims to “public rights” by former slaves and their descendants in the late nineteenth century.<sup>8</sup> While Scott’s notion of “vernacular political thought” is particularly useful in the period following emancipation when former slaves and their descendants are arguing for the “right to have rights,”<sup>9</sup> I am using vernacular law as a

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<sup>6</sup>In addition to the works cited below, see, for example, Amitava Chowdhury, “Horizons of Memory: A Global Processual Study of Cultural Memory and Identity of the South Asian Indentured Labor Diaspora in the Indian Ocean and the Caribbean,” Ph.D. diss., Washington State University, 2008.

<sup>7</sup> See, for example, John Savage, “Between Colonial Fact and French Law: Slave Poisoners and the Provostial Court in Restoration-Era Martinique,” *French Historical Studies* 29:4 (2006): 565-594.

<sup>8</sup> Rebecca Scott, *Degrees of Freedom: Louisiana and Cuba after Freedom* (Cambridge: Harvard University Press, 2005), 269; Rebecca Scott, “Public Rights and Private Commerce : A Nineteenth-Century Atlantic Creole Itinerary” *Current Anthropology* 48 :2 (April 2007): 237-56 and “Public Rights, Social Equality and the Conceptual Roots of the Plessy Challenge” *Michigan Law Review* 106 (March 2008): 777-804.

<sup>9</sup> Rebecca Scott and M. Zeuske, “Le droit d’avoir des droits: Les revendications des ex-esclaves à Cuba (1872-1909)” *Annales, Histoire, Sciences sociales* 59, no. 3 (2004): 521-45.

general notion of legal principles and procedures that are understood and *acted upon* by a community, sometimes independent of – and even in opposition to – more formal or statist political or juridical powers.

Secondly, whereas historians tend to narrate history chronologically, from past to present, I propose an inverse narrative structure: a “genealogy” of legal ideas, which moves from a more recent period (the mid-nineteenth century) *backward* to earlier historical periods and legal cultures. Much as a genealogist today might work backward from parents to ancestors, often selecting the most prominent or notorious members of the family lineage to celebrate, I will be using Furcy’s case to disentangle both formal legal and common popular understandings of race and Free Soil. Like Foucault, I am skeptical of the historical search for the pure origins of an unchanging historical object of inquiry. The story offered here is not *the* history of the origins of race or the Free Soil principle, but rather an investigation of the instantiation and uses of these two concepts in distinct historical contexts.

### **Madeleine and Furcy: 19<sup>th</sup>-Century Invocations of the Free Soil Principle**

Around 1759, a baby girl was born in or near Chandernagor, a French enclave in India.<sup>10</sup> In later litigation, some would claim that the girl, Madeleine, was born free, others to an enslaved mother.<sup>11</sup> She was sold twice to masters with Portuguese names, and finally, in 1768

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<sup>10</sup> *Plaidoyer*, 3. The name is now spelled Chandannagar.

<sup>11</sup> *Plaidoyer*, 3. The *Gazette des tribunaux*, 21 Dec. 1843, n<sup>o</sup> 5204, p. 1, describes her as born a slave. She might have been of Indian or Luso-Indian origins; her Christian name might have been assigned at birth or a later baptism upon sale to Catholic owners (see *Dames créoles: Anthologie des femmes illustres de La Réunion de 1663 à nos jours*, edited by Christian Vittori [Saint-Marie, Réunion : Azalées Éditions, 2005], 1: 42).

to a French colonist, Mlle Dispense.<sup>12</sup> From 1771 to 1772, Dispense, accompanied by three black servants, including Madeleine, now eleven years old, traveled to Lorient via Ile de France.<sup>13</sup> French law required that all slaves brought into France be registered by the French Admiralty at the port of disembarkation, but to date no record that Dispense registered Madeleine upon arrival has been found.<sup>14</sup>

In Lorient, Dispense and her retinue came to stay with Marie Anne Ursule Desblotières, Mme Routier.<sup>15</sup> A year later, Dispense decided to enter a convent and gave Madeleine to Routier under the condition that she return the girl to the Indies and manumit her.<sup>16</sup> Madeleine accompanied Routier to Ile Bourbon (Réunion), arriving there in 1774.<sup>17</sup>

By 1776, Madeleine was a young woman of seventeen living on one of the largest plantations on the island. Headed by the creole-born M. Routier, age 45, the household included Mme Routier, their four sons and three daughters. The Routiers owned 124 slaves and lived in a stone house.<sup>18</sup> Their extensive lands were planted with 10,000 feet of coffee, 50,000 of manioc, 75,000 of wheat, 5,000 of rice, 120,000 of corn (maize), 12,000 of beans and

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<sup>12</sup> *Plaidoyer*, 3, dates this sale to 8 November 1768, but other documents give “8 décembre 1768” (Arrêt de la Cour de Bourbon, 12 février 1818, [quoted in *Plaidoyer*, 6]). The date of the sale to Mlle Dispense occurred 28 October 1768 for the price of 55 rupees (21 Dec. 1843, n° 5204, p. 1).

<sup>13</sup> *Plaidoyer*, 3, 34. Mlle Dispense’s additional “*domestiques noirs*” were Janot and Cécile (*Etat nominatif des passagers arrivés des colonies, pendant les années 1769-1773*), A.N., Col., F/5B/21.

<sup>14</sup> Sue Peabody, “*There Are No Slaves in France*”: *The Political Culture of Race and Slavery in the Ancien Régime* (New York and Oxford: Oxford UP, 1996), *passim*, hereafter cited as *No Slaves*. The most recent royal legislation was the Déclaration of December 15, 1738 (*ibid.*, 37-39), reinforced by the Ordinance of April 5, 1762 (*ibid.*, 74). Pierre H. Boule, who has worked extensively with the Admiralty registrations of non-whites in French ports found no record of the slave Madeleine in the Lorient registers, though he has not examined the Lorient registers for 1772 (personal correspondence, March 16, 2007), nor did subsequent lawyers when the case came to court.

<sup>15</sup> *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1. The 1787 census lists her as *créole* of Ile Bourbon (A.N. Col. G<sup>1</sup> 480).

<sup>16</sup> *Plaidoyer*, 3, 37 ; *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1.

<sup>17</sup> *Plaidoyer*, 3. *Etat nominatif des passagers embarqués pour les colonies, pendant les années 1769-1780, Port Lorient*, A.N. Col., F/5B/51.

<sup>18</sup> These include 56 men between the ages of 15 and 55, and four elderly men; 32 women between the ages of 15 and 40, plus seven older women; 18 boys and 7 girls under the age of 14. (Recensement, Ile Bourbon, 1776. A.N. Col. G<sup>1</sup> 479).

included 64 cattle, one sheep, forty goats, eighty pigs and seven horses.<sup>19</sup> By 1787, the senior Routier had died, leaving the widow Routier, now 45, as head of household. She hired a manager for the plantation; the number of slaves had increased to 131, probably through reproduction, rather than purchase.<sup>20</sup>

Madeleine, age 28 in 1787, had contributed to the Routier's expanding slave holdings by giving birth to her first child, a daughter named Constance.<sup>21</sup> The following year, in 1788, she bore a second child, a boy named Furcy.<sup>22</sup> There is no record of the father. A later account would describe Furcy as having, "le teint mulâtre, mais des traits fort réguliers et des cheveux noirs, semblables en tout à ceux des Européens ... une apparence de couleur qui dénote peut-être qu'il y a eu, de la part de sa mère, alliance avec un homme de race nègre."<sup>23</sup> However, such a description could equally apply to the child of a white man and a dark-complected Indian woman.

In July 1789, after sixteen years, Madame Routier fulfilled her promise to Mlle Dispense and manumitted Madeleine. In the official papers, Madeleine is described as "une Indienne, âgée de trente ans," and is freed in the formulaic words, "en reconnaissance des bons services qu'elle lui a rendus." To ensure that Madeleine would not become a burden to the community,

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<sup>19</sup> Recensement, Ile Bourbon,, 1776. A.N. Col. G<sup>1</sup> 479.

<sup>20</sup> Recensement, Ile Bourbon, 1787. A.N. Col. G<sup>1</sup> 480. The 1776 census lists 25 children under the age of 14, while the 1787 census lists 33, for a net gain of 8; the slave population of the plantation increased by seven over the same period.

<sup>21</sup> Recensement, Ile Bourbon, 1787. A.N. Col. G<sup>1</sup> 480.

<sup>22</sup> The year of Furcy's birth is noted in *Gazette des tribunaux*, 24 Dec. 1843, n<sup>o</sup> 5207. Perhaps he was born on January 16, the feast day dedicated to the Irish St. Fursey.

<sup>23</sup> *Gazette des tribunaux*, 14 Aug. 1835, n<sup>o</sup> 3115, p. 1.

Routier pledged a pension of 600 *livres* and living expenses.<sup>24</sup> Madeleine continued to live on the Routier plantation, where she died before her children achieved adulthood.

