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A Debt of Dishonor

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ABSTRACT

In 1825, France conditioned its grant of recognition to the new nation of Haiti on the payment of 150 million francs plus trade benefits. The payments were, at least in part, compensation for the losses that French plantation owners suffered, a key part of which was the loss of enslaved Haitians, who took their freedom via revolution. France has officially apologized and acknowledged a "moral debt" that it owes the Haitian people. But is there a legal debt that Haiti, one of the poorest nations in the world, could claim today from France, one of the richest?

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INTRODUCTION

In 1825, Haiti, with a fleet of French gunboats offshore, agreed to pay France 150 million francs and to grant favorable customs treatment to French imports.[1] In return, King Charles X granted "the full and complete independence of [the Haitian] Government," although he did not explicitly recognize the new state itself.[2] The payments from Haiti were intended to indemnify French plantation owners for property, including enslaved persons, lost in the revolution that had won Haiti's independence in 1804.[3] The immorality and injustice of demanding an indemnity from Haiti, which had already paid in blood for freedom from slavery and the colonial yoke, is clear today.

France has officially apologized and acknowledged a moral debt.[4] The clear but unspoken implication, however, is that, if France has any obligations based on this history, they are moral rather than legal in nature. When asked in 2004, a spokesman for the French Foreign Ministry responded, "[T]his case has been closed since 1885."[5] But has the passage of time wiped the legal slate clean? Our

[1] *See generally* King Charles X of France, *The Indemnity: French Royal Ordinance of 1825*, *in* THE HAITI READER: HISTORY, CULTURE, POLITICS 68 (Laurent Dubois, Kaiama L. Glover, Nadève Ménard, Millery Polyné & Chantalle F. Verna eds., Claire Payton trans., 2020) (providing background about Haiti's "second generation" that grew out of historical developments in the early nineteenth century). Language explicitly granting recognition was included in the 1838 Treaty of Peace and Friendship that reduced the remaining Haitian debt to 60 million francs. *See* LAURENT DUBOIS, HAITI: THE AFTERSHOCKS OF HISTORY 9 (2012).

[2] *See* King Charles X of France, *supra* note 1, at 68.

[3] The payments were to compensate the former colonists who would claim compensation for the loss of their property (meaning, most notably, the formerly enslaved Haitians themselves). *See* Liliana Obregón, *Empire, Racial Capitalism and International Law: The Case of Manumitted Haiti and the Recognition Debt*, 31 LEIDEN J. INT'L L. 597, 614 (2018) (noting how Haiti made agreement to pay France "for its recognition of independence," while Haitians never asked for compensation for slave labor in return).

[4] *See Hollande Promises to Pay 'Moral Debt' to Former Colony Haiti*, GUARDIAN (May 12, 2015, 7:22 PM), https://www.theguardian.com/world/2015/may/13/hollande-haiti-visit-france-former-colony [https://perma.cc/4P2V-CSUA] (reporting that former French President acknowledged France's role in slave trade and injustice surrounding Haiti's freedom). Press accounts of this debt and the question of whether France should have to repay what it extracted from Haiti are numerous. *See, e.g.*, Howard W. French, Opinion, *The West Owes a Centuries-Old Debt to Haiti*, L.A. TIMES, Oct. 10, 2021, at A23 (revealing how American, as well as French, development is tied to Haiti's history of enslavement and exploitation); Marlene Daut, *France Pulled Off One of the Greatest Heists Ever. It Left Haiti Perpetually Impoverished*, MIA. HERALD, July 16, 2021, at 15A (arguing that Haiti is clear example for need for reparations given history with France); Adam Hochschild, *Tragic Island*, N.Y. TIMES, Jan. 1, 2012 (Sunday Book Review), at 1 (outlining various acts of violence and slavery that led to Haiti's exploitation and eventual independence); Isabel Macdonald, Opinion, *France's Debt of Dishonor to Haiti*, GUARDIAN (Aug. 16, 2010, 5:00 AM), https://www.theguardian.com/commentisfree/cifamerica/2010/aug/16/haiti-france [https://perma.cc/MUE4-PCQP] (reporting that in 1825, Haiti was forced to pay compensation under "threat of a French military invasion that aimed at the re-enslavement of the population").

[5] Jose de Cordoba, *Impoverished Haiti Pins Hopes for Future on a Very Old Debt*, WALL ST. J. (Jan. 2, 2004, 12:01 AM), https://www.wsj.com/articles/SB107300144534788700. In

goal in this Essay is to lay the historical and economic foundations for addressing that question and to offer some preliminary thoughts about its answer.

Broadly speaking, four significant barriers limit legal recourse for harms that occurred centuries ago. First, the wrongdoer may be long gone, along with those who suffered the direct harm. Second, the passage of time obscures facts, making it hard to determine whether there was a legal wrong under the laws of the time. Third, it is hard to quantify a harm done centuries in the past. Fourth, most legal systems have time limitations on claims that are often no more than a few years; two centuries is a long time.

In the case of the Haitian Independence Debt of 1825, the first limitation is of little significance. The primary parties in question—Haiti and France—are sovereign states.[6] The law treats sovereigns (and, therefore, their obligations) as having infinite life. The fourth question—that of surmounting the statute of limitations or laches—will depend on the legal forum in which the claim is brought and the exceptions that forum permits to its time limitations, so we put it aside.[7] We focus on the second and third limitations. First, we tell the story of the debt with more detail than is typical. Drawing on archival research and secondary sources, we trace the history from negotiations in the early nineteenth century to the assumption of the debt in 1825 and its eventual renegotiation in 1838. We end with Haiti's halting but ultimately successful efforts to pay the amount in full. The loan was controversial and its legality was questioned from the start, both in Haiti and in France. Because it was understood that Haiti could not pay without borrowing, we also describe the involvement of high-profile investment banks and politicians in placing Haitian loans in France.[8] Second, we report a range of economically plausible estimates of the lasting harm to Haiti caused by the debt. These estimates fill a gap in the economic literature, which

response to questions raised in 2004 about the obligations of France to Haiti, then French President Jacque Chirac went so far as to warn the Haitian authorities that might wish to "take care over the nature of the actions of their regime." *See* de Cordoba, *supra*. Not long after, the regime in power in Haiti was toppled and, naturally, questions were raised about French involvement. Paul Farmer, *Who Removed Aristide?*, LONDON REV. BOOKS (Apr. 15, 2004), https://www.lrb.co.uk/the-paper/v26/n08/paul-farmer/who-removed-aristide [https://perma.cc/V94V-223R].

[6] If one includes the French financial institutions that lent Haiti the funds to pay France its indemnity, then there is the matter of whether the modern incarnations of those institutions are still alive.

[7] The question of how statutes of limitations should apply in cases of grievous historical wrongs is a complex one that has received little attention in literature. Suzette M. Malveaux, *Statutes of Limitations: A Policy Analysis in the Context of Reparations Litigation*, 74 GEO. WASH. L. REV. 68, 71-72 (2005) (highlighting how "little has been written on the narrow but essential question of whether, as a matter of current public policy, it is legitimate to apply outmoded notions of the statute of limitations to [reparations] litigation while simultaneously refusing to consider modern bases for expanding permissible exceptions to the application of statutes of limitations").

[8] *See infra* notes 93-101 and accompanying text.

includes no readily available long series for Haiti's GDP and external debt. They suggest that the economic cost of the 1825 debt was large, likely a multiple of Haiti's 2018 GDP.[9]

Armed with this historical and economic background, we conclude by offering preliminary thoughts on France's legal obligations to Haiti in the present day. To be clear about our intentions, we are not asking whether France owes reparations for past wrongs, where reparations means a backward-looking obligation to engage in corrective justice for reasons of fairness, morality, and equity—but not law.[10] The question is whether there is a viable legal claim that could be brought before some tribunal today, under existing law, and we think the answer is a qualified "yes." There are significant barriers, which, if litigated to conclusion, might result in a French victory. But the claim is more plausible than it might seem, and plausible claims have value.

I. THE HAITIAN INDEPENDENCE DEBT OF 1825

In this Part, we relate the story of the Haitian Independence Debt, estimate the evolution of Haiti's external debt-to-GDP ratio from 1825 to 2020, and consider the implications of the 1825 debt for the economic evolution of Haiti. Although we provide more historical detail than is strictly necessary, we do so because, while aspects of the Haitian debt resemble other historical episodes, the debt is unique in ways that might affect legal analysis.[11]

First, unlike other countries that experienced gunboat diplomacy in the context of debt *enforcement*, the Haitian debt to France *originated* with gunboat diplomacy. Whether or not the debt was the product of duress, and whether or not this would have been illegal under international law, this is an important distinction between the Haitian case and other episodes of state practice. Second, it was uncommon and perhaps unprecedented for a state that had successfully won its independence to have to purchase recognition. Third, even at the time, and even in France, the legality and morality of the loan were questioned. And finally, although the indemnity was quickly transformed into bond debt, it is artificial to view these as separate obligations given the close coordination and relationships between French political elites and the financiers who arranged and underwrote the bonds.

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[9] *See infra* Section I.B.

[10] *E.g.*, Eric A. Posner & Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689, 692 (2003) (excluding legally cognizable claims from discussion of reparations claims).

[11] For a fuller treatment of the history we describe in this section, see generally Kim Oosterlinck, Ugo Panizza, W. Mark C. Weidemaier & Mitu Gulati, The Odious Haitian Independence Debt (Sept. 24, 2021) (unpublished manuscript) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3894623).

A. *The Story of the Haitian Independence Debt*

Gunboats and sovereign debts have a long common history.[12] Their relationship is often viewed through the prism of reimbursement, where powerful nations used the threat of force to induce repayment of debts owed to their citizens—so called "gunboat diplomacy."[13] The practice was not routine, nor were political actors entirely enthusiastic about gunboat diplomacy. There are famous instances of nations such as Great Britain trying to convince British investors that they were on their own if their investments in foreign sovereign bonds turned sour.[14] Some authors, such as Borchard, also argued that military interventions only occurred against weak states.[15] Yet gunboats have been used to force defaulting countries to pay their dues, and in some cases, the threat to use them has been enough to affect sovereign bond prices on secondary markets.[16] Sovereign defaults also have been used as an excuse for military intervention, sometimes leading to the colonization of the defaulting country.[17]

[12] *See, e.g.*, MICHAEL TOMZ, REPUTATION AND INTERNATIONAL COOPERATION: SOVEREIGN DEBT ACROSS THREE CENTURIES 114 (2007) (relaying the "gunboat hypothesis" that "creditors used their militaries to extract payments from foreign countries" throughout the course of history).

[13] *See Palmerston Redux*, FIN. TIMES (Aug. 9, 2013), https://www.ft.com/content/9eee457a-00e6-11e3-a90a-00144feab7de (describing term as originating in 1850 from British blockade of Piraeus to help British merchant, Don Pacifico, recover 500 pounds).

[14] *See* D.C.M. PLATT, FINANCE, TRADE, AND POLITICS IN BRITISH FOREIGN POLICY: 1815-1914, at 137 (1968) (noting how certain British officials were against interfering in private transactions and that government should only interfere in "exceptional circumstances"); *see also* Charles Lipson, *International Debt and National Security: Comparing Victorian Britain and Postwar America*, *in* THE INTERNATIONAL DEBT CRISIS IN HISTORICAL PERSPECTIVE 189, 192-94 (Barry Eichengreen & Peter H. Lindert eds., 1989) (identifying overarching theme of laissez-faire towards British economic investments overseas and reluctance to intervene militarily).

[15] *See* EDWIN M. BORCHARD, INTERNATIONAL CONTRACTUAL CLAIMS AND THEIR SETTLEMENT 40 (1913) (presenting this hypothesis, among others, as reasons why armed intervention to gain payment is unjustifiable).

[16] *See, e.g.*, Kris James Mitchener & Marc Weidenmier, *Empire, Public Goods, and the Roosevelt Corollary*, 65 J. ECON. HIST. 658, 679 (2005) [hereinafter Mitchener & Weidenmier, *Empire*] (providing examples of how threats from United States to occupied countries in nineteenth century led to market participants "bidding up sovereign debt prices in the London market on countries under the U.S. sphere of influence"); Kris James Mitchener & Marc D. Weidenmier, *Supersanctions and Sovereign Debt Repayment*, 29 J. INT'L. MONEY & FIN. 19, 26 (2010) (noting that "American gunboat diplomacy produced a large bond market rally in Central and Caribbean securities trading on the London market" in late nineteenth and early twentieth centuries).

[17] *See* Mitchener & Weidenmier, *Empire*, *supra* note 16, at 659, 661 (noting how United States sent gunboats to Dominican Republic after Santo Domingo defaulted on payment in 1905 and how "[a]s long as European creditors were concerned with the ability of Central and South American governments to honor their debts, the specter of European military intervention to enforce creditor claims was present").

This was the case for both Morocco (1903) and Egypt (1876).[18] On occasion, the threat of force has been used to ensure that defeated countries honor commitments to pay war reparations and, implicitly, the bonds securing these payments.[19] Surprisingly, though, the Haitian Independence Debt of 1825 rarely appears in discussions of gunboat diplomacy.[20]

One reason for that omission may be that, in Haiti's case, payments were not required from a defeated country. From the French point of view, Haiti was still a colony in 1825. At the Vienna Congress, in 1815, France had insisted that Saint Domingue was still a French possession.[21] As a result, even though the Haitians had ousted the French in 1804, no nation would recognize Haiti's independence.[22] Following Napoleon's defeat at Waterloo, the French government was forced to postpone any military intervention to reconquer Haiti, despite lobbying for intervention by the dispossessed former French plantation owners.[23] To make the situation more complex, the island was separated in two until 1820, with President Alexander Pétion ruling over the South and West and King Henri Christophe ruling the North.[24] As best we know, it was Pétion who suggested the payment of an indemnity to France, referring to the sale of Louisiana to the United States as a precedent.[25] King Henri Christophe, however,

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[18] *See* HERBERT FEIS, EUROPE: THE WORLD'S BANKER, 1870-1914, at 382-94 (1930) (outlining history of French and British actions in Northern Africa, which resulted in colonization of Egypt and Morocco); Juan H. Flores Zendejas, *Sovereign Debt and European Interventions in Nineteenth Century Latin America* 1 (Paul Bairoch Inst. of Econ. Hist., Univ. of Geneva, Working Paper No. 2/2020, 2020) (asserting that interventions to collect debts triggered "the imposition of foreign control" over countries who failed to pay).

[19] *See* Kim Oosterlinck, Loredana Ureche-Rangau & Jacques-Marie Vaslin, *Baring, Wellington and the Resurrection of French Public Finances Following Waterloo*, 74 J. ECON. HIST. 1072, 1099 (2014) (stating that French occupation of other countries "acted as an incentive for foreign bankers to lend").

[20] *See, e.g.*, Flores Zendejas, *supra* note 18, at 4 (focusing mostly on Latin America rather than any country in Caribbean or Central America).

[21] François Blancpain, *Note sur les "Dettes" de l'Esclavage: Le Cas de l'Indemnité Payée par Haïti* (1825-1883), 90 OUTRE-MERS 241, 243 (2003).

[22] Julia Gaffield, *Five Myths: The Haitian Revolution*, WASH. POST, Aug. 8, 2021, at B3 (noting how foreign nations withheld "formal diplomatic recognition" of Haiti until 1825 or later).

[23] Benoît Joachim, *L'Indemnité Coloniale de Saint-Domingue et la Question des Rapatriés*, 246 REVUE HISTORIQUE 359, 364 (1971); FRANÇOIS BLANCPAIN, UN SIÈCLE DE RELATIONS FINANCIÈRES ENTRE HAÏTI ET LA FRANCE (1825-1922), at 48 (2001).

[24] Wilfred Morfa, The Difficult Relationship Between Haiti and the Dominican Republic 13, 15 (May 2011) (M.A. Thesis, City University of New York) (available at https://academicworks.cuny.edu/cc_etds_theses/44/) (explaining that Treaty of Ryswick in 1697 split the two colonies of Spanish Santo Domingo (present-day Dominican Republic) and French Saint-Domingue (present-day Haiti) which fueled confrontations between the two countries after advent of Haitian independence).

[25] Marlene Daut, *When Haiti Paid France for Freedom: The Greatest Heist in History*, AFRICA REP. (July 2, 2020, 5:13 PM), https://www.theafricareport.com/32162/when-haiti-paid-france-for-freedom-the-greatest-heist-in-history/ [https://perma.cc/7MR5-UYN8]

was opposed to paying the French any indemnity.[26] For French negotiators, by contrast, the indemnity was a sine qua non of letting go of their former colony.

Negotiations between France and Haiti resumed after the second Restoration of Louis XVIII. In 1816, French negotiators tried to convince Haitian rulers to accept that their country would become a sort of protectorate. This attempt failed as Haiti's leaders wanted the country to be recognized as independent.[27] Negotiations took place almost continuously, but as some of these negotiations were informal, the amount of information available differs vastly from one negotiation to the other.[28]

The island was subsequently reunited under the rule of President Jean-Pierre Boyer in 1820. The French negotiators used this fact to ask for an even larger indemnity.[29] In 1821, Boyer suggested that an indemnity could be paid in exchange for recognition.[30] Haitian negotiators wanted to compute the amounts on the basis of Franco-Haitian trade. On the French side, an amount of 100 million francs was suggested as early as 1814.[31] In May 1824, President Boyer sent two envoys, Rouanney and La Rose, to negotiate an indemnity of 100 million francs in exchange for recognition of the country's independence.[32] Many authors have stressed the negative effects for Haiti of this diplomatic endeavor. MacGregor presents this offer as a major diplomatic error from the Haitian side.[33] Franklin asks: "[I]s it not the most unaccountable occurrence in the annals of almost any country, that overtures should have been made to

(noting how Pétion sought negotiation and used Napoléon sale of Louisiana to United States as guide for price).

[26] What rights, what arguments can the ex-colonists then allege to justify their claim for an indemnity? Is it possible that they wish to be recompensed for the loss of our persons? Is it conceivable that Haitians who have escaped torture and massacre at the hands of these men, Haitians who have conquered their own country by the force of their arms and at the cost of their blood, that these same free Haitians should now purchase their property and persons once again with money paid to their former oppressors?

Letter from the Duke of Limonade to Thomas Clarkson, *in* HENRY CHRISTOPHE AND THOMAS CLARKSON: A CORRESPONDENCE 173, 176 (Earl Leslie Griggs & Clifford H. Prator eds., 1952); *see* Frédérique Beauvois, *L'Indemnité de Saint-Domingue: « Dette d'Indépendance » ou « Rançon de l'Esclavage »?* 10 FRENCH COLONIAL HIST. 109, 112 (2009).

[27] BLANCPAIN, *supra* note 23, at 51.

[28] Beauvois, *supra* note 26, at 111-15.

[29] *Id.* at 114.

[30] Joachim, *supra* note 23, at 363.

[31] Beauvois, *supra* note 26, at 114.

[32] 1 JOHN MACGREGOR, THE PROGRESS OF AMERICA, FROM THE DISCOVERY BY COLUMBUS TO THE YEAR 1846, at 1190 (London, Whittaker & Co. 1847) (noting how French agents were authorized to offer 10 million francs for the transaction). Haiti never proposed more than 80 million. Beauvois, *supra* note 26, at 114. The difference in figures reflects the lack of sources and the contradictions observed in various narratives.

[33] MACGREGOR, *supra* note 32, at 1190 (stating that Haitians "entrapped their independence" when engaging with French in this way).

France, to recognize an independence already established and tacitly admitted?”[34] The French refused this offer but came back soon with a counter-proposal.

In September 1824, Charles X succeeded Louis XVIII on the French throne. Soon after his coronation, he began to deal with the Haitian case. A royal decree, signed by Charles X on April 17, 1825, recognized the independence of Haiti’s government, a belated (and limited) recognition of the de facto independence the country had gained twenty-two years earlier.[35] Even this concession was made on the condition that Haiti would pay an indemnity of 150 million francs in five installments. The decree also provided for a series of commercial advantages for France, including favorable trade treatment.

Independence was limited to the part of the island that had formerly been a French colony, not the part that used to belong to Spain.[36] Furthermore, the phrasing of the royal decree led to many questions.[37] The Ordonnance read: “We concede, on these conditions, by the present ordinance, to the present inhabitants of the French part of Saint-Domingue the full and complete independence of their government.”[38] The government was thus recognized as independent. However, there was no mention of Haiti being, as a full sovereign, entitled to be a part of the community of nations.

To convince the Haitian government to accept these terms, France literally relied on gunboat diplomacy. On July 3, 1825, the French navy arrived in Port-au-Prince. According to François Blancpain, “the 14 vessels with 528 cannons in the harbor of Port-au-Prince . . . constituted a very convincing diplomatic argument.”[39] On July 8, 1825, Haiti agreed, under the shadow of the gunboats, to the terms offered by France. Recognition of Haiti’s independence by other nations (e.g., Prussia, the Netherlands, and the United Kingdom) followed shortly thereafter.[40] One notable exception, given temporal proximity to its own recent revolution and the subsequent struggle for international recognition, was the United States.[41]

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[34] JAMES FRANKLIN, THE PRESENT STATE OF HAYTI (SAINT DOMINGO) WITH REMARKS ON ITS AGRICULTURE, COMMERCE, LAWS, RELIGION, FINANCES, AND POPULATION, ETC. ETC. 242 (Greenwood Press 1970) (1828).

[35] Joachim, *supra* note 23, at 359.

[36] BLANCPAIN, *supra* note 23, at 56.

[37] Itazienne Eugène, *La Normalisation des Relations Franco-Haïtiennes (1825-1838)*, 90 OUTRE-MERS 139, 142 (2003).

[38] *Id.* at 144 (“Nous concédons, à ces conditions, par la présente ordonnance, aux habitants actuels de la partie française de Saint-Domingue l’indépendance pleine et entière de leur gouvernement.”).

[39] Blancpain, *supra* note 21, at 243.

[40] *Recognition of Haytian and Liberian Independence—a Step in Advance*, N.Y. TIMES, Feb. 5, 1862, at 4, https://www.nytimes.com/1862/02/05/archives/recognition-of-haytian-and-liberian-independence-a-step-in-advance.html.

[41] BLANCPAIN, *supra* note 23, at 62. U.S. leaders such as Thomas Jefferson feared that showing support for a slave rebellion would lose them support from domestic slaveholders; it

It did not take long for commentators to stress the negative aspects of this agreement. Macaulay wrote: "Haiti has done itself a great harm by imprudently committing itself to pay France the enormous sum of 150 million francs for the price of the recognition of its independence."[42] By contrast, for at least some of the dispossessed plantation owners, the 150 million francs represented an indemnity equivalent to only a tenth of the claimed value of their former properties.[43] What we do know is that the indemnity shaped the relationship between France and Haiti for the rest of the century.[44]

As a technical matter, Haiti paid for the recognition of its independence, not for its independence itself. As best we can tell, an explicit payment for recognition was rare even for the time. Episodes linking sovereign debts with independence exist. In some instances, would-be-independent countries borrowed abroad to wage a war of independence. For example, Greece floated several loans in London.[45] Also, the Confederacy borrowed on the European markets to fund its secession efforts.[46] Somewhat more explicit, Waibel reports that a number of Spanish colonies had to assume certain Spanish debts as the implicit "price" of independence.[47] And, along these lines, after the overthrow

took until 1862 for the United States to recognize Haiti. Julia Gaffield, *Meet Haiti's Founding Father, Whose Black Revolution Was Too Radical for Thomas Jefferson*, CONVERSATION (Aug. 30, 2018, 10:24 AM), https://theconversation.com/meet-haitis-founding-father-whose-black-revolution-was-too-radical-for-thomas-jefferson-101963 [https://perma.cc/MEX4-BWXK] (discussing early American political leaders' reluctance to recognize Haitian political independence). For a less critical view of Jefferson's relationship to Haiti, see generally ARTHUR SCHERR, THOMAS JEFFERSON'S HAITIAN POLICY: MYTHS AND REALITIES (2011).

[42] ZACHARY MACAULAY, HAÏTI OU RENSEIGNEMENTS AUTHENTIQUES SUR L'ABOLITION DE L'ESCLAVAGE ET DE SES RÉSULTATS, À SAINT DOMINGUE ET À LA GUADELOUPE 59 (Paris, Chez L. Hachette 1835).

[43] CHARLES ESMANGART, LA VÉRITÉ SUR LES AFFAIRES D'HAÏTI PUBLIÉE PAR LE COMITÉ DES ANCIENS PROPRIÉTAIRES DE SAINT-DOMINGUE 3 (Paris, Imprimerie de Carpentier-Mericourt 1833).

[44] Joachim, *supra* note 23, at 359.

[45] 2 WILLIAM H. WYNNE, STATE INSOLVENCY AND FOREIGN BONDHOLDERS: SELECTED CASE HISTORIES OF GOVERNMENTAL FOREIGN BOND DEFAULTS AND DEBT READJUSTMENTS 283-84 (Beard Books 2000) (1951) (discussing Greek bond issues with "tempting return[s]" in financing war of independence).

[46] *See* Kris James Mitchener, Kim Oosterlinck, Marc D. Weidenmier & Stephen Haber, *Victory or Repudiation? Predicting Winners in Civil Wars Using International Financial Markets*, 60 J. BANKING & FIN. 310, 310 (2015) (creating method assessing civil war outcomes, including U.S. Civil War, using "data from international financial markets"); Marc D. Weidenmier, *The Market for Confederate Cotton Bonds*, 37 EXPLS. ECON. HIST. 76, 95 (2000) (assessing "how investors priced Confederate cotton bonds in London"); William O. Brown Jr. & Richard C.K. Burdekin, *Turning Points in the U.S. Civil War: A British Perspective*, 60 J. ECON. HIST. 216, 217, 231 (2000) (discussing impact of Gettysburg and Vicksburg on "cotton backed" debts).

[47] Michael Waibel, *Decolonization and Sovereign Debt: A Quagmire*, *in* SOVEREIGN DEBT DIPLOMACIES: RETHINKING SOVEREIGN DEBT FROM COLONIAL EMPIRES TO HEGEMONY 213,

of the Tsar, the Soviets used promises to reimburse Tsarist bonds that they had repudiated as a bargaining device to obtain de jure recognition of their government in the 1920s.[48] However, the explicit creation of an enormous new sovereign debt as the price for recognition seems unique to the Franco-Haitian context.

To pay the indemnity, the Haitian government had no alternative other than to borrow. The amount was well above what the Haitian government had in its coffers and, reportedly, equivalent to ten years of fiscal revenues.[49] Beauvois estimates that the average government revenues between 1818 and 1824 at 2,581,210 francs.[50] With this estimate, the proportion would represent more than fifty-eight years of revenue. Even though many in France believed Haiti could easily pay, this was not the case. Rumors that the former King Christophe had left a 250 million franc treasure proved unfounded. Ternaux, an enthusiastic defender of the loan, claimed that Haiti's annual revenues were in the region of 37 million francs, a figure divorced from reality.[51] As for the financial capacities of the country, it depended heavily on foreign trade.

As noted, some displaced French plantation owners thought that the amounts imposed on Haiti were reasonable (others thought them unreasonably low), but their self-interest is obvious.[52] Other prominent voices, however, even in France, flagged the fact that the indemnity was exorbitant. Members of the parliament such as Alexandre Delaborde, Emmanuel de Las Cases, and François-André Isambert denounced the amounts to be paid.[53] Taxes on coffee, the main export of Haiti, represented the main source of revenue for the government. Coffee revenues served as a collateral for loans floated in France.[54] The sharp decline in the price of coffee thus dramatically affected the government's resources.[55] Prices fell from 290 francs for 100 pounds in 1821, to 140 francs in 1825, and to a meagre 85 francs in 1830.[56] The decision to decrease tax duties on trades

223 (Pierre Pénet & Juan Flores Zendejas eds., 2021) (noting debt assumption was cost of "friendly relations with Spain"). More generally, the idea that the colonial powers imposed unjust treaties on their former colonial subjects as they were departing resonates with many in the former colonies. *See id.* at 217 (citing France's exit from Algeria under Evian Accords and United Kingdom's exit from Mauritius under Lancaster House Accords as examples where quid pro quo for leaving was extracted).

[48] KIM OOSTERLINCK, HOPE SPRINGS ETERNAL: FRENCH BONDHOLDERS AND THE REPUDIATION OF RUSSIAN SOVEREIGN DEBT 82 (Anthony Bulger trans., 2016).

[49] BLANCPAIN, *supra* note 23, at 58.

[50] Beauvois, *supra* note 26, at 117.

[51] LOUIS GUILLAUME TERNAUX, CONSIDERATIONS SUR L'EMPRUNT D'HAITI 20 (Paris, Éverat 1825).

[52] ESMENGART, *supra* note 43, at 3.

[53] LAURENT, LA VÉRITÉ SUR L'EMPRUNT PERÇU PAR LE GOUVERNEMENT FRANÇAIS POUR LE COMPTE DE LA RÉPUBLIQUE D'HAÏTI 3 (Paris, Imprimerie de A.-T. Breton 1842).

[54] BLANCPAIN, *supra* note 23, at 15.

[55] Beauvois, *supra* note 26, at 117.

[56] BLANCPAIN, *supra* note 23, at 16.

with France further reduced revenues. The end result of all this was that President Boyer proposed a new tax to try to stay current on debt payments within a decade.[57]

The morality of the indemnity, and thus the debt, was also questioned early on. Was it morally sound to ask people who had been enslaved to pay for their freedom? Laurent was one of the most vocal opponents, arguing that the settlers' "titles emanate of blood, carnage and plunder . . . . thefts of men on the coasts of Africa, held in slavery . . . , in order to enrich their good masters."[58] Macaulay wondered if "[i]t was necessary that these men pay in money what they had already bought with their blood; it was necessary to levy contributions for the execution of a generally odious measure."[59] The indemnity was also in direct opposition to the Haitian Constitution which had declared that "any property that has belonged to a French white person is unquestionably and by right confiscated in favour of the State."[60] That dictate in the Haitian Constitution may have been why payments were not made directly by Haiti to the dispossessed French plantation owners.

In April 1826, the French government committed to act as intermediary and pay the indemnity. For the displaced former plantation owners, this potentially meant that France had recognized their rights to an indemnity and that it was France which had taken over the burden of the indemnity.[61] Nonay, for example, had already argued that France should guarantee the indemnity.[62] To ensure that Haiti would pay, Nonay suggested that France be allowed to occupy the port of Mole Saint Nicolas and the Samana peninsula up until the debt was

[57] *Id.* at 63. Although opinion was not uniform, many observers abroad also questioned the amount of the indemnity and Haiti's capacity to pay. An article in *The Times of London* noted that payment was both economically and politically infeasible for Haiti, as the debt obliged the country to pay for an independence it had already won: "It was quite preposterous to suppose that a state like Hayti could pay 6,000,000*l.* to foreigners within the stipulated time for any political object, far less for an object that did not interest the people at all. The Republic was as independent before the treaty as it has been since." LONDON TIMES, June 30, 1828, at 6. Among other examples, one newspaper in the United States noted (repeating comments in the French press) that "to demand of Hayti four or five millions a year, till the period when the indemnity, and the loan should be both liquidated, would be like expecting more than eight hundred millions a year of France for 20 years." *France and Hayti*, BUFFALO REPUBLICAN, U.S. TEL., Mar. 18, 1829.

[58] LAURENT, *supra* note 53, at 2 (emphasis omitted).

[59] MACAULAY, *supra* note 42, at 60 ("Il fallut que ces hommes payassent en argent ce qu'ils avaient déjà acheté de leur sang; il fallut lever des contributions pour l'exécution d'une mesure généralement odieuse . . . .").

[60] Joachim, *supra* note 23, at 361 ("[T]oute propriété qui aura appartenu à un Blanc français est *incontestablement et de droit* confisquée au profit de l'Etat . . . .").

[61] *Id.* at 366.

[62] LOUIS-JEAN-PIERRE NONAY, LA VÉRITÉ SUR HAÏTI, SES DEUX EMPRUNTS, SES AGENS, SES FINANCES, SON CRÉDIT ET SES RESSOURCES. RÉPONSE À LA LETTRE D'UN COLON, À L'USAGE DE SON EXC. LE MINISTRE DES FINANCES ET DES CAPITALISTES, PAR UN SUBRÉCARGUE 32-35 (Paris, Imprimerie Moreau 1828).

reimbursed.[63] In practice, the Caisse des Dépôts et Consignations was tasked with the payment. According to Joachim, many beneficiaries came from important aristocratic families, some of them members of the Chambre des Pairs (the upper house) or the Chambres des Députés (the lower house).[64] These legislators had considerable sway over the actions of the French government but were also under the thumb of lenders who they had borrowed from to run their colonial estates.

A large number of pamphlets, all claiming to tell the truth about the Haitian bonds and the indemnity, tell us that the default led to heated debates.[65] Some of these pamphlets are anonymous; others, supposedly written by actors with a personal life, aim at creating empathy. One of these authors, Laurent, is presented as an invalid from the Napoleonic wars and a holder of Haitian bonds.[66] Laurent suggests that the banker Jacques Lafitte had acted in a fraudulent way.[67] Most importantly, the same author argues that the bond should have been labeled as a Franco-Haitian loan because it had been floated under the auspices of the French government who presented it as "a national loan for French people."[68] According to Laurent, it was because of the proceeds the Haitian government owed on this indemnity, combined with France's acknowledged responsibility to provide the dispossessed plantation owners with compensation for their losses, that this borrowing by Haiti had received market support.[69] For the French, the notion that an indemnity had to be paid to the former plantation owners in Haiti was politically sensitive. Many drew a parallel with the indemnity paid to the aristocrats who had been deposed during the French revolution. The decision to indemnify the dispossessed aristocrats in a financial transaction called the Milliard des Emigrés[70] (the Emigrants' Billion) plagued French politics for years, even if it eventually settled the claims made by the exiled aristocrats.[71] In Haiti, the indemnity was regularly denounced as the source of many evils, such as the depreciation of the local currency and inflation.[72] Blancpain considers the domestic opposition to the indemnity to be

[63] *Id.* at 41-42.

[64] Joachim, *supra* note 23, at 370.

[65] *See* ESMANGART, *supra* note 43, at 3; LAURENT, *supra* note 53, at 2.

[66] LAURENT, *supra* note 53, at 8.

[67] *Id.*

[68] *Id.* at 1.

[69] *Id.* at 1-2.

[70] The amount of one billion francs was often used as a reference to gauge the indemnity required from Haiti.

[71] *See generally* Christian Rietsch, *Le "Milliard des Emigrés" et la Création de la Rente 3%*, *in* 2 LE MARCHÉ FINANCIER FRANÇAIS AU XIX^E SIÈCLE: ASPECTS QUANTITATIFS DES ACTEURS ET DES INSTRUMENTS À LA BOURSE DE PARIS 209 (Georges Gallais-Hamonno & Pierre-Cyrille Hautcoeur eds., 2007).

[72] Joachim, *supra* note 23, at 362.

one of the causes of the 1843 revolution which forced President Boyer into exile.[73]

The legality of the Royal Decree was also questioned in France. Brière tells us that members of the two French Chambers, the Chambre des Pairs and the Chambre des Députés, knew nothing about the negotiations and discovered in the press that Haiti had been granted its independence.[74] The phrasing of the Royal Decree led to intense debate in France. The legal text was an "Ordonnance." The Ordonnance pronounced Haiti's independence; however, that independence was conditioned on Haiti first granting preferential trade agreements to French traders and then making the payment of 150 million francs. According to some commentators in France, the concessions were illegal because they were not the result of a negotiation between independent nations but rather were forced upon a colony.[75] Other commentators questioned whether the French king had the authority to unilaterally grant independence and thus cede part of the French territory. The questions were considered important enough at the time that the French authorities gave answers. Specifically, the government answered that the state of war with Haiti allowed the King to take these measures.[76] Later on, the government argued that because Saint Domingue was a colony, it was subject to specific legislation. Lastly, the Prime Minister, Count Joseph de Villèle, argued that the agreement had been signed for the safety of the state, a strange argument to say the least, as pointed out by Brière.[77]

The link between the political world and the French financial system was so strong that it seems that French bankers knew Haiti was going to float a loan even before the Ordonnance was signed.[78] Even though other markets were ready to lend to Haiti, the debt was issued in Paris to please the French government. The nominal amount was equal to 30 million francs, well below the value of the total indemnity but enough to pay its first installment. Issuing more would have been difficult from a budgetary point of view but would also have reduced the chances of the Haitian government renegotiating the amount of the indemnity.[79]

The three envoys sent by Haiti to negotiate the loan attracted the attention of the French public, which was not used to seeing people of color representing a nation. Adolphe Thiers describes them as "extremely remarkable men, worthy

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[73] BLANCPAIN, *supra* note 23, at 62.

[74] Jean-François Brière, *La France et la Reconnaissance de l'Independence Haïtienne: Le Débat sur l'Ordonnance de 1825*, 5 FRENCH COLONIAL HIST. 125, 125 (2004) (describing how Royal Decree recognizing Haiti's independence and subsequent law setting rules for allocation of Haitian reparations to former French planters were met with widespread discussion and opposition in both French parliamentary chambers).

[75] BLANCPAIN, *supra* note 23, at 56.

[76] Brière, *supra* note 74, at 133.

[77] *Id.* at 134.

[78] Joachim, *supra* note 23, at 374.

[79] BLANCPAIN, *supra* note 23, at 65.

of representing all the countries of the world."[80] The Haitian government issued a prospectus to describe the loan.[81] The loan would be composed of 30,000 bonds with a face value of 1,000 francs, a maturity of 25 years, and would pay a 6% annual coupon. Every year bonds would be randomly drawn and reimbursed. If several banks decided to create a syndicate, the prospectus made sure they were jointly responsible for its issue: should they fail to place all of the loan, each would be required to keep part of the unsold bonds.[82]

The prospectus was also an opportunity to stress the independence of Haiti. Its introductory sentences translate to the following: "His Majesty Charles X having solemnly recognized the independence of Haiti, and the government of that country having granted the former colonists an indemnity of 150 million francs payable in five years, His Excellency the President has decided to open a loan of 30 million francs repayable in twenty-five years, to meet the first term of this indemnity."[83] The prospectus made a direct link with the indemnity; the loan was issued to pay it.[84] But the prospectus was also used to reassure investors. It claimed that the loan option had been chosen because revenues were sufficient, and it was therefore unnecessary to create new taxes.[85]

Would be underwriters had to submit sealed bids to Guillaume Louis Ternaux.[86] Ternaux, also known as Ternaux l'Ainé, was an industrialist and banker.[87] He was a staunch supporter of the movement for Greek independence.[88] He considered the loan to be a guarantee of peace that would allow Haiti to reduce its defense expenditures.[89] While an opponent of slavery, Ternaux considered the payment of the indemnity as an act of justice.[90] He

[80] *« Des Hommes Forts Remarquables, Dignes de Représenter Tous les Pays du Monde », Letter from Thiers to Baron Cotta Dated 30 September 1825*, *in* 7 ROBERT MARQUANT, THIERS ET LE BARON COTTA: ÉTUDE, SUR LA COLLABORATION DE THIERS À LA GAZETTE D'AUGSBOURG 263, 263 (1959).

[81] *Emprunt d'Haïti, 1825, 30 Million Francs, Remboursable en 25 Ans* (on file with Rothschild Archive, Roubaix, Box 132 AQ 73).

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] Jean-François Brière, *L'Emprunt de 1825 dans la Dette de l'Indépendance Haitienne Envers la France*, 12 J. HAITIAN STUD. 126, 127 (2006) (noting Parisian bank Ternaux & Gandolphe solicited bankers on behalf of Haiti to bid on offering loan of 30 million francs over twenty-five years).

[87] 1 BERTRAND GILLE, HISTOIRE DE LA MAISON ROTHSCHILD 151 (1965); Fritz Redlich, *The Beginnings and Development of German Business History*, 26 BULL. BUS. HIST. SOC'Y 1, 68 (1952) ("Ternaux [was] an industrialist who also dabbled in investment banking.").

[88] Denys Barau, *La Mobilisation des Philhellèlenes en Faveur de la Grèce, 1821-1829*, *in* POPULATIONS RÉFUGIÉES: DE L'EXIL AU RETOUR 37, 46 (Luc Cambrézy & Veronique Lassailly-Jacob eds., 2001) ("Ternaux . . . took the initiative to support the launch of a new loan for the benefit of the Greek government.").

[89] TERNAUX, *supra* note 51, at 25.

[90] *Id.* at 7.

praised the institutions of Haiti, its government, and its rulers, claiming that the risk of investing in Haitian securities was minimal.[91] Thiers was critical of Ternaux whom he viewed as a good industrialist but a bad banker. Relying on sealed bids for a loan of only 30 million francs seemed to him a bad operation as it was bound to attract unreliable bidders and could therefore compromise Haiti's creditworthiness.[92] The Rothschild archives in Roubaix provide the template of the offers the would-be underwriters had to fill in.[93] The offer had to include a firm commitment to buy the 30,000 bonds at a specified price. Would-be underwriters also had to pledge to pay amounts in cash at the dates specified in the prospectus at the Caisse des Dépôts et Consignations. Last but not least, to make an offer, they had to deposit an amount equivalent to 3 million francs at Ternaux Ainé.[94]

The bidding process led to contradictory accounts. According to Gille, two syndicates (led by André et Cottier, Lefèbvre, Mallet, and Pillet-Will on one side, and Délessert and Périer on the other) signaled early on their willingness to underwrite the loan.[95] Both offered a price of 76% of par.[96] The similar price might have been the result of an agreement between the two syndicates. The bids fell well below the expectations of the Haitian government, which hoped to get 90% of par.[97] The President of the Council of Ministers (i.e., the Prime Minister), Joseph de Villèle, then tried to ensure that the banker Jacques Laffitte could get the deal for a price of 80% of par.[98] By contrast, Thiers suggests that already in September 1825, Villèle had vied to ensure that Laffitte would create a syndicate that would exclude the Rothschilds, whom Villèle disliked.[99] To do so, Villèle hoped to get the support of the receveurs généraux. According to Thiers, the receveurs généraux and Laffitte had already created a syndicate with the aim to bid for the Haitian loan in September 1825.[100] Thiers only mentions the Delessert syndicate.[101]

On November 4, 1825, Haiti and Laffitte's syndicate reached an agreement.[102] The loan was to be underwritten at 80% of par by a syndicate led by Laffitte but

[91] Ternaux was, we suspect, defending the loan in part because of his involvement in its issue. *See* Brière, *supra* note 86, at 127 (explaining Ternaux, whose bank negotiated loan to Haiti, claimed that stable institutions made Haiti a safe investment).

[92] MARQUANT, *supra* note 80, at 266.

[93] *Modèle de Soumission* (on file with Rothschild Archive, Roubaix, Fr., Box 132 AQ 73).

[94] *Id.*

[95] GILLE, *supra* note 87, at 151.

[96] *Id.* at 151.

[97] *Id.* at 182.

[98] *Id.*

[99] MARQUANT, *supra* note 80, at 261-62.

[100] *Id.*

[101] *Id.*

[102] Karl-Georg Faber, *Aristokratie und Finanz: Das Pariser Bankhaus Paravey et Compagnie (1819-1828)*, 57 VIERTELJAHRSCHRIFT FÜR SOZIAL-UND WIRTSCHAFTSGESCHICHTE 145, 195 (1970).

which also included the Rothschilds. There again contradictory accounts exist regarding the procedure by which they managed to end up with the contract. According to Gille, who cites the *Moniteur Universel*, the failure of the first two bids implied that the two first syndicates making bids were no longer in line for the loan.[103] Bargaining with the Haitian representative ensued, and the Laffitte syndicate offered 77% of par. The Haitian government made a concession at 85% of par and both parties finally agreed to set the price at 80% of par.[104] By contrast, according to Thiers, Ternaux had asked the Laffitte syndicate to guarantee the issue by committing, if the bids were unsuccessful, to accept taking over the loan at twenty-five centimes above the highest bids.[105] When he heard the existence of this guarantee, Delessert refused to bid. This led Ternaux to contact the syndicates to offer a price.[106] The syndicate led by Laffitte entered the only bid at 80% of par, a bid which was accepted by Haiti.[107]

Other contemporaneous actors provide yet other accounts. Esmangart states that a Franco-English syndicate was ready to loan 150 million francs to Haiti as soon as news of the Laffitte loan began to circulate.[108] Haiti decided to limit the loan to 30 million. Esmangart mentions three original syndicates with 76% of par as highest bid.[109] According to him, a fourth syndicate, which had not participated in the previous bid, entered the game and won.[110] In any case, the whole procedure was heavily criticized at the time.[111]

The winning syndicate was composed of several partners with the following shares: the Syndicat des Receveurs Généraux, Laffitte and Rothschild, took 32 million of the issue each; the Paravey bank took 20 million; four other banks (including J. Hagermann) took 15 million; and the remaining 15 million was covered by sixty other banks.[112] The composition of the syndicate is interesting in many respects. First, it includes very high-profile bankers. Flandreau and Flores show that the London branch of the Rothschilds was picky when deciding to loan to a sovereign.[113] As a result, sovereign bonds issued by the Rothschilds were statistically less likely to default than sovereign bonds issued by second-

[103] GILLE, *supra* note 87, at 152.
[104] *Id.*
[105] MARQUANT, *supra* note 80, at 270-73.
[106] *Id.* at 272.
[107] *Id.*
[108] ESMANGART, *supra* note 43, at 4.
[109] *Id.* at 8.
[110] *Id.*
[111] GILLE, *supra* note 87, at 152; MARQUANT, *supra* note 80, at 272.
[112] Faber, *supra* note 102, at 195.
[113] *See* Marc Flandreau & Juan H. Flores, *Bonds and Brands: Foundations of Sovereign Debt Markets, 1820–1830*, 69 J. ECON. HIST. 646, 664 (2009) ("The Rothschilds chased good securities and good securities only.").

tier banks.[114] Second, the syndicate shows strong direct and indirect connections to influential men.

In 1825, Jacques Laffitte was a well-established politician. He was a member of parliament from 1816 to 1824, and he was previously Governor of the Banque de France.[115] The Paravey bank was also connected to powerful men. The bank was originally created by Emmerich Joseph Duke of Dalberg and Pierre Paravey in April 1818.[116] In 1822, Charles-Maurice de Talleyrand-Périgord became a partner in the bank, whose capital was divided as follows: 40% Dalberg, 40% Paravey, and 20% for Talleyrand.[117] The bank served as an investment arm for Talleyrand and Dalberg. Talleyrand had served as Minister of Foreign Affairs during the Directory, during the Consulate, under Napoleon I, and under Louis XVIII.[118] During the Second Restoration, Talleyrand's political activity diminished, but he remained active in the Chambre des Pairs. His ability to survive regime changes while remaining in power was spectacular. Dalberg, a man very close to Talleyrand, shared this ability. Born in Germany, he became a French citizen in 1809.[119] In charge of negotiating Napoleon's second wedding, he was made Duke in 1810.[120] Following Napoleon's defeat in 1814, he joined, with Talleyrand, the French provisional government.[121] In August 1815, the King made him Pair de France.[122] With their support, Pierre Paravey managed to enter the main financial circles (those including Rothschild and Laffitte) and have the bank become a shareholder of the Banque de France.[123]

In view of the involvement of high-profile investment banks and famous politicians, it seems reasonable to assume that bondholders would consider the Haitian loan as relatively safe. This turned out not to be the case. The syndicate's plan was to float the bond at 83.5% of par.[124] On November 8, 1825, the Haitian loan appeared for the first time on the Paris stock exchange, with trades at 84% of par, but on November 11, 1825, the London Stock exchange crashed.[125] Shortly afterwards, prices on the Paris bourse also fell. The bond traded at 80%

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[114] *Id.* at 670 ("[S]ecurities underwritten and issued by the House of Rothschild clearly outperformed the rest.").

[115] ADOLPHE ROBERT, EDGAR BOURLOTON & GASTON COUGNY, DICTIONNAIRE DES PARLEMENTAIRES FRANÇAIS COMPRENANT TOUS LES MEMBRES DES ASSEMBLÉES FRANÇAISES ET TOUS LES MINISTRES FRANÇAIS 518 (Paris, Bourloton 1891).

[116] Faber, *supra* note 102, at 145.

[117] *Id.* at 146.

[118] *See generally* EMMANUEL DE WARESQUIEL, TALLEYRAND: LE PRINCE IMMOBILE (2006) (providing a biographical account of Talleyrand's political influence under multiple French regimes).

[119] ROBERT ET AL., *supra* note 115, at 518.

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] Faber, *supra* note 102, at 156.

[124] *Id.* at 196.

[125] MAURICE GONTARD, LA BOURSE DE PARIS (1800-1830), at 208 (2000).

of par on December 11.[126] Members of the syndicate were stuck with the bonds because of unlucky timing with respect to the crash in London and Paris. Many syndicate members were unwilling to sell at a loss.

Haiti's inability to pay had a dramatic impact on the Paravey bank. Coupled with other illiquid investments, Paravey was forced to seek the help of Dalberg and Talleyrand.[127] Demands to lend money to the bank became more and more frequent and involved substantial amounts. In exchange for his help, Talleyrand asked to increase his participation in the capital of the company to one-third. In March 1828, Dalberg and Talleyrand agreed to a new loan on the condition that it would serve to liquidate the bank. Paravey committed suicide shortly after, on April 17, 1828.[128] Following the death of Paravey, the tribunal de commerce began the procedure to liquidate the bank.

Dalberg and Talleyrand ended up taking over the Haitian bonds still held by the bank.[129] To do so, they signed an agreement on July 8, 1828, with all involved parties.[130] The syndicate had paid 24 million francs to acquire the bonds: four million had been paid as a deposit, the remainder had been guaranteed by 3% French rentes.[131] The members of the syndicate had created a common pool to pay for the loan. Paravey & Cie had acquired the equivalent of 16% of the loan.[132] The bank had committed to pay 640,000 francs but had been unable to pay its dues and furthermore defaulted on another part of the deal.[133] Since Talleyrand and Dalberg had guaranteed this advance, they had to get involved. Eventually, they agreed to liquidate the participation of the bank in the common fund.[134] To do so, Talleyrand and Dalberg would take over all the remaining Haitian bonds still on the banks' books (2,366 out of 2,866 originally held by the bank).[135] They paid 1,525,400 francs to this end (i.e., a price of close to 650 francs per bond) but Talleyrand and Dalberg were only able to sell these for an amount between 622 and 625 francs in October of the same year.[136] The remainder of the Paravey debt to the syndicate was paid in the framework of the liquidation of the Paravey bank.

On July 24, 1828, Talleyrand and Dalberg stuck another deal with Laffitte, Rothschild, and the receveurs généraux. A copy of this agreement is preserved at the Rothschild Archives in Roubaix.[137] From January to April 1828, the three

[126] Faber, *supra* note 102, at 197.
[127] *Id.* at 208-09.
[128] *Id.* at 189.
[129] *Entre les Soussignés* (on file with Rothschild Archive, Roubaix, Box 132 AQ 73).
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] Faber, *supra* note 102, at 198.
[137] *Emprunt d'Haiti* (on file with Rothschild Archive, Roubaix, Box 132 AQ 73).

groups lent an amount equal to 2,403,000 francs to help the Paravey bank. To liquidate the bank, Laffitte, Rothschild, and the receveurs généraux requested that Tallyerand and Dalberg renounce the sums they had on their current account at the bank (respectively, 180,000 francs and 1,098,000 francs). Both were jointly responsible for the debts of the bank. Talleyrand and Dalberg had to reimburse the loan and its interests by September 30, 1830, even if the liquidation of the bank had not been finalized by then. This adventure brought Talleyrand to the brink of bankruptcy, forcing him to mortgage his paintings in 1829 to face a liquidity shortage.[138]

Thanks to the proceeds of the aforementioned loan, Haiti managed to pay the first installment of the indemnity, only to default on the second installment the following year. Haiti managed to service the loan in 1826 and 1827 only because it received the help of the French Treasury.[139] In 1827, the Haitian government asked Laffitte to negotiate a moratorium.[140] For investors, the central question became whether France had guaranteed the loan. According to Nonay, France had guaranteed the indemnity but not the loan which had served to help make payments on it.[141] Esmangart concurred.[142] As the latter represented the former colonizers, he had an interest in placing the burden of the loan solely on Haiti to free more French resources to pay for the remainder of the indemnity. According to Esmangart, Jacques Laffitte, by contrast, claimed that France had indeed guaranteed the loan.[143] Esmangart claims that it was established in 1828 and that the loan and the indemnity were separate, with France having no responsibility regarding the loan.[144] Negotiations stalled, and a moratorium that had been agreed upon was denounced by Haiti. The French Revolution of 1830 then led to a new round of negotiations.

The inability to pay prompted President Boyer to ask for a reduction of the indemnity. Once the default became known, many critics of the original indemnity suggested it could have been predicted. According to Nonay "by selling to the blacks something they owned, M. de Villèle could not ignore that

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[138] De Waresquiel, *supra* note 118, at 562.

[139] Blancpain, *supra* note 23, at 67.

[140] Esmangart, *supra* note 43, at 6.

[141] Nonay, *supra* note 62, at 32-35.

[142] Esmangart, *supra* note 43, at 11-15.

[143] *Id.* at 10.

[144] *Id.* at 10-11. Even in the absence of a formal guarantee, market participants often considered loans issued by colonies to enjoy an implied guarantee from the colonizing power. *See generally* