The Code Noir as an Archive of Resistance

Reading the Atlantic Revolution and Colonial Law from Below

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What does it mean to examine political modernity from below, specifically from the position of the enslaved person – not as a metaphor or a footnote, but as a lens for analyzing foundational political and legal concepts? This question guides the reflections that follow.

I argue that foregrounding the position of the enslaved provides a productive point of departure for understanding how colonial and racial epistemologies, imaginaries, and institutions have shaped core Western concepts, such as democracy and the rule of law. More importantly, this approach invites us to ask what becomes thinkable when we treat the enslaved not as an absence in accounts of modernity, but as a figure whose resistance leaves traces within the colonial archive – traces that can be transformed into a generative site of theorization. In this sense, such a perspective offers a methodological tool for reflexive legal scholarship at the heart of the Centre for Advanced Studies *RefLex*.

Foregrounding the experiences and articulations of the enslaved departs sharply from the established conventions of political theory – the discipline in which I was trained. It challenges prevailing modes of doing political and legal theory, as well as intellectual history. Dominant Euro-American traditions of political, legal, and constitutional thought not only lack sustained theoretical engagement with colonialism, racism, and enslavement as historical forms of domination whose legacies persist today, but are also marked by what Siba N'Zatioula Grovogui calls the "non-reflexivity of political theory" regarding colonial and racial epistemologies, and the premises and tacit assumptions that rest upon them.

What is needed, then, is not merely a moral critique, but a twofold task: First, to theorize how deeply colonial and racial epistemologies are woven into modernity's conceptual fabric; and second, to interrogate how these epistemologies continue to shape political and legal thought.

In what follows, I pursue this argument by turning to two scenes of the political, located at distinct nodal points of the Atlantic Revolution – the entangled histories of the American, French, and Haitian Revolutions – which together stand at the origin of modern democracy and law, even as they were intimately interconnected: the Western European coffeehouse and the Caribbean plantation.

I then examine the resistance of the enslaved against colonial slave law to explore what Anthony Bogues calls "a political, social, and intellectual history of thought of the enslaved". Recovering this largely neglected genealogy, I argue, both compels and enables us to rethink our methodological engagement with colonial law. Finally, I discuss the implications of this approach for the project of reflexive globalization in legal scholarship and for the research pursued within the *RefLex* Centre.

The Coffeehouse and the Plantation as Entangled Scenes of Modernity

The colonial trope of the slave was crucial for early modern political theory. The antinomy of freedom and slavery provided a blueprint for rethinking the human, the universal, and the political amid the shift from theological justifications to natural law. In canonical Enlightenment theories by Thomas Hobbes and John Locke, "the slave" appears largely as a metaphor to sharpen the concept of freedom, while the real enslaved subject disappears. Today it is common to acknowledge Hobbes's and Locke's involvement in colonial enterprises and the enslavement of people of

African descent. Yet what follows from this acknowledgement on a conceptual level remains unclear. While some critical scholars analyze how colonial violence and racial capitalism have shaped these philosophers' conceptions of freedom and property (Katja Diefenbach, Iris Därmann), I propose refusing and reversing the colonial trope of the slave. This trope ontologizes the colonial fiction of the slave as a "thing" (John F. Campbell) and renders it conceptually impossible to grasp that the enslaved person was always a person – a conspirator, a rebel, – as Caribbean historian Elsa Goveia emphasized in her early study of colonial slave laws. What would it mean, by contrast, to foreground the agency, political imaginations, and desires of the enslaved?