When Madame Routier died in 1808, the year that the United States and Great Britain banned their slave trades, the young man Furcy was nineteen years old.<sup>25</sup> Some time earlier, one of the Routier daughters had married a Monsieur Lory (or Lorry).<sup>26</sup> In 1812, Furcy was transferred, possibly in payment for a debt (*échu en partage*) to Lory. At the time, Furcy was evaluated at 3,700 *livres* and his occupation was listed a *maitre d'hôtel*.<sup>27</sup> Lory was an important slave trader in Ile Bourbon, with relatives and business in the nearby French populated and British-administered colony of Ile de France (Mauritius). Though France officially acquiesced to the British ban of the slave trade in 1815, authorities turned a blind eye to smuggling for more than a decade; Lory would profit handsomely from this insouciance.<sup>28</sup>

By 1817, Furcy was thirty years old, the same age at which his mother had been freed. For reasons that aren't entirely clear, Furcy decided that his enslavement was illegal and took Lory to court to sue for his freedom. In his petition, Furcy claimed his freedom on three grounds: 1) he was Indian by birth and Indians could not be legally enslaved; 2) his mother had set foot on French soil, which should have entitled her (and thus her descendents) to free status and 3) his mother's manumission in 1789 should have authorized his own free status

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<sup>24</sup> Dame Routier filed the petition on 3 July and it was authorized by administrators on 6 July 1789 (*Plaidoyer*, 3-4; *Gazette des tribunaux*, 21 Dec. 1843, n° 5204).

<sup>25</sup> *Gazette des tribunaux*, 22 Dec. 1843, n° 5205, p. 1.

<sup>26</sup> *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1.

<sup>27</sup> *Plaidoyer*, 4. "A son tour, [Furcy] servit donc Mme Routier, et, après elle, M. Lorry, auquel il échet en partage moyennant 3,700 francs," (*Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1); "...l'acte de partage de 1812, qui le place dans le lot échu à M. Lorry, et lui attribue une valeur de 3,700 francs" (*Gazette des tribunaux*, 22 Dec. 1843, n° 5205, p. 1). The *Gazette des tribunaux* evaluates him in *francs*, rather than *livres*.

<sup>28</sup> In 1820 Lory was one of two traders (the other named Gamin) receiving a shipment of 220 slaves from Zanzibar. Richard B. Allen calculates the profit earned on this trip alone to be \$20,054 ("Licentious and Unbridled Proceedings: The Illegal Slave Trade to Mauritius and the Seychelles during the Early Nineteenth Century," *Journal of African History* 42 [2001]: 102-103).

since tradition prohibited the separation of a slave mother and child.<sup>29</sup> The tribunal of Saint-Denis appointed a *patron* to advocate on his behalf.<sup>30</sup> But the municipal court rejected Furcy's claim to freedom on October 17, 1817, noting that since the Routier family had listed Madeleine as a slave on its inventories for sixteen years prior to her manumission in 1789, Furcy was born to an enslaved mother and was hence a slave himself.<sup>31</sup>

The court's decision led to public outcry and the governor responded by sending Furcy to prison while his patron appealed the case to the colonial Cour de Bourbon.<sup>32</sup> On February 12, 1818 the appeals court upheld the lower court's decision.<sup>33</sup> On 2 November 1818 Furcy was released, stripped of all his papers and sent to live with Lory's relatives on Ile de France.<sup>34</sup> There, according to one account, "l'esclave révolté eut à expier par les plus rudes travaux son audacieuse prétention à la liberté."<sup>35</sup>

In 1829, Furcy "eleva de nouveau sa voix; il reclama avec force sa liberté."<sup>36</sup> English authorities emancipated him on the grounds that he had not been registered, either with Customs or on the boat that transported him. Upon liberation, Furcy remained in Mauritius and became a local celebrity as a *confiseur*.<sup>37</sup> His new trade allowed him to "amasser une fortune

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<sup>29</sup> *Plaidoyer*, 4.

<sup>30</sup> *Plaidoyer*, 5.

<sup>31</sup> This is the date given in *Plaidoyer*, 5-6; the *Gazette des tribunaux* cites the decision's date as Dec. 17, 1817 (21 Dec. 1843, n° 5204, p. 1).

<sup>32</sup> *Plaidoyer*, 8; The *Gazette des tribunaux* refers to "reprobation générale" in the colony against the court's decision (13 Aug. 1835, n° 3114, p. 1).

<sup>33</sup> This *arrêt* is quoted at length in *Plaidoyer*, 6-8 and in *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1.

<sup>34</sup> *Gazette des tribunaux*, 22 Dec. 1843, n° 5205, p. 1 and *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1. Passenger lists show that Furcy departed from Ile Bourbon on 26 October 1818 on the *Clélie*. He is listed as "Furcy, noir à M. Lory" (A.N. Col., F/5B/7).

<sup>35</sup> *Plaidoyer*, 8.

<sup>36</sup> *Gazette des tribunaux*, 13 Aug. 1835, n° 3114, p. 1.

<sup>37</sup> "Affaire Furcy: les esclaves qui touchent le sol de la France sont libre," *L'abolitionniste français* 1 (1844): 58.



qui n'est pas sans quelque importance."<sup>38</sup> Yet, according to his lawyer, Furcy "n'est plus agité que d'une seule pensée, celle de venir demander justice en France."<sup>39</sup> Around 1832, Furcy boarded a ship, with his original petition hidden in the sole of his shoe,<sup>40</sup> and "[a] touch[é] enfin le sol français."<sup>41</sup>

On August 12, 1835, supported by the *procureur général*, André Marie Jean Jacques Dupin, Furcy demanded a review of his case before the Cour of Cassation on two grounds: 1) the racial argument: that Indians cannot be enslaved; and 2) the Free Soil argument: based on the fact that Furcy's mother had set foot on French soil in 1771.<sup>42</sup> On May 6, 1840, the Cour de Cassation struck down the Cour royale de Bourbon's 1818 decision on the basis of "le principe du droit public français, lequel assurait le bienfait de la liberté à tout esclave don't le pied touchait le sol de la France," rendering "les parties au même état où elles étaient avant ledit arrêt."<sup>43</sup> The case was apparently sent for retrial to the Cour de Bordeaux, which found against Furcy's freedom; this decision was then appealed to the Cour royale de Paris.<sup>44</sup>

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<sup>38</sup> *Gazette des tribunaux*, 22 Dec. 1843, n° 5205, p. 1.

<sup>39</sup> *Plaidoyer*, 8.

<sup>40</sup> *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1.

<sup>41</sup> *Plaidoyer*, 8, *Gazette des tribunaux*, 13 May 1840, n° 4580, p. 1.

<sup>42</sup> *Plaidoyer*, 8, *Gazette des tribunaux*, 13 Aug. 1835, n° 3114, p. 1 and 13 May 1840, n° 4580, p. 1. Dupin held important offices in the Napoleonic and Restoration governments as well as editing major compilations of legislative codes and judicial decisions.

<sup>43</sup> *Plaidoyer*, 10, *Gazette des tribunaux*, 13 mai 1840, n° 4580, p. 1.

<sup>44</sup> *Gazette des tribunaux*, 24 Dec. 1843, n° 5207, p. 1. The use of the Cour de Bordeaux is odd. Perhaps it had jurisdiction over colonial matters [hypothesis to be verified], or perhaps the Cour de cassation doubted that the Cour de Bourbon would give the case a fair hearing and remanded it to an alternate court. Until further investigation is undertaken, a third possibility is that "Bordeaux" is a typo and the case was, indeed, remanded to the Cour de Bourbon.

In December 1843, the Cour royale heard arguments from Furcy's lawyer, Edouard Thureau, the Lory's lawyer, Paillet, and the *procureur général*, Hébert.<sup>45</sup> At the concluding audience on December 23, after listening to Hébert's arguments "avec une attention religieuse," the justices of the Cour royale retired to their chamber to deliberate.<sup>46</sup> An hour later, President Séguier declared Furcy a free man. Furcy was now fifty-six years old. His mother, Madeleine, had arrived in Lorient almost eighty years earlier.

### **The Enslavement of "Indians"**

Furcy's lawyers, those representing the Lorys, and the *procureurs* drew upon many different legal arguments to support or reject Furcy's freedom. They variously cited France's "fundamental maxim" of Free Soil, Roman law, colonial legislation, prior court decisions, and royal and republican statutes, some dating as far back as the fourteenth century. The two key points of contention rested upon the concepts of race and Free Soil. The first debate concerned whether Asian Indians were exempt from enslavement; the second asked whether Madeleine's residence in Lorient in the 1770s made her free and, consequently, Furcy too.

Furcy's lawyer before the Cour royale de Paris, Edouard Thureau, argued vehemently that legal slavery was limited to Africans and their descendents; "Indians" could not legally be enslaved. Thureau cited two eighteenth-century legal decisions in which South Asian Indian slaves had won their freedom: that of Mathieu of Surat before the Conseil Supérieur de la

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<sup>45</sup> *Plaidoyer*, 44, *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1; *Gazette des tribunaux*, 22 Dec. 1843, n° 5205, p. 1; *Gazette des tribunaux*, 24 Dec. 1843, n° 5207, p. 1; "Affaire Furcy: les esclaves qui touchent le sol de la France sont libre," *L'abolitioniste français* 1 (1844): 58.

<sup>46</sup> *Gazette des tribunaux*, 24 Dec. 1843, n° 5207, p. 1.

Martinique, March 7, 1712 and that of Francisque of Pondichéry, August 22, 1759, before the Parlement of Paris.<sup>47</sup>

Mathieu was born in Surat, India, and accompanied a Capuchin friar to Nantes around 1696. From Nantes, Mathieu served a ship captain for three years, until his arrival in Martinique, when he was sold to a merchant in Trinity, who held Mathieu as a slave for thirteen years. On March 7, 1712, Mathieu sued for and won his freedom before the sovereign council of Martinique – on what grounds is unclear.<sup>48</sup> Pierre François Régent Dessalles, the Martinique counselor of the late eighteenth century, thought that Mathieu’s natal origin was the salient factor—as an “Indian,” he was entitled to his freedom.<sup>49</sup> However, the fact that Mathieu had earlier set foot on French soil could, arguably, have been the basis of the court’s decision. Without direct evidence concerning the sovereign council’s deliberations and judgment, it is impossible to know.

The first metropolitan legal case to argue that slavery was justifiable only for Africans and their descendents was that of Francisque before the Parlement of Paris in 1759. Francisque came to St. Malo from Pondichéry in 1750. In 1757, he fled his master’s mistreatment and sought another employer. His master had him imprisoned and Francisque sued for his freedom, first in the Admiralty Court of France and then, upon appeal, before the Parlement of Paris. His lawyer argued for his freedom on the grounds of his Indian origins, the Free Soil principle, and failure to comply with the royal laws of 1716 and 1738. As I have argued elsewhere, the lawyer’s claim for an exclusive relationship between slavery and blackness was based on the

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<sup>47</sup> *Plaidoyer*, 13.

<sup>48</sup> P.F.R. Dessalles, *Les Annales du Conseil Souverain de la Martinique*, ed. Bernard Vonglis (Paris : Harmattan, 1995), 1 : 363-364.

<sup>49</sup> Dessalles, *Annales du Conseil Souverain*, 1 : 364.

flimsiest of reasoning.<sup>50</sup> Yet the linkage between African descent and slavery was so strong in 1759 that it did not need careful justification—mere assertion was sufficient to be persuasive.

Probably more significant than prior case law were the statutes bearing on the racialized nature of slavery in the French empire. Thureau cited numerous *ancien régime* laws regulating colonial slavery – the 1685 Code Noir, the ordinance of April 23, 1615, edicts of July and September 1720, letters patents of 1723, the edict of 1724, that of 1716 and the declaration of 15 December 1738.<sup>51</sup> According to Thureau, “tous sans exception, se réfèrent et dans leur texte et dans leur esprit à la race nègre exclusivement,” i.e., Africans and their descendants.<sup>52</sup>

A crucial piece of legislation for Furcy’s claim to freedom was Louis XV’s order of 2 March 1739, prohibiting the enslavement of Indians:

Sa Majesté, informée qu’il y a des personnes qui vont traiter des Caraïbes et Indiens de nations contre lesquelles les Français ne sont pas en guerre, pour les emmener aux îles du Vent de l’Amérique, où iles les vendent comme esclaves, et voulant prévenir les inconvénients que cette traite pourrait occasionner, Sa

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<sup>50</sup> Peabody, *No Slaves*, 61-68; Sue Peabody, “Race, Slavery, and the Law in Early Modern France,” *The Historian* 56:3 (Spring, 1994): 501-510.

<sup>51</sup> *Plaidoyer*, 11-12, 15; *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1. Some of these laws did, indeed, explicitly link the condition of blackness with slavery but Thureau was disingenuous in citing some of the others. The 1685 Code Noir established civil and criminal procedures for the management of *esclaves* and *nègres* in the French Antilles, using the two terms more or less interchangeably throughout, although *esclave* is more common than *nègre* (*Le Code noir: Recueil d’édits, déclarations et arrêts concernant les esclaves nègres de l’Amérique*, [Paris: chez les Librairies Associez, 1743]). The Edicts of 1723 and 1724 adapted the 1685 Code Noir for the colonies of Ile de France and Ile Bourbon (1723) and Louisiana (1724), and echoed most, but not all, of the provisions of the Antillean Code Noir; Louisiana’s Code Noir continues to employ the terms “*esclaves nègres*” but also introduces the terms “*sujets blancs*” and “*Noirs*” in its innovative ban on interracial marriages (article 6) (Moreau de Saint-Méry, *Recueil des loix...*, 3:80). I have not yet been able to examine the original text of the Code Noir for Ile Bourbon to assess its racial terminology. Thureau’s “edicts of July and September 1720” assigned exclusive trading privileges for sites in Africa and the Indian Ocean to the new Compagnie des Indes (Moreau de Saint-Méry, *Recueil des loix...*, 2:671-673, 2:698-701); here, slaves are referred to as *nègres* throughout. The edict of October 1716 and the declaration of 15 December 1738 regulated the arrival of “*esclaves*” and “*esclaves nègres*” into metropolitan France; the two terms seem to be used more or less haphazardly, rather than in a specific or restricted sense (these two laws are republished by Pierre H. Boule, following the 1767 Paris edition of the *Code Noir*, in his book, *Race et esclavage dans la France de l’Ancien Régime* [Paris: Perrin, 2007], 247-254). On the other hand, although Thureau claimed that the ordinance of April 23, 1615 was the law “par laquelle Louis XIII rend esclaves le nègres de ses colonies [emphasis in original, *Plaidoyer*, 12],” it did nothing of the kind. This ordinance was a metropolitan law expelling all Jews from the kingdom (M.L.E. Moreau de Saint-Méry, *Recueil des loix*, 1:13-14.)

<sup>52</sup> *Gazette des tribunaux*, 21 Dec. 1843, n° 5204, p. 1 ; *Plaidoyer*, 11-12, 15.

Majesté fait très-expresses inhibitions et défenses à tous Français de traiter des esclaves Caraïbes et Indiens, voulant que tous ceux qui seront emmenés ou qui iront à l'avenir dans les îles du Vent soient et demeurent libres.<sup>53</sup>

The 1739 royal order was apparently, however, little known and often ignored. As Brett Rushforth's recent research shows, 18<sup>th</sup>-century colonial administrators in Martinique and New France opposed the enslavement of neighboring Indian allies for pragmatic strategic reasons and in consort with "just war" rationale for enslavement. Yet neither French colonial authorities nor the crown understood the 1739 decree as a universal racial ban on enslaving Indians. Rather, the 1739 decree was interpreted much more narrowly, as prohibiting the enslavement of allies and neighbors; the importation of North American slaves (presumed to be enemies captured in a just war) to Antillean colonies like Martinique, was seen as legitimate. Canadian traders provided a small stream of enslaved North American Indians (*panis*) to an eager market in Martinique in the 1740s and later.<sup>54</sup> Interestingly, lawyers arguing for Francisque's freedom in 1759 never mentioned the 1739 order, despite the fact that it had been issued only two decades earlier.<sup>55</sup> Perhaps they were unaware of it or perhaps lumping Caribs and Pawnees together in the same category as the "civilized" Moguls of India would have undermined their central argument of racial superiority for Asian *Indiens*.

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<sup>53</sup> *Plaidoyer*, 13; *Code de la Martinique*, ed. Jacques Petit de Viéville, (Saint-Pierre : Impr. De P. Richard, 1772), 1:455. Lawyers opposing Furcy's freedom insisted that the 1739 law had not been registered by the sovereign councils in the colonies but Furcy's lawyers rebutted that the royal order merely recalled an old principle and did not make new law (*Plaidoyer*, 16.).

<sup>54</sup> Brett Rushforth, "They Often Take Them to the Islands to Serve as Slaves': Indian Slaves in Martinique, 1710-1760," unpublished paper presented Omohundro Institute of Early American History and Culture Annual Conference, Quebec City, Quebec, June 2006. Many thanks to Prof. Rushforth for sharing this paper with me in advance of publication.

<sup>55</sup> *Mémoire signifié pour le nommé Francisque, Indien de nation, néophyte de l'Eglise Romaine, Intimé contre le Sieur Allain-François-Ignace Brignon, se disant Ecuyer, Appellant* (Paris : chez P.G. Simon, Imprimeur du Parlement, 1759).

Thureau further supported the alleged ban on Indian slaves with a letter from the Minister of the Marine, dated January 7, 1767:

Sa majesté a toujours admis, et elle entend que ses Conseils Supérieurs admettent une différence essentielle entre les Indiens et les Nègres ; la raison de cette différence est prise de ce que les Indiens sont nés libres, et ont toujours conservé l'avantage de la liberté dans les Colonies, tandis que les Negres n'y ont été introduits que pour y demeurer dans l'état de l'esclavage ; première tâche qui s'étend sur tous leurs descendants, et que le don de la liberté ne peut effacer.  
<sup>56</sup>

Thureau neglected to mention that this letter was a reply to Saint-Domingue administrators seeking advice about colonists who wanted to register titles of nobility (and thus had no direct bearing on freedom suits); the sticking point was whether descent from a black or an Indian negated noble status. Louis XV, through his minister, affirmed that subjects descended from “une Race Indienne” must be “assimilés aux Subjects du Roi originaires d'Europe,” though he stipulated that their genealogy must be proven “de manière qu'il ne reste aucun doute sur leur origine.” Colonists descended from the “Race Nègre,” by contrast, were prohibited from holding any public office or noble title.<sup>57</sup> As such, the 1767 ministerial letter did not specifically ban the enslavement of Indians, nor did it shed light on the question of American versus Asian *Indiens*. However, the letter is striking for its use of the term “race” (absent in most legislation), and for its emphasis on the “*premier tache*” of blackness.<sup>58</sup> The word *race* appeared often in disputes over noble lineage since at least the seventeenth century.<sup>59</sup>

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<sup>56</sup> *Plaidoyer*, 13, and Moreau de Saint-Méry, *Recueil...*, 5:80.

<sup>57</sup> Moreau de Saint-Méry, *Recueil...*, 5:80-81.

<sup>58</sup> This phrase echoes authors who associated blackness and slavery with the curse of Ham. See Benjamin Braude, “The Sons of Noah and the Construction of Ethnic and Geographical Identities in the Medieval and Early Modern Periods,” *William and Mary Quarterly*, 54: 1 (January 1997): 103-142.

<sup>59</sup> Pierre H. Boule made this connection in, “Francois Bernier (1620-88) and the Origins of the Modern Concept of Race,” in *The Color of Liberty: Histories of Race in France*, (Durham; Duke UP, 2003), This point is

By the late eighteenth and early nineteenth centuries, both the impact of racial categorization and the presence of Asian Indian slaves in the French Caribbean colonies were more apparent. Dessalles, in his account of the case of Mathieu of Surat, asserted that Asian Indians were common in Martinique, but believed that the 1739 royal order had made this trade illegal:

Malgré l'ordre du Roi [du 8 mai 1739], il est très-ordinaire de voir aux Colonies des Indiens qui y sont esclaves : tous les Navires qui y arrivent des grandes Indes en amènent [sic], qu'ils vendent comme de véritables Negres. Les Capitaines en ont-ils le droit ? Je pense que l'ordre ci-dessus, qui y est absolument contraire, doit fixer le sort de cette classe d'hommes, & les faire déclarer libres dans toutes les réclamations qui seroient faites par eux en justice.<sup>60</sup>

Thureau eagerly jumped on Dessalles' insistence that Indian slaves were prohibited by the 1739 order.

But by claiming that Asian Indians could not legally be enslaved, Thureau and Dessalles flew in the face of historical experience. Since the seventeenth century, Dutch, and later French, colonization of the Mascarene islands had depended on imported enslaved labor from both Africa and South Asia. Colonial administrators of the Mascarene islands had actively sought agricultural laborers from Pondichéry since at least 1728, though the Malagasy people of East Africa formed the majority of enslaved people in Ile Bourbon from 1709-1808.<sup>61</sup> Pierre Boule's work on the 1777 census of non-whites in metropolitan France shows that some 6.9%

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developed by Guillaume Aubert in "The Blood of France": Race and Purity of Blood in the French Atlantic World," *William and Mary Quarterly* 61:3 (July 2004): 439-478.

<sup>60</sup> *Annales du conseil souverain de la Martinique*, 1:364; *Plaidoyer*, 16.

<sup>61</sup> By 1808, Indians comprised only 3.2% of the enslaved population, though their descendents must have formed a significant portion of the 42.8% enslaved creole population. J.-M. Filliot, *La Traite des esclaves vers les Mascareignes au XVIIIe siècle* (Paris : ORSTOM, 1974), 179; J. Barassin, "Aperçu général de l'évolution des groupes ethniques à l'île Bourbon depuis les origines jusqu'en 1848," *Mouvements de population dans l'océan indien*, Actes du quatrième Congrès de l'AHAOI (Paris, Marseille : Robert, 1980), 245-251; Prosper Eve, *Naître et mourir à l'île Bourbon à l'époque de l'esclavage* (Paris : L'Harmattan and Saint-Denis : Université de la Réunion, 1999), 17-18.

were born in India or the Mascarenes (some of whom were of Indian descent); a large proportion are ambiguously characterized as “*noirs de l’inde.*” Only two (0.1% of the total) were listed as “Amérindiens caraïbes.”<sup>62</sup>

Opponents of Furcy’s freedom cited this demographic reality of Asian Indian slaves in the French empire.<sup>63</sup> In addition, they pointed to 18<sup>th</sup>-century colonial legislation that affirmed the legal presence of Indian slaves in Pondichéry and Ile Bourbon.<sup>64</sup> Both sides cited the abolition of slavery in Pondichéry in the autumn of 1792.<sup>65</sup> Nevertheless, Thureau concluded that “un fait n’est pas un droit”<sup>66</sup>; the mere existence of enslaved Indians from South Asia should not presume the legitimacy of their enslavement.

Of course, the lawyers opposing Furcy’s free status argued that French laws prohibiting the enslavement of *Indiens* applied to American Indians, not those of South Asia.<sup>67</sup> Paillet, the lawyer representing the widow and heirs of Lory before the Cour royale in 1843, argued that the ban on American Indian slavery resulted from the supposed fact that “l’esclavage des Indiens n’existait pas, n’avait jamais existé”; South Asian slavery was “un fait ancien et incontestable,” only banned by the British there six months earlier.<sup>68</sup> Furcy’s lawyers offered a

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<sup>62</sup> Boulle, *Race et esclavage*, 175-176. Boulle’s earlier, preliminary study counted about 1,800 non-whites in France; of these some 11% originated in the Indian Ocean region, with almost half born in India, (*ibid.*, 141-143 ).

<sup>63</sup> Paillet cited an 1826 census of Ile Bourbon which counted 1,333 Indian slaves there (*Plaidoyer*, 19).

<sup>64</sup> Paillet cited several police regulations (for French Pondichéry, those of 20 June 1778 and 18 Dec. 18 1790 and for Ile de Bourbon, the “arrêté colonial” of 7 May 1770) that indicated the legitimate presence of slavery in both colonies (*Plaidoyer*, 17-18).

<sup>65</sup> Arrêtés of October 11, October 15 and November 16, 1792 by the Colonial Assembly of Pondichéry declared Indians there free for the future, but permitted slaveholders to dispose of slaves acquired prior to the legislation’s ratification (*Plaidoyer*, 17-18). Since Madeleine had been enslaved prior to 1792, this law would not have freed her or Furcy. This early instance of abolitionism, pre-dating that of Saint-Domingue or Paris, has been widely overlooked by historians of abolitionism to this day.

<sup>66</sup> *Plaidoyer*, 17.

<sup>67</sup> *Plaidoyer*, 14.

<sup>68</sup> *Gazette des tribunaux*, 22 Dec. 1843, n° 5205, p. 1. The British outlawed slavery in India in July 1843.



semantic response – the term *Indiens* had applied for a much longer time to the people of *Indoustan* and was only later applied to the indigenous people of America.<sup>69</sup>

Whether or not Asian Indians could be legitimately enslaved was a volatile issue in the wake of British emancipation (1833-1843), and was not limited to the Indian Ocean region. As pressure against the slave trade and slavery itself mounted, from the Americas to Africa and Asia, there were widespread debates and efforts to replace African slaves with “free labor,” especially in the British Empire, which resulted in the increased use of indentured Asian labor throughout the globe. The argument against the enslavement of Indians was, at once, an effort to protect South Asians from exploitation *and* a divisive and racist proposal, laying the groundwork for future tensions between people of African and Indian descent, a problem that erupts periodically in some former colonies to this day.<sup>70</sup>

In its final decision of December 22, 1843, the Cour royale de Paris did not mention the racial argument, so laboriously debated by the lawyers. The absence of race in the decision is consistent with French liberal “race-blind” ideology. Instead, the magistrates emphasized the importance of what I call the “Free Soil” principle.

## **Free Soil**

I have coined the term “Free Soil principle” for the legal notion that slaves who crossed particular territorial boundaries became free. As I will discuss further below, this axiom of vernacular law was not unique to France, but I believe France’s articulation was the first *national* (as opposed to municipal) formulation of the Free Soil principle. The *procureur général*

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<sup>69</sup> *Plaidoyer*, 14.

<sup>70</sup> Chowdhury, “Horizons of Memory.”

in Furcy's case articulated this "fundamental maxim" of the French nation as "*nul n'est esclave en France.*"<sup>71</sup> As I have shown elsewhere, this supposedly eternal French principle was cobbled together from a variety of statutory, historical and judicial sources and changed expression over time.<sup>72</sup> In the late sixteenth century, Jean Bodin articulated the principle as, "la seruitude ... n'a point de lieu en tout ce Royaume: de sorte mesme que l'esclauve d'un estrange est franc & libre si tost qu'il a mit le pied en France."<sup>73</sup> Antoine Loisel was the first to call the principle a maxim, and included the condition of baptism in his seventeenth-century formulation of the Free Soil principle: "Toutes personnes sont franches en ce roïaume: et sitost qu'un esclave a atteint les marches d'icelui, se faisant baptizer, est affranchi."<sup>74</sup> By the mid-eighteenth century, most expressions of the Free Soil maxim omitted the condition of baptism (presumably because the 1685 and 1724 Codes Noirs required all colonial slaves to be baptized while the metropolitan laws of 1716 and 1738 allowed for their religious education in the metropole), linking free status solely with the condition of crossing the territorial boundaries of metropolitan France.

France's increased participation in the trans-oceanic slave trade and the use of slaves in its colonies over the late 17<sup>th</sup> and 18<sup>th</sup> centuries brought thousands of slaves to metropolitan France, primarily as personal servants. The presence of these slaves and the pressure of colonial lobbies prompted the royal government to issue a series of laws, whose ultimate effect was to suspend and eventually negate the Free Soil principle for colonial slaves who accompanied their masters to France. While maritime provinces, with their commercial and social ties to the colonies, typically supported the royal suspension of the Free Soil principle,

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<sup>71</sup> *Gazette des tribunaux*, 13 août 1835, n° 3114, p. 1.

<sup>72</sup> Peabody, *No Slaves*, 24-37.

<sup>73</sup> Jean Bodin, *Les six livres de la République* (Lyon : Jean de Tournes, 1579), 43.

<sup>74</sup> Antoine Loisel, *Institutes coutumières* (Paris: Abel l'Angelier, 1608), 1.

jurists of the Admiralty Court of France and the Parlement of Paris resisted registration and implementation of these royal laws and continued to free hundreds of slaves who reached their jurisdiction throughout the 18<sup>th</sup> century.<sup>75</sup>

In arguing for Furcy's freedom, Thureau drew upon many eighteenth-century *causes célèbres* as evidence of the enduring Free Soil principle.<sup>76</sup> Building on many of the same sources as eighteenth-century lawyers, Thureau added several new instances from the 16<sup>th</sup> and 19<sup>th</sup> centuries. Earlier legists of the Free Soil principle had looked to the freeing of *mainmortes*, or serfs, by 11<sup>th</sup>-century regent Abbé Suger and Saint Louis X, who had first linked the name of France with the principle of free subjects in 1315; 16<sup>th</sup>-century decisions by parlements of Toulouse and Bordeaux; the Duke of Guise in 1552; Henri II freeing some Moorish galley slaves from a Spanish shipwreck in 1553.<sup>77</sup> Thureau cited all of these instances, but added to these an earlier 16<sup>th</sup>-century case wherein a Greek slave was forcibly freed from his Italian master in 1538.<sup>78</sup>

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<sup>75</sup> The most important of these laws were the Edict of October 1716, the Declaration of December 15, 1738, and the Declaration pour la Police des Noirs of August 9, 1777. The 1716 edict permitted slaves to accompany their masters to France for religious education or training in a useful trade, provided that they had the permission of colonial administrators, that the slaves were registered with the admiralty upon arrival, and that their stay was temporary; failure to comply with these conditions resulted in the slave's freedom. The 1738 declaration reiterated the edict of 1716, closing some of the loopholes (e.g. specifying a stay of no longer than three years in the metropole) and changing the penalty for noncompliance to royal confiscation of the slave and transport to the colonies, thus completely suspending the Free Soil maxim. Neither of these laws was registered by the Parlement of Paris and they remained un-enforced within its jurisdiction. The 1777 Police des Noirs deliberately avoided the offensive term "*esclave*," replacing the laws of 1716 and 1738 with a ban on immigration by all "*noirs, mulâtres et autres gens de couleur*." Both the Parlement of Paris and the Admiralty Court of France found this racial quarantine acceptable, soon registering the law. However, the Admiralty Court continued to free slaves who sued for their freedom on the grounds of the Free Soil maxim until it was disbanded in 1789. See Peabody, *No Slaves*, 122; Dwain C. Pruitt, "The Opposition of the Law to the Law: Race, Slavery and the Law in Nantes, 1715-1778," *French Historical Studies* 30:2 (2007): 147-74; Boulle, *Race et esclavage*, 85-107.

<sup>76</sup> For example, Furcy's lawyer, Thureau, cited Boucaux v. Verdeline (1738), Francisque v. Brignon (1759), Louis v. Lefebvre (1762), and Roc v. Poupet (1770), (*Plaidoyer*, 28-30). Each of these cases is discussed in Peabody, *No Slaves*, 24-37, 57-71, 72-73, and 98-110.

<sup>77</sup> Peabody, *No Slaves*, esp. 28-32.

<sup>78</sup> *Plaidoyer*, 21.

Subsequent developments in the Revolution and the early nineteenth century were also relevant. Many historians are familiar with the National Assembly's 28 September 1791 proclamation granting equal rights to French men, regardless of color. Less well known is that the same act formally instituted the Free Soil principle as statutory law (as opposed to the amorphous "maxim") for the first time in French history: "Art. 1. tout individu est libre aussitôt qu'il est entré en France." As one anonymous member of the Assembly observed during the debates, the Free Soil principle was so widely accepted under the Old Regime that the proposed revolutionary measure was superfluous; nevertheless, its enthusiastic supporters carried the day.<sup>79</sup> In 1802 Napoleon restored slavery and re-issued the ban on non-white immigration to metropolitan France, effectively suspending the Free Soil principle, and resurrected a ban on interracial marriages.<sup>80</sup> For sixteen years, Napoleonic policy officially discriminated against blacks in the metropole.

However, under the Restoration anti-slavery measures and more liberal racial policies emerged. Pressed by triumphant British and re-invigorated French abolitionists, France reluctantly agreed to abolish the slave trade within five years in the 1815 Treaty of Paris.<sup>81</sup> On

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<sup>79</sup> Assemblée Nationale Constituante, 28 September 1791, ratified 16 October, 1791. The brief discussion leading to the adoption of this measure and the text of the decree can be found online: <http://www.assemblee-nationale.fr/histoire/esclavage/abolition.asp>. See *Plaidoyer*, 24, n. 2.

<sup>80</sup> Arrêté portant défense aux Noirs, mulâtres et autres gens de couleur d'entrer sans autorisation sur le territoire continental de la République, 13 Messidor Year X (July 2, 1802), accessible at [http://www.assemblee-nationale.fr/histoire/Esclavage/arrete\\_2juil1802.pdf](http://www.assemblee-nationale.fr/histoire/Esclavage/arrete_2juil1802.pdf) (consulted July 23, 2008). This 1802 decree is also reprinted in Benot et Dorigny, 1802, 564.

<sup>81</sup> Daget, *Répression de la traite des Noirs*, 12, 34-38, 51-53; Robert Stein, *The French Slave Trade in the Eighteenth Century: An Old Regime Business* (Madison: University of Wisconsin Press, 1980), 198; David Geggus, "Haiti and the Abolitionists: Opinion, Propaganda and International Politics in Britain and France, 1804-1836," in David Richardson, ed., *Abolition and Its Aftermath: The Historical Context, 1790-1836* (London: Frank Cass, 1985), 117.

January 8, 1817, Louis XVIII issued a ban on the slave trade which echoed the 1815 treaty.<sup>82</sup> Perhaps this news reached Furcy's ears in Ile Bourbon in 1817, inspiring him to initiate his lawsuit for freedom. The year 1818 marked something of a sea-change in French policy towards slavery and race. On April 15, 1818, the Chambre des députés banned the French slave trade.<sup>83</sup> Jennifer Heuer's recent research shows that during the same year, the liberal Count de Serre became Minister of Justice and quietly lifted the Napoleonic ban on interracial marriages.<sup>84</sup> A ministerial circular of August 1818 removed the ban on travel by free people of color.<sup>85</sup>

The July Monarchy was also favorable to anti-slavery and rights for non-whites. On 24 February 1831, Louis-Philippe revoked colonial legislation which had impeded the civil rights of people of color, including their capacity to inherit property from whites.<sup>86</sup> His act of 12 July 1832 liberalized manumission policies in the colonies, resulting in the formal freeing of thousands of slaves throughout the French empire.<sup>87</sup> And his law of 30 April 1833 criminalized excessive corporal punishment for slaves, such as mutilation and branding.<sup>88</sup> Thureau cited several incidents from the 1830s that supported the enduring Free Soil principle. The first was a statement by the Marquis de Lafayette in the Chambre des Députés on 4 December 1830: "Le sol français est essentiellement libre. Avant la révolution, il suffisait à l'esclave africain de le

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<sup>82</sup> *Bulletin des Lois du Royaume de France*. VII<sup>e</sup> Série. Tome 4. No. 136, pp. 105-106 ; Daget, *Répression de la traite*, 39.

<sup>83</sup> *Bulletin des Lois*, VII<sup>e</sup> Série. Tome 6. No. 206, pp. 234-235; Daget, *Répression de la traite*, 39, 54.

<sup>84</sup> Jennifer Heuer, "The one drop rule in reverse? Interracial marriages in Napoleonic and Restoration France" unpublished paper presented at the Western Society for French History, Colorado Springs, Colorado, 27-29 October 2005.

<sup>85</sup> Heuer cites CAOM- Code de la Martinique- 1814-1818, vol. 6, 44645/vi), 557-no 1942, "circulaire ministerielle qui déclare que les gens de couleur libres peuvent librement et sans être assujettis a aucun cautionnement sortir des colonies pour se rendre soit en France, soit a l'étranger, inspection. reg. 10, 5 août 1818, " crediting Rebecca Hartkopf-Schloss.

<sup>86</sup> *Bulletin des Lois*, IX<sup>e</sup> Série. Tome 2, 2<sup>e</sup> partie. No. 50, pp. 218.

<sup>87</sup> *Bulletin des Lois*, IX<sup>e</sup> Série. Tome 5. No. 175, pp. 53-55.

<sup>88</sup> *Bulletin des Lois*, IX<sup>e</sup> Série. Tome 6, 2<sup>e</sup> partie, No. 226, pp. 257-258.

toucher pour recouvrer ses droits à la liberté.”<sup>89</sup> According to Thureau, Genoude, the lawyer representing Fleury, manager of the *Gazette de France*, made a similar statement in the Cour d'assises de la Seine, May 15, 1832.<sup>90</sup>

Most importantly, during French debates following British general emancipation, Louis-Philippe issued the Ordinance of 29 April 1836, ratified by the Chambre on May 14, which restored the Free Soil principle, requiring that any slave brought to France be manumitted before his or her arrival, or become free “à compter de son débarquement dans la métropole.”<sup>91</sup> Of course, this law was too late to apply to Madeleine or form the basis of Furcy’s 1818 lawsuit for freedom (though presumably it should have been sufficient to declare Furcy free in France since 1836).

In their opposing arguments, Furcy’s adversaries challenged some of the historical underpinnings of the Free Soil principle. For example, Thureau, following 18<sup>th</sup>-century precedents, cited a medieval royal ordinance linking the name of France with the condition of freedom. In 1315, Louis X (*le Hutin*) famously pronounced:

Nous, considérant que notre royaume est dit et nommé le royaume des francs; et voulant que la chose soit accordante au nom, avons ordonné que toute servitude soit ramenée à la franchise....<sup>92</sup>

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<sup>89</sup> *Plaidoyer*, 24, n. 2. The citation is a little confusing, Thureau also mentions 6 September 1831 in conjunction with Lafayette’s statement. I have not yet been able to confirm Lafayette’s words in an independent source.

<sup>90</sup> *Plaidoyer*, 24, n. 2. In this case, the *Gazette de France* had published a letter by Fouquet, judge of the Tribunal de la Seine, dated April 24, 1830, allegedly provoking people to disobey the law, to overturn the king’s government, and attacking the rights by which the king ruled (*Gazette des tribunaux*, 16 mai 1832, n° 2108, p. 1). I have not, however, found specific mention of “le sol français,” or the Free Soil principle in any form in Genoude’s remarks.

<sup>91</sup> *Bulletin des Lois*, IX<sup>e</sup> Série. Tome 12. No. 419, pp. 172-173; *Plaidoyer*, 24, n. 2 and p. 33. “Affaire Furcy: les esclaves qui touchent le sol de la France sont libre,” *L’abolitioniste français* 1 (1844): 59.

<sup>92</sup> This passage is quoted by the *procureur générale* in the 1835 plea before the Cour de cassation (*Gazette des tribunaux*, 13 Aug., 1835, n° 3114, p. 1); see also prior citations in Peabody, *No Slaves*, 28, 32, 110.

Paillet, the lawyer representing Furcy's putative masters, insisted that Louis X's ordinance concerned serfs, not colonial slaves.<sup>93</sup> More damning than Paillet's objection is the fact that Louis X's ordinance promoting manumission concluded with the phrase, "à bonnes et convenables conditions."<sup>94</sup> In other words, much like Louis-Philippe in 1832, the quarrelsome Louis X merely offered serfs the right to purchase their freedom; he did not abolish serfdom (or slavery) universally throughout his kingdom.

Louis X's 1315 ordinance is the earliest legislation cited by lawyers and historians seeking the origins of France's Free Soil principle. Yet there are tantalizing hints of an alternative genealogy of this "first and most fundamental" right of the French. In the 1783 edition of Antoine Loisel's *Institutes coutumières*, the editor cites a 1402 legal decision concerning "quatre esclaves qui se sauvèrent de Perpignan à Toulouse," who were freed by the syndic of Toulouse, "par une privilège de cette ville, toute sorte d'esclaves étaient libres dès qu'ils avaient mis le pied dans sa banlieue."<sup>95</sup> Loisel's eighteenth-century editor quoted directly from Germain de La Faille's *Annales de la ville de Toulouse*, which also discusses a similar case before the *capitouls* (magistrates) of Toulouse in 1406.<sup>96</sup> According to La Faille, both courts based their decisions on a tradition specific to the city of Toulouse; *French* Free Soil was not invoked (nor, incidentally, was baptism). The story of the Free Soil principle in Toulouse is a

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<sup>93</sup> *Gazette des tribunaux*, 22 Dec., 1843, n° 5205, p. 1. The distinction is debatable; Marc Bloch observed that the ancient Latin terms *servus* and *servii*, retained by scribes over many centuries, came to describe qualitatively different servile obligations by the medieval period. The modern word "slave" (*sclavi* in Italian, *esclave* in French), entered western European languages as an ethnic term describing slaves from eastern Europe ("Slav"), beginning with the German and Italian languages in the tenth or eleventh centuries, and appearing in French and English sources only in the thirteenth. See Marc Bloch, *Slavery and Serfdom in the Middle Ages*, trans. William R. Beer (Berkeley: U. California Press, 1975), 3-7, 20, 24, 28; Steven A. Epstein, *Speaking of Slavery: Color, Ethnicity, and Human Bondage in Italy* (Ithaca: Cornell UP, 2001), 18-24.

<sup>94</sup> *Recueil des Ordonnances des rois de France*, 1: 583.

<sup>95</sup> *Institutes coutumières de monsieur Loisel*, second edition, (Paris : chez Nyon, 1783), 13.

<sup>96</sup> (Toulouse : G.-L. Colomiez, 1687-1701), 156.

little like the fable of the blind men and the elephant. Many historians have touched on a portion of the story, but none has yet attempted to trace the evolution of this principle over the centuries.

### **Toulouse and French Free Soil**

Situated beyond the direct authority of both French and Catalan kingdoms, the city of Toulouse and its surrounding territory, the Toulousain, were under the direct rule of the count of Toulouse from the tenth through the late thirteenth centuries. However, the city was repeatedly attacked during the late eleventh and twelfth centuries by the likes of Guillaume IX of Aquitaine, Henry II of France and Eleanor of Aquitaine, Alphonse II of Aragon, and Richard I of England and the Aquitaine. The nearly constant state of battle forged the residents of Toulouse into warrior-citizens, merging the identities of knight and burgher. Their successes empowered them to demand special privileges or liberties from the count of Toulouse over the 12<sup>th</sup> and 13<sup>th</sup> centuries.

In the midst of this turbulent period, sometime before 1141, Count Alphonse-Jourdain set aside a portion of the city of Toulouse as a protected area, demarcated with crosses, known as a *salvetat*, along the banks of the Garonne River. Residents of this area received legal and military protection as well as special privileges, such as trading rights and exemption from tolls. The aim of the *salvetat* was to attract new settlers. A second *salvetat*, known as the *gardiage* was established some time between 1189 and 1195.<sup>97</sup>

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<sup>97</sup> John Hine Mundy, *Liberty and Political Power in Toulouse, 1050-1230* (New York: Columbia University Press, 1954), 5-7, 27, 127.



The earliest recorded judicial case in Toulouse to invoke something like a Free Soil principle dates from 1203, when the consuls of Toulouse denied the claims of two recently defeated lords, Arnaud and Aton Izarn, over their former serfs, Pierre and Guillaume, who had taken up residence in the city.<sup>98</sup> The consuls based their decision on municipal customary law, which prohibited the alienation of citizens of Toulouse through sale:

... Et est talis consuetude in hac villa Tolose quode aliquis de Tolosa non potest aliquem hominem statem in Tolosa emere, nec ullo modo adquirere ab aliquo extra Tolosam.<sup>99</sup>

Most historians of medieval Toulouse read this customary law as forbidding the enslavement of the citizens of Toulouse by foreign lords.<sup>100</sup> But a close reading of the decision shows that custom merely forbade the *sale* of residents of the city by foreign lords to other residents. In the documentation for this case, the nouns “slave” and “serf” [*servus, servii*] do not appear at all, though the verb *servire* [to serve or to be the slave of] describes the men’s putative relationship to their masters. The obligation to serve was mutually understood to be: a) freely accepted by the serf/slave, and b) consisting of proprietorship [*dominium*], homage [*hominium*] and fidelity [*fidelitatum*].<sup>101</sup> At the same time, the consuls and all parties to the suit accepted the notion that such service could legitimately be bought and sold amongst citizens of Toulouse

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<sup>98</sup> Mundy, *Liberty and Political Power*, 132-134; Henri Gilles, *Les Coutumes de Toulouse (1286) et leur premier commentaire (1296)*, (Toulouse: Recueil de l’Académie de Législation, 1969), 147, n. 2 ; “Jugement des consuls prononçant la liberté de deux serfs de Verfeil établis à Toulouse, April 4, 1203,” in *La Commune de Toulouse et les sources de son histoire (1120-1249)*, ed. R. Limouzin-Lamothe, (Toulouse: Didier, 1932), 475-478.

<sup>99</sup> “... such is the custom in the city of Toulouse that anyone from Toulouse cannot buy any person living in Toulouse nor acquire [such a person] in any way from anyone outside of Toulouse.” (*Commune de Toulouse et les sources de son histoire*, 474). Translated for me by Chris Piuma, a graduate student at the University of Toronto; any errors in interpretation are my own.

<sup>100</sup> Mundy (*Liberty and Political Power*, 132) says, “This lawsuit demonstrates a conviction that the inhabitant of Toulouse could not but be free, that `town air made free.’” Gilles states that this case formed the basis of Article 155b, discussed below (*Coutumes de Toulouse*, 147, n.2).

<sup>101</sup> The *hominium* included an economic duty to pay taxes, such as the annual head tax [*chevage*], a tax on marriage outside the domain [*formariage*] and an inheritance tax [*mainmorte*] (Bloch, *Slavery and Serfdom*, 37-47).

or between foreigners. The case therefore hinged on whether the masters, Arnaud and Aton Izarn, and the putative serfs, Pierre and Guillaume, were citizens of Toulouse. To be “of Toulouse,” a man was required to a) stay and remain [*stabant et steterant*] in the city for an unspecified period of time, b) perform the military duty, c) follow the customs, and d) pay taxes [*fecerant exercitus huius ville et consuetudines et husus*]. There was no requirement that the citizen be born in the city, nor did Toulouse require a specific term of residency, such as the “year and a day” common to so many medieval cities.<sup>102</sup> On April 4, 1203, the consuls of Toulouse ruled in favor of the former serfs, Pierre and Guillaume, on the basis of the many witnesses who could testify to their citizenship, while “Arnaud proved nothing with witnesses from the city.” Though the court freed the brothers from Arnaud Izarn, it left open the possibility claims by the original masters, who had sold the men to the Izarns in the distant past.<sup>103</sup>

Toulouse’s Free Soil principle evolved over the thirteenth century. On May 10, 1226, the excommunicated and besieged Count Raymond VII of Toulouse permitted the city consuls to expand the *salvetat* by about a league, with a maximum radius of about thirteen kilometers from the center of town.<sup>104</sup> The consuls reminded the count of an ancient tradition whereby:

Aucune personne établie dans ce territoire ne peut être réclamée par des seigneurs étrangers; mais ni les hommes du comte, ni ceux des citoyens et bourgeois de Toulouse n'ont droit d'invoquer le privilège à l'encontre de leurs maîtres.<sup>105</sup>

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<sup>102</sup> Susan Reynolds, *Kingdoms and Communities in Western Europe, 900-1300* (Oxford: Clarendon Press, 1997), 114; David Nicholas, *The Growth of the Medieval City: From Late Antiquity to the Early Fourteenth Century* (London and New York: Longman, 1997), 157.

<sup>103</sup> “Jugement des consuls,” 477.

<sup>104</sup> John Hine Mundy, *Liberty and Political Power*, 125.

<sup>105</sup> E. Roschach, *Inventaire des archives communales antérieures à 1790, tome I, Série AA, nos 1 à 60*, (Toulouse, 1891), AA 2, no. 84.

The count was probably only too happy to reaffirm this tradition since it loosened the bonds of his rivals' serfs, inducing them to come live in Toulouse and fight to protect his realm. In 1237 the defeated Count Raymond VII was forced to offer his daughter, Jeanne, in marriage to Alphonse of Poitiers, brother of King Louis IX of France, marking Toulouse's submission to the French crown. Raymond VII died in 1249 and the county of Toulouse passed to Alphonse and Jeanne. Alphonse and Jeanne died childless in 1271 and the county of Toulouse entered into the royal domain.<sup>106</sup> In the summer of 1283, Alphonse's nephew King Philippe III accepted a comprehensive list of 160 *coutumes* when he passed through the city.<sup>107</sup> Included among Toulouse's liberties was the right of asylum hinted at in the consular decision of 1203 and affirmed by Count Raymond VII in 1226. The 1283 articulation of Toulouse's Free Soil principle reads:

Item, est usus et consuetudo Tholose quod homines venientes in Tholosa causa habitandi et ibi habitantes undecunque venerint, quamvis habeant dominos, possunt et debent ibi stare liberi a dominis suis et facere negotia sua sine petitione et impedimento et contradictione dominorum suorum et quod dicti domini non possunt nec debent ipsos homines sic in Tholosa habitantes vel in barriis in aliquo fortiare ratione seu occasione domini.<sup>108</sup>

The Free Soil principle specified in 1283 was more expansive than either the consular decision of 1203 or the 1226 pronouncement: men of Toulouse could operate in contradiction to the will

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<sup>106</sup> William Chester Jordan, "Alphonse of Poitiers," *Medieval France: An Encyclopedia*, ed. William W. Kibler, (Routledge, 1995), 27.

<sup>107</sup> Gilles, *Les coutumes de Toulouse*, 15-17; Adolphe Tardif, *Le droit privé au XIIIe siècle: d'après les coutumes de Toulouse et de Montpellier* (Paris: A. Picard, 1886), 6-7.

<sup>108</sup> Gilles, *Les coutumes de Toulouse*, 147; Adolphe Tardif, *Coutumes de Toulouse publiées d'après les manuscrits 9187 et 9993 fond latin de la Bibliothèque nationale*, (Paris: Alphonse Picard, 1884), 77; Tardif, *Droit privé*, 2. John Ott, Associate Professor of medieval history at Portland State University offers this rough translation: "[I]t is the use and custom of Toulouse that men [*hominess*] coming to Toulouse to take up residence, and living there no matter where they are from, although they may have lords, they can and ought to be able to remain free from their lords and to carry out their business without petition and the impediment or contradiction of their lords. The said lords shall not nor ought not to force in any matter those men so living in Toulouse or in the suburbs, by the lord's reason or whim" (private communication, 1/23/2008).

of their former lord. Though this customary liberty was one of twenty rejected by Philippe (he approved the other 140 liberties), he died soon after.<sup>109</sup>

Almost a century later, in 1373, Louis d'Anjou, the lieutenant of the French king for Languedoc, affirmed the Free Soil principle of Toulouse in a case concerning a Greek slave, Anthony Soldani, who had fled his master in Perpignan. When royal officers came to Toulouse to confiscate the escaped slave, the *capitouls* challenged the crown for having violated the city's privilege. Louis d'Anjou ultimately supported the municipal leaders.<sup>110</sup> Perhaps Philippe's objections had been forgotten in the intervening years while the counselors of Toulouse had kept the Free Soil tradition alive. The 1373 case brought Toulouse's Free Soil principle into conflict with slaveholders of Perpignan, a pattern that would continue well into the fifteenth century. The fact that the *capitouls* and the crown's representative were willing to uphold their tradition in the face of foreign challenges and royal functionaries must have encouraged other slaves to attempt similar escape.

The Parlement of Toulouse met for the first time in 1420.<sup>111</sup> The stream of slaves escaping from Perpignan to Toulouse drew the ire of the King Alfonso V of Aragon. In 1427, he sent a messenger to the new court with letters patent from the governor of Roussillon and Cerdagne demanding compensation for seven fugitives. In this case, the Parlement of Toulouse decided that the slaves should be returned to Aragonese authorities, perhaps because they had

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<sup>109</sup> Tardif, *Coutumes de Toulouse*, ix-xxi ; Gilles, *Coutumes de Toulouse*, 18-19.

<sup>110</sup> Adolphe Tardif, *Coutumes de Toulouse*, 77; Philippe Wolff, *Commerces et marchands de Toulouse (vers 1350 – vers 1450)*, (Paris : Librairie Plon, 1954), 155, n. 252.

<sup>111</sup> This was the second *parlement* after that of Paris. The origins of the Parlement of Toulouse are obscure. The foremost historian of its first century, André Viala, speaks only generally of the "diverse vicissitudes" and weak royal administration that caused it to be established. André Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ* (Albi [France]: Reliure des Orphelins, 1953), 1: 43-50.

only reached the city of Beziers, and had not entered the city of Toulouse itself.<sup>112</sup> In any event, the court's decision makes it clear that in 1427 Free Soil was not envisaged as prerogative of the French kingdom but was limited to the city of Toulouse. Not only was French Free Soil not advanced by the royal attorney in this case (nowhere does he claim that the slaves are free by setting foot on French soil), his assertion that such slaves should be considered royal property makes it clear that nothing prevented the king or others from owning slaves in France.<sup>113</sup>

A key development in the transformation of Toulouse's municipal tradition of Free Soil to a national principle of the French kingdom occurred in 1440. On 28 September, Jean Solarii, syndic of the *capitouls* came before a Montpellier commission established by treaty between the kings of France and Aragon to resolve cases of slaves escaping to Toulouse. As in early cases, the *capitouls* were accused of harboring fugitive slaves. Solarii gave an eloquent defense of Toulouse's Free Soil principle:

... concédé à la ville par ses comtes, puis confirmé par les rois, et ... joui depuis par l'effet d'une coutume immémoriale, [the Free Soil principle] est l'un des plus beaux titres de la glorieuse cité. Si [Toulouse] n'en avait pas usé, ses tribulations, en particulier les guerres anglaises, l'auraient dépeuplée beaucoup plus.... Qui oserait douté que la liberté est naturellement favorable et désirable pour tout être vivant ? Pour celui qui raisonne correctement, la servitude a été en effet introduite par la violence et la crainte, contrairement au droit naturel premier. Le roi de France est surnommé glorieux et très chrétien, il est vénéré même chez les infidèles et les barbares, *sa renommée réside dans la liberté de tous les habitants de son royaume*. Aussi, soutenir que le monarque ne peut concéder le privilège discuté revient à contredire la majesté royale ; c'est une injure,

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<sup>112</sup> Viala, *Le Parlement de Toulouse*, 1:566-567. Viala erroneously mentions the case as occurring in 1527. See also Charles Verlinden, *L'esclavage dans l'Europe médiévale* 2 vols. (Brugge : De Tempel, 1955, 1977), 1:815-816,

<sup>113</sup> Viala, *Parlement de Toulouse*, 1: 567. Viala gives the customary foundation of Toulouse's Free Soil principle as Title V, Article 1: "si quelqu'un déclarait vouloir entrer à Toulouse et en devenir citoyen et si un autre que le maître de son corps s'emparait de lui en chemin, le marquait, ou le pendait, les consuls et la communauté de Toulouse devaient le réclamer, le garder, et s'il était capturé, le reprendre ainsi que tous ses biens, comme s'il était citoyen de Toulouse." (*ibid.*, 1: 568-569). It is not clear whether he is quoting this from the original judicial documents or extrapolating from his knowledge of Toulouse's customary law. Viala seems completely unaware of the *consuls'* thirteenth- and fourteenth-century evocations of the Free Soil principle, beginning only with the 1402 case discussed by La Faille.

pour la vengeance de laquelle tous ses fidèles sujets doivent se dresser, s'armer des lois et du droit. [emphasis mine]<sup>114</sup>

In this way, Solarii linked the privilege of Toulouse for the first time with the protection of the French crown.

Finding against the *capitouls'* petition for removal, the Montpellier commissioners ultimately rejected the Toulousan privilege on 24 January 1442. Later that summer, the commissioners concluded an accord between France and Aragon, which was ratified by Charles VII in September. Nevertheless, the *capitouls* pursued their appeal to the Parlement of Paris in September 1444, supported by the royal *procureur*. On 19 September, the court declared the Aragonese commissioners *défaillant*, deprived of all defense. In 1445 the Parlement of Paris agreed to register the 1442 accord but rejected the portion that violated the Free Soil privilege of Toulouse.<sup>115</sup>

The ongoing conflict between Aragon and the newly consolidated kingdom of France during the first half of the fifteenth century was crucial to the transformation of Toulouse's local municipal Free Soil principle into a "fundamental maxim" of the French nation. By the late sixteenth century, the transformation was complete. In his influential *Six livres de la République*, Jean Bodin described Free Soil as a *national* principle, citing two decisions by the Parlement of Toulouse, witnessed by him during his residence while a law student there from 1550 to 1560:

[M]esme que l'esclave d'un estranger est franc & libre, si tost qu'il a mis le pied en France...<sup>116</sup>

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<sup>114</sup> This Viala's summary of Solarii's speech (Viala, *Parlement de Toulouse*, 1: 571).

<sup>115</sup> Viala, *Parlement de Toulouse*, 1: 570-572, Verlinden, *L'Esclavage dans l'Europe médiévale*, 1:816-817; La Faille, *Annales de la ville de Toulouse*, 1:203 ; and Dom Devic, Dom Vaissète, and Ernest Roschach, *Histoire de Languedoc*, (Privat, 1886-1889), 9:12.

<sup>116</sup> Jean Bodin's *Six livres de la république*, (Lyon : Jean de Tournes, 1579), Book I, chap. V, 43.

By 1571, the Parlement of Bordeaux had taken up the Free Soil principle, freeing a shipment of slaves on the grounds that, “la France, la mère de liberté, ne permet aucuns esclaves.”<sup>117</sup>

Apparently unaware of the medieval municipal roots of French Free Soil, the Cour royale de Paris accepted the tradition as articulated by Thureau and the *procureur général* Michel Hébert, and cited it as the basis of their decision of 23 December 1843 that Furcy had been free since birth.

## Conclusion

The Cour royale’s decision that Furcy was free, indeed that his mother had been legally so since her arrival in Lorient in 1774, is at once triumphant and unsettling. Indeed, it raises more questions than it answers.

While the court condemned Lory’s heirs to pay for court costs and denied their demand against Furcy for damages and interest, there is no indication that Furcy received any compensation for living the first forty-one years of his life as a slave.<sup>118</sup> There would be no reparations here.

Though Furcy’s life is remarkably well documented for someone held as a slave, the absence of evidence in his own voice leaves only speculation with regard to his motives, beliefs and consciousness. Furcy’s actions make it clear that, at least from the age of thirty, he believed himself a free man, and tenaciously engaged all the legal and administrative means at his

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<sup>117</sup> Pierre de Saint-Romuald, *Ephemerides ou journal chronologique et historique*, 2<sup>nd</sup> ed. (Paris, 1664), 127.

<sup>118</sup> *Plaidoyer*, 46.

disposal to resist the Lory's control and to seek formal recognition of his free status by multiple governments.

Several lacunae in the documentation of Furcy's life point to troubling problems of interpretation. Why did Furcy initially challenge his enslavement in 1817? Did Lory renege on a tacit understanding that Furcy would be manumitted, as his mother had been, at the age of thirty? Did the king's ban of the slave trade in January of that year make Lory appear vulnerable and encourage Furcy to challenge his master head-on?

Some time between his emancipation in 1829 and the filing of his appeal to the Cour de cassation in 1835, Furcy traveled to Paris, ostensibly to overturn the colonial decisions of 1817 and 1818. When, precisely, and why did Furcy leave Mauritius, where he lived as a free man (and apparently a successful *confiseur* of some means), and travel to France?

Some insight can be gained by widening the focus from France and its colonies to the wider Atlantic. The English Admiralty Court decided the important case of *Grace*, a slave, in 1827. *Grace* had accompanied her mistress to England from the colony of Antigua in 1822 and voluntarily returned to the colony the following year. Lord Stowell ruled that although arrival in England effectively suspended colonial slave law that was in direct violation of English law (for example, the incapacity of slaves to sue their masters), mere arrival in the metropole did not confer emancipation, effectively outlawing the Free Soil principle in England.<sup>119</sup> As it was English customs officials who had secured Furcy's free status in Mauritius (much as they had initiated *Grace's* lawsuit in Antigua), perhaps Furcy, hearing of this decision, decided to challenge the French Bourbon court's ruling, so as to be certain of his freedom to return there.

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<sup>119</sup> John Haggard, *Reports of Cases Argued and Determined in the High Court of Admiralty*, vol.2 (1825-1832), (London: Saunders and Benning, 1833), 117; *Plaidoyer*, 34.



The two legal arguments advanced in favor of Furcy's freedom, race and Free Soil, hint at another significant problem of interpretation. Was Furcy, first and foremost, the champion of Indian laborers who understood themselves free by virtue of racial privilege? Or was Furcy primarily the latest in a series of men and women to claim the benefits of French Free Soil for anyone lucky enough to travel to the metropole? Neither avatar was a radical abolitionist. Furcy's case did not overtly challenge the institution of slavery *tout court*; indeed, the law of slavery thrived on the distinction between metropolitan and colonial law embodied in the Free Soil principle. Winning with the racial argument would have liberated several thousand Indian slaves in Ile Bourbon and the rest of the empire. The most that Furcy's case could hope to achieve through the Free Soil principle was to reaffirm the freedom of hundreds (possibly thousands) of former slaves resident in the metropole. However, these should technically have been free by virtue of the Ordinance of 29 April 1836. Thus, Furcy's victory was primarily symbolic. A free man twice over (in Mauritius and by virtue of the 1836 law and his travel to France), Furcy's lawsuit confirmed his free status a third time, this time at the highest court of France, thus offering a modicum of assurance to other former slaves in the metropole, and possibly the right to travel as a free man to Ile Bourbon.

Finally, no documentation has yet appeared to indicate what happened to Furcy following the Cour royale's 1843 decision. Did he remain in Paris or return to Ile Bourbon to reunite with his sister Constance, if she still survived? Did he live to celebrate the abolition of slavery in 1848? What did "freedom" mean to someone like Furcy, before and after general emancipation? Such questions beg further research.

As I suggested at the outset, this paper is an inquiry into an instantiation of *vernacular law*. From sixteenth century onward, the association between the French nation and the condition of freedom was so powerful that a popular understanding emerged that merely setting foot on French soil made one free. In France the Free Soil principle gained early currency among jurists, thanks in part to the influence of Jean Bodin, but it did not issue from the authority of a particular monarch or statutory pronouncement. Rather, Free Soil was understood popularly as a kind of unwritten customary constitutional principle, a fundamental maxim.

The Free Soil idea was not peculiar to France. From the sixteenth through the eighteenth centuries, many slaves and Englishmen alike believed that arrival in the English metropole and baptism would make a slave free, and acted according to this vernacular understanding of the law. A similar idea prevailed in the Netherlands, though Dutch courts rejected the popular notion when it was legally tested in 1736. In 1761, the Portuguese prime minister Pombal declared Portugal Free Soil (though his intent, like that of the French 1777 *Police des Noirs*, was clearly to quarantine the metropole from the immigration of indigent blacks). Indeed, throughout the Atlantic world (and beyond), from the sixteenth century through the abolition of slavery in the nineteenth, judges, assemblies and statist powers wrestled over racial justifications for enslavement and the popular principle of Free Soil. Individual successes and failures had international repercussions as word spread from one regime, orally and through print, to other parts of the slave system.<sup>120</sup> Free Soil, while

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<sup>120</sup> Sue Peabody, "Slavery, Freedom, Statehood and the Law in the Atlantic World, 1700-1888," in *Democracy and Culture in the Transatlantic World: Third Interdisciplinary Conference, October 2004*. The Maastricht Center for Transatlantic Studies, Maastricht, The Netherlands. (Växjö, Sweden: Växjö University, 2005), 233-240.

sometimes supported by official laws and judicial decisions, was kept alive by the aspirations of people suffering in slavery. Who is to say whether the American slave Dred Scott, living in Louisiana in 1843, was not inspired by Furcy to claim his freedom from his master's widow when he moved to Missouri in 1846?

Although the effects of Furcy's Free Soil victory were perhaps more symbolic than real, his decades-long struggle for freedom does not deserve to be forgotten. As a non-white anti-slavery activist, he surely deserves a place in the history of global anti-slavery, a history that continues to be written.