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**IDENTIFYING IDENTITIES: THE POLITICS OF
COMMUNITY IN HISTORICAL AND
CONTEMPORARY PERSPECTIVE**

**RACE, NATION-BUILDING AND LEGAL TRANSCULTURATION
DURING THE HAITIAN UNIFICATION PERIOD (1822-1844):
TOWARDS A HAITIAN PERSPECTIVE**

*Charles R. Venator Santiago**

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I. INTRODUCTION

Dominican and Haitian historians have traditionally emphasized the centrality of race in shaping the legal and political relationship between the eastern and western parts of the island of *La Tortuga* during the Haitian unification period, which lasted from 1822 until 1844. To be sure, the Haitian Revolution and its republican project was rooted in a distinct ideology that created a safe nation-state for people of African and Indoamerican heritage in a world dominated and governed by an ideology of white supremacy. In contrast, Dominicans argued that the Haitian

* The author can be contacted via e-mail at csantiago@ithaca.edu. This Article was prepared for the LatCrit Colloquium on International and Comparative Law held in Buenos Aires, Argentina on August 12-14, 2003. It is intended to be a brief sketch of a larger and ongoing research project on legal transculturation in the Caribbean. I am indebted to Ginetta E.B. Candelario, Ambassador Guy Alexandre, Julio Enrique de Campo and Eddy E. Jaquez from the *Archivo General de la Nación*, Ambassador William Páez Piantini, and Sra. Cristina de Sanchez from the *Secretaría de Estado de Relaciones Exteriores de la Republica Dominicana* for providing me access to important materials on Haitian and Dominican history. My research has also been funded by the generous support of Provost Peter Bardaglio and the Provost Office at Ithaca College. I would also like to thank Bob Cottrol for inviting me to participate in his panel.

constitutional provisions denying citizenship entitlements, and by extension property ownership rights, to white foreigners prevented the integration of the eastern part of the unified island republic.¹ It followed that white Dominicans, or at least a small minority of these, saw themselves as an oppressed minority living in a nation that prevented them from becoming citizens.² Perhaps responding to this argument, the Haitian historian Jean Price-Mars wrote that President Jean Pierre Boyer left the *status quo* in place in the eastern part of the island, and did not actively enforce the racist provisions of the Haitian Constitution of 1816 because to do otherwise could be perceived as a betrayal of the ideological principles of the revolution.³

The problem with this argument lies in the fact that earlier "Haitian" constitutions made special exceptions for particular whites,⁴ namely Poles, Germans, white women, and other foreign military and public officials that aided the Haitian project. It follows that the Haitian unification project, first under the Boyer administration and later under leadership of Charles Herard, could have made a special constitutional exception to accommodate the claims raised by white property-owners residing in the eastern part of the island following the historical precedents. This paper will address some of the issues present in the relationship between law, race, and nation-building during the Haitian unification period. I am especially interested in engaging several distinct perspectives on this relationship as articulated by various Haitian scholars.

This Article is part of a larger ongoing research project on legal transculturation in the Caribbean and, more specifically, part of a larger project on the relationship between law, race, and nation-building in Haiti. Because I have already discussed some of the relevant historical questions elsewhere,⁵ this Article will be limited to some preliminary reflections on the constitutional provisions informing the relationship between law, race, and nation-building in the eastern part of Haiti during the unification period. I am especially interested in addressing some of the arguments raised by Haitian historians regarding the impact of racially based

1. EMILIO RODRÍGUEZ DEMORIZI, *LA CONSTITUCIÓN DE SAN CRISTÓBAL: 1844-1854*, 376-77 (1980).

2. See generally FRANKLIN FRANCO PICHARDO, *EL PENSAMIENTO DOMINICANO: 1780-1940* (2001).

3. JEAN PRICE-MARS, *LA REPÚBLICA DE HAÏTÍ Y LA REPUBLICA DOMINICANA* 300-301 (Sociedad Dominicana de Bibliófilos, Inc. 2000) (1953).

4. All of the Haitian constitutions discussed in this Article are contained in LUIS MARINÁS OTERO, *LAS CONSTITUCIONES DE HAÏTÍ* (1968).

5. For an expanded discussion of this argument, see Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During The Haitian Unification Period (1822-1843): Towards A Dominican Perspective* (forthcoming 2004) (proceedings from LatCrit VIII, 2003).

constitutional provisions on the efforts to build an island-wide Haitian republic. The Article will be divided in three parts, which introduce the reader to some important arguments that provide a foundation for my overall project.

II. A NOTE ON LEGAL TRANSCULTURATION

Prior to the French and Haitian occupations, Santo Domingo's legal institutions were based on the Spanish *Laws of the Indies*. Wenceslao Vega B. argues that the French occupation of the eastern part of the island beginning in 1802 introduced the emerging revolutionary legal system in Santo Domingo leading to the establishment of a mixed legal regime. In his words:

Durante este período los franceses introdujeron un interesante experimento en el orden legal y judicial, al establecer un régimen mixto, manteniendo una dualidad de derechos, aplicando para los franceses que llegaron a habitar la colonia sus leyes metropolitanas, pero conservando las antiguas leyes españolas para los habitantes de origen español. En efecto, por Decreto de Napoleón de 1802 se ordenó que debían continuar vigentes todas las leyes, usos y divisiones, tanto civiles como eclesiásticas, que habían regido a Santo Domingo durante el período colonial español.⁶

This mixed legal regime would be in place until the Spanish reclaimed sovereignty over Santo Domingo. Between 1808 and 1821 Spain managed to re-occupy the area. This period is generally known as the governance of *La España Boba*. Vega B. contends that between 1812 and 1814, the Spanish regime introduced the liberal constitutional principles arising from the Cadiz movement.⁷ However, soon after the return of Fernando VII,

6. WENCESLAO VEGA B., *HISTORIA DEL DERECHO DOMINICANO* 106 (2002).

During this period the French introduced an interesting legal and juridical experiment, by establishing a mixed law regime that maintained a duality of rights, which extended metropolitan laws to French citizens arriving from the metropolis, while using the old Spanish laws for the inhabitants of Spanish heritage. In fact, in 1802, by Napoleonic decree, it was ordered that all Spanish laws, uses (sic) and divisions that were in place prior to the French occupation, both civil as well as ecclesiastical, were to remain in use.

Id. (author's translation).

7. *Id.* at 112.

legal actors in the island sought to re-introduce the “colonial” legal institutions.⁸

In contrast, the Haitian revolution introduced a succession of constitutions between 1805 and 1816 which were shaped by both the regional demands and a local interpretation of the emerging Napoleonic legal narrative. The Haitian occupation of the eastern part of Santo Domingo, however, sought to create an island-wide administrative unity under the tenets of the Constitution of 1816. Between 1816 and 1843, Jean Pierre Boyer transplanted the Haitian Constitution of 1816 to the eastern part of the island and governed Santo Domingo with Haitian legal institutions. In 1843 the rebel forces of Charles Herard managed to oust Boyer. In 1843, Herard commissioned a constitutional assembly that drafted what is known as the Dominican-Haitian Constitution of 1843.⁹ This short-lived constitutional project incorporated the perspectives of the eastern inhabitants of the island for the first time. However, two months after its adoption, the Dominican Republic seceded from Haiti. The eastern part formally separated from Haiti in 1844 soon after giving rise to a new Dominican Republic, despite the prevalence of annexationist ideologies.

Despite the transplantation of the Haitian constitutional regime, the Boyer administration sought to accommodate the demands and interests of the elite as well as those of most of the inhabitants of the east.¹⁰ Thus, for example, “Dominican” jurists like the infamous Buenaventura Báez were employed in the local legal institutions as jurists. Given the training that local jurists had in the Spanish legal tradition, I suspect that their interpretations and application of the Haitian constitution and the additional codes were informed by the legal culture that shaped their knowledge of law. It may thus be possible to demonstrate that the law in the eastern part of Haiti was more the result of a clash of legal cultures than the direct application of Haitian law. Of course, it is also possible to argue that Haitian law was in itself an arena where jurists trained in the French legal tradition negotiated the revolutionary ideology that sought to inform the creation of a Haitian legal narrative. To this extent, it may be possible to argue that Haitian law can also be understood as a clash of legal traditions, at least during its inception.

Puerto Rican scholars attempting to understand how the U.S. common law tradition has interacted with the Spanish civil law tradition in the formation of a Puerto Rican legal system have used the notion of legal

8. *Id.*

9. *See generally* ALFONSO LOCKWARD, *LA CONSTITUCIÓN HAITIANO-DOMINICANA DE 1843* (1991).

10. *See* VEGA B., *supra* note 6, at 163.

transculturation to describe the resulting interactions.¹¹ The term legal transculturation has generally been used to describe how multiple legal traditions clash with each other, engage in a mutually constitutive relationship, and ultimately form a national legal narrative. It follows that this legal narrative is both informed by multiple legal traditions and is also different from its parental legal sources.¹²

My contention is that a critical reading of the notion of legal transculturation, one that considers the homogenizing effects of nation-building, the relationships of power between competing legal traditions, as well as other dimensions of power inherent in this narrative, can provide an interesting point of departure for the study of the relationship between law and society during the Haitian unification period. This can be accomplished by understanding the law as a “contact zone”¹³ where competing legal traditions clash and engage in a mutually constitutive relationship. In the case at hand it is possible to argue that the first instance of legal transculturation in the eastern part of the island can be discerned from the mixed law regime imposed by the French occupation in 1802. A second instance of legal transculturation can be discerned from the interpretation and application of the Haitian legal narrative in the east by legal actors trained in the Spanish legal tradition. However, the most important example of legal transculturation, albeit episodic, was embodied in the creation of the Constitution of 1843, which incorporated the perspectives of jurists and other legal actors from the eastern part of the island.

III. CONSTITUTIONAL PRECEDENTS

There are at least two important constitutions predating the Constitution of 1816 that provide the key ideological precedents for the Haitian unification project. The Constitution of 1801, albeit short-lived, institutionalized some of the key ideological principles that would inform the revolution. In addition, the Constitution of 1805 codified the revolution’s principles. My contention is that it is possible to find important provisions in these constitutional texts that could have addressed the racialist concerns of the eastern elites. Moreover, the Haitian regime

11. For a more expanded discussion of my interpretation of the notion of legal transculturation, see Charles R. Venator Santiago, *The Uses and Abuses of the Notion of Legal Transculturation: The Puerto Rican Example?*, 13 BERKELEY LA RAZA L.J. 441 (2002).

12. For a discussion of the notion of transculturation, see FERNANDO ORTIZ, *CONTRAPUNTEO CUBANO DEL TABACO Y EL AZÚCAR* (2002).

13. MARY LOUISE PRATT, *IMPERIAL EYES: TRAVEL WRITING AND TRANSCULTURATION* (1992).

could have included a special provision that accommodated the racist concerns of the white elite residing in the eastern part of the island, and still maintained an ideological commitment to the revolution.

The first article of Toussaint L'Ouverture's Constitution of 1801 affirmed the unification of the island — or rather the French colonies — under the principles established by the Treaty of Basilea of 1795.¹⁴ To be sure, L'Ouverture was clear that he was unifying the French territories under one administration and as part of the French empire. This principle would be reaffirmed in every subsequent Haitian constitution up to the Constitution of 1843. Of course, it is possible to argue that the Boyer administration viewed the eastern part of the island as an additional source of labor and revenues as well as a strategic territory that could be used to keep foreign invaders at bay.¹⁵ Notwithstanding this argument, it is possible to argue that from a constitutional perspective the Haitian regime could have viewed the unification as the affirmation of the emancipation of the French colonies.

The central principle of the Haitian revolutionary ideology was the abolition of slavery. The third article of the Constitution of 1801 affirmed the permanent abolition of slavery in the island and the right of the territory's inhabitants to be born, live, and die free and French.¹⁶ More importantly, Article 4 stated that "Toda persona, cualquiera que sea su color, será admitida a todos los empleos."¹⁷ Read together, these two articles affirmed the right of all the inhabitants of the island to be citizens of the nation. In other words, all citizens regardless of the color of their skin were in principle protected by an affirmative vision of the law and were entitled to all of the protections afforded to a national. While it is evident that these provisions were adopted to protect the traditionally marginalized mulattoes and the newly emancipated blacks, it is also evident that L'Ouverture was concerned with a certain degree of national social and economic stability.

The Constitution of 1805 was the first formal constitutional text of the Haitian republic and it sought to institutionalize the revolution's ideology. Like L'Ouverture's text, this constitution affirmed the territorial unity of the island under the Haitian regime and affirmed the right of the republic to govern the emancipated French territories (Article 18).¹⁸ It also affirmed

14. See MARIÑAS OTERO, *supra* note 4, at 109.

15. See John Edward Baur, *Mulatto Machiavelli, Jean Pierre Boyer, and The Haiti of His Day*, 32 J. NEGRO HIST. 307-53 (1947).

16. *Id.*

17. MARIÑAS OTERO, *supra* note 4, at 109. "No person can be denied employment because of the color of their skin." *Id.* (author's translation).

18. *Id.* at 123.

the antislavery provisions (Article 2) and further expanded the anti-discrimination protections present in the earlier text by recognizing various rights to liberty, property, and equality.¹⁹ In addition, this Constitution introduced three crucial articles that defined the racial character of the Haitian nation. These were representative of the revolutionary ideology of the time and they recognized the possibility of extending citizenship rights to some white inhabitants.

To be sure, Article 12 stated that “Ningún blanco, cualquiera que sea su nacionalidad, podrá poner los pies en este Territorio, a título de amo o de propietario y no podrá, en el futuro, adquirir en el mismo propiedad alguna.”²⁰ Clearly the Haitian regime was concerned with the potential re-occupation of the island by French elites and other white foreigners with available resources, the assumption being that wealthy whites could attempt to purchase the island plantation by plantation. More importantly, this clause affirmed the commitment to expel the white master from the colony and simultaneously affirm the sovereignty of the former slaves and subordinated inhabitants of the island.

This article was followed by an important amendment that created a special exception for certain whites. To be sure, Article 13 stated that: “El artículo precedente no surtirá efectos ni con respecto a las mujeres blancas naturalizadas haitianas por el Gobierno ni respecto a sus hijos presentes o futuros. Se incluyen en las disposiciones del presente artículo a los alemanes y polacos naturalizados por el Gobierno.”²¹ This article was further complemented by a provision that made it illegal to discriminate on the basis of color, and further recognized all Haitians as “blacks.”²² It is possible to argue that read together Articles sought to eradicate the tensions between mulattoes and blacks in Haiti by adopting a “generic” racial category that would be symbolic of the revolution. Of course these provisions have to be read in the context of a patriarchal society that treated men as masters of the family and the state, and did not necessarily extend rights to women in general. What is important to recognize, however, is that the Haitian regime envisioned the future development of a black Haitian citizenry that could incorporate individuals of mixed heritage.

19. *Id.* at 121-22.

20. *Id.* at 122. “No white, regardless of his nationality, will be allowed to step on this territory in as a slave or property owner, nor will he be able to acquire property whatsoever in the future.” *Id.* (author’s translation).

21. *Id.*

22. MARIÑAS OTERO, *supra* note 4, at 122. The preceding article will not be applicable to white women that have been naturalized as Haitian by the government nor will their children. This provision includes Germans and Poles that have been naturalized by the government.

The provision recognizing the naturalization of some Germans and Poles was rooted in the efforts to reward those soldiers who had been brought by the French to fight against the “slaves” and had shifted their alliances upon realizing the unjustness of the French invasion. The Haitian regime defended these troops and recognized their contributions to the revolution. It follows that the Haitian regime, even at its earliest stage, was willing to extend citizenship rights to loyal citizens regardless of their race. More importantly, it was willing to naturalize white or *blanc* foreigners who contributed to the struggle to establish a Haitian republic.

IV. THE RISE AND FALL OF THE HAITIAN EMPIRE

The Dominican secession from Spain in 1821 did not abolish slavery in the eastern part of the island. It also neglected to extend affirmative civil rights to mulattoes and other people of color residing in the new nation. Needless to say, when Boyer decided to annex the east in 1822, he met little resistance from the majority of the population, which mostly identified as mulatto and black. The Boyer administration transplanted the Haitian Constitution of 1816 to the east and proceeded to create administrative unity for Haiti and the island as a whole. It is noteworthy to point out that Article 41 of this text, adopted six years prior to the occupation, clearly recognized that the Haitian republic should encompass the whole island.²³ Despite the abuses committed against the residents of the east, the Boyer administration introduced more progressive and egalitarian legal, social, and economic institutions and policies than any of the previous regimes that occupied Santo Domingo.

The Constitution of 1816 basically affirmed all of the previous constitutional provisions regarding the relationship between race, law, and the nation. In fact, the Nineteenth Century Haitian historian Thomas Madiou noted that Boyer further recognized all the white residents of the east as Haitian nationals.²⁴ This is especially important because eastern elites like Buenaventura Báez argued that Article 38 of the Constitution of 1816 prevented white residents residing in Haiti from owning property.²⁵ In other words, while Boyer recognized white eastern elites as Haitians, and while he maintained a *de facto* status quo in the east, mulatto elites like Báez were primarily concerned with their potential *de jure* status. Even after the collapse of the Boyer regime and the efforts to create a “Haitian-Dominican” constitution in 1843, Báez and other members of the

23. *Id.* at 166.

24. THOMAS MADIOU, HISTOIRE D’HAÏTI, TOME VI (1819-1826) 297-98 (1988).

25. MARIÑAS OTERO, *supra* note 4, at 165.

Venator Santiago: Race, Nation-Building and Legal Transculturation During the Haiti constitutive assembly would continue to protest the constitutional provisions that restricted property ownership to black Haitians and prohibited whites, or rather *blanc* foreigners, from owning property in Haiti.

Haitian historians such as J.C. Dorsainvil attributed the failure of the unification, and the secession of the Dominican Republic, to the inability of Haitians to accommodate the “racial” concerns of the white property owners of the east.²⁶ In contrast, Dantes Bellegarde wrote:

Si los gobernantes haitianos hubiesen tenido más psicología, habrían tratado, no de absorber a los “hermanos del Este” como se decía, pero sí de fortalecer su alianza voluntaria con Haití mediante una organización política que les hubiese dejado su autonomía y la libertad de evoluciones dentro de sus propios límites.²⁷

While I suspect that Haitian jurists were dismissive of the easterner’s claims, it seems to me that the Constitution of 1843 could have adopted a provision that recognized the white residents of the east as special Haitian citizens entitled to own property in Haiti. Following the precedents established by the naturalization of German and Polish soldiers, it is clear that the *de jure* recognition of white elites from the east could have been justified as part of a unification provision.

Of course, this would not have solved the other political challenges that Haiti faced, nor is it likely that it would have prevented the secession of the “Dominicans.” In this I agree with Bellegarde; the Haitian regime made numerous political mistakes and generally subordinated the inhabitants of the east. Thus, while I think that the east would have seceded from Haiti because of the political character of the Haitian polity at the time, I wonder whether it could have been possible to effectuate some transformation of the nation-building project through the law. In other words, I wonder whether the law’s formal recognition of white eastern property owners would have enabled a more successful unification between the two parts of the island. Following this line of reasoning, it is

26. J.C. DORSAINVIL, *MANUAL DE HISTORIA DE HAITÍ* 174 (1979).

27. DANTES BELLEGARDE, *LA NACIÓN HAITIANA* 130 (1984).

If the Haitian rules had possessed any psychology (sic), they would not have tried to absorb “their brothers from the east” as they were known, but rather they would have attempted to strengthen their voluntary alliance with Haiti through the encouragement of political organizing that would have conferred them autonomy and freedom within their own boundaries.

Id. (author’s translation).

possible to argue that legal transculturation could have facilitated the unification of the island under a revolutionary Haitian republic.

V. PRELIMINARY CONCLUSIONS

By way of conclusion I want to suggest two possible arguments. First, it is clear that the Haitian regime could have addressed the constitutional concerns of white property owners from the east. It would not have been inconsistent with the revolution to make a special provision recognizing the rights of white elites residing in the east to own property. The precedent established by the naturalization of German and Polish soldiers would have been sufficient to justify a constitutional provision recognizing the exceptional status of white elites of Spanish heritage.

Secondly, I wonder whether the law could have enabled formation of a new national narrative that unified the island and its competing traditions. In other words, is it possible to argue that the law could have transformed the Haitian-Dominican relationship in such a way that both parts of the island would have remained unified under one national project? While I am not in a position to offer a substantive answer to this question, I think that further research into the constitutional debates regarding the claims of the Spanish administrators could help us clarify whether this is a legitimate question.