First, we must expand our account of modernity against Eurocentric limits. Jürgen Habermas's *The Structural Transformation of the Public Sphere* tells a straightforward story of democracy: the bourgeois public sphere emerges in European coffeehouses, cultivates reason, and culminates in the French Revolution, which both establishes and, through colonization, globalizes constitutional democracy and universal human rights. This triumphant narrative, however, rests on the erasure of the enslaved, which becomes visible when we draw a thicker, more material picture of the coffeehouse. Coffee, the fuel of this public sphere, carries a denser history of modernity, as historians have shown (Brian William Cowan). Coffeehouses depended on a global commodity chain linking Africa, the Near East, the Caribbean, and European cities like Vienna, Amsterdam, and London. These cities were tied to the Caribbean through finance capital – an entire system of credits, loans, and insurance developed in the Atlantic sphere on the basis of the enslavement of African people (Ian Baucom) – and through men who drank coffee there, incorporated colonial commodities into daily live, and were sometimes served by enslaved persons present in Europe itself: gentlemen embodying a new hegemonic masculinity who were often "absentees," plantation owners whose wealth derived from enslaved labor.

Thus, the coffeehouse was not only a site of rational deliberation but a colonial and racial space of sensorial experience and commodity exchange, dependent on the commodification of human beings. As "human cargo" in the transatlantic enslavement trade (Sidney Mintz), with the legal status of "thing" on Caribbean plantations, the enslaved provided the material conditions for the emergence of democracy and the democratic revolution in North America and Europe. More than historiographical correction, tracing democracy's rise as both normative concept and political regime alongside this material genealogy raises conceptual questions obscured when colonial entanglements are framed as contradictions between universal ideas and non-ideal conditions, or as mere problems of exclusion.

If we understand Western democracies as "empires of democracy" (Tyler Stovall), we must challenge the "Westphalian commonsense" of political theory (Siba N'Zatioula Grovogui) and recognize empire's ontological primacy over the nation-state (Mustapha Kamal Pasha). We must also interrogate democracy's constitutive racial underpinnings, as Barnor Hesse's concept of "racialized modernity" suggests. These interventions – from Black political thought to postcolonial, decolonial, and critical legal studies – revise modernity's conceptual vocabulary, offering reflexive legal scholarship a critique of coloniality and raciality to pursue and develop further.

Reading the Code Noir as an Archive of Resistance

If analysis of colonial entanglements reveals that the European public sphere and the Atlantic Revolution materially depended on enslaved labor, it compels us, in a second step, to decenter the bourgeois and the citizen as the standard political subject and instead recognize the enslaved's agency as equally constitutive in the making of modernity. Foregrounding enslavement in the Atlantic world as lived experience means taking the plantation seriously as a central institution of modernity – the site of the "otherwise modern" (Michel-Rolph Trouillot). From the enslaved's perspective, the plantation, rather than the coffeehouse, emerges as the "political architecture of modernity" (Denise Ferreira da Silva), where modern capitalism operates through enslavement, including the

"fabrication of racial subjects" (Achille Mbembe). Central to this regime is law's capacity to "make and unmake persons" (Colin Dayan).

Yet the black experience in Western modernity involves not only "thingification" (Aimé Césaire) but also resistance. This archive of resistance becomes visible when reading the colonial archive against the grain – specifically through the *Code Noir*, the first written law of the French colony of Saint-Domingue. Louis Sala-Molins describes the *Code Noir* as "the most monstrous juridical text produced by modernity." It defines enslaved people as property (*meubles*/"furniture," Art. 44), denying their personhood and establishing their "legal inexistence" (Louis Sala-Molins).

Paragraph by paragraph, it codifies attempts to reconcile public security in the colony with the enslaver's private sovereignty (Malick W. Ghachem), including racial terror and torture for total value extraction. Reflexive legal scholarship must ask how we treat this document of colonial violence. Usually interpreted as a tool of dehumanization and control of the enslaved population, analyzed article by article, such exegesis risks rehearsing the enslaver's authority and affirming the "legal fiction" that a person could become a thing (Dayan).

The *Code Noir* can instead be read from below, as Sala-Molins suggests – not primarily as a legalization of violence, but as a response to the enslaved's resistance and refusal to be reduced to "things." It prohibited what it feared and what persisted: gatherings, free movement, acts of sabotage, conspiracy, and revolt. Seen from below, the *Code Noir* appears as an archive of the enslaved's political agency, preceding the enslaver's legal authority and harboring "hidden transcripts" (James C. Scott) of the enslaved's resistance against colonial, racial, and capitalist domination.

We can read the *Code Noir* alongside other archives of resistance documenting freedom practices: colonial reports of fugitivity, forged passes and emancipation papers, and transgressions of racialized dress codes. This archive – unlike legalistic readings reliant on the colonial trope of the slave – is inhabited by individuals with names and bodies who moved beyond the plantocratic order, like Guiget: "Guiget, a 30-year-old black woman who is blind in one eye, set off for the plains with a donkey and an eight-day pass. There has been no sign of the *marrone* for two months" (Jean Fouchard).

Reading the colonial archive against the grain reveals a maroon genealogy of the Atlantic Revolution that enlarges our political imaginary. Marronage marks more than individual acts of escape. Enslaved and fugitive people collectively built alternative forms of sociality and normativity – the "counter-plantation" (Jean Casimir) as a space of experimenting with other ways of world-making. In this alternative genealogy, the Haitian Revolution as the most visible accumulation of the enslaved's resistance (Cary Hector) is not only a constitutional drama, entangled with the French Revolution. It also follows a different path of modernity written by the enslaved, with the Quilombo of Palmares as the first state in the Americas (1605–1695), built by fugitives together with indigenous communities and poor whites (Cedric J. Robinson). The counter-plantation thus appears as a reconstruction of modernity by the maroons, with codes and concepts that differ from Western conceptions and practices of law and constitutionalism. Practicing legal scholarship reflexively means making these dimensions, often concealed behind colonial and racial epistemologies, objects of inquiry and critique emerging from the underside of modernity.

Reflexivity as Scholarly Practice

What do these counter-readings and counter-archives imply for reflexive globalisation as a research paradigm? Reflexive globalization has three dimensions: epistemic (which theories and archives we draw on), analytic (how we conceptualize global entanglements and colonial legacies), methodological as well as political (how and under which conditions we produce knowledge).

First, reflexive globalization requires bringing into conversation epistemologies from the Global South and critical theoretical genealogies that are marginalized in the Germanophone academic landscape and increasingly pressured by democratic backsliding, the erosion of academic freedom, and right-wing attacks

on critical knowledge production. Reflexivity means recognizing these as sites of theorizing, rather than treating them as mere empirical sources.

Second, reflexive globalization calls for an analytic of global entanglements and colonial legacies. This involves reworking the Global North/South divide by acknowledging a Global South in the North, embodied by racialized and minoritized groups – Roma, refugees, migrants, and those "migranticized" (Fatima El-Tayeb) within a Europe still marked by racial logics despite its public silence on race (Alana Lentin). It also means extending the scope of scholarship across oceans and continents, against "North Atlantic Universals" (Michel-Rolph Trouillot), by engaging concepts such as the Indian Ocean (Isabel Hofmeyr), the Black Pacific (Robbie Shilliam), the "intimacies of four continents" (Lisa Lowe), and inter-imperial constellations (Anca Parvulescu/Manuela Boatcă), that reach into Eastern Europe, the Ottoman Empire, Russia and Japan.

Third, reflexive globalization has methodological implications. It requires asking what material we select and how we engage with it. The discussion of the *Code Noir* can be extended into a broader question of how legal documents of domination can be read in ways that foreground resistance and lived experience rather than merely rehearsing the authority of colonial law. For RefLex, questions of methodology also include reflecting on inter- and transdisciplinary research designs when bringing together scholars and practitioners whose knowledge emerges from the field and from experiential engagements with political and legal formations.

Finally, reflexive globalization cannot ignore the political and material conditions of scholarship itself. It requires confronting the North-South divide in academia, Northern dominance in the global production and circulation of knowledge, and the neoliberal university's focus on quantifiable outputs and third-party funding. Any serious project of reflexive globalization must address who sets research agendas, whose work is recognized as theory, and how structural inequalities shape what can be researched, by whom, and with what authority.

If practiced in this way, the research communities forged under the roof of the *RefLex Centre* can help cultivate alternative political and legal imaginaries of democracy and justice – imaginaries that are needed today more than ever.

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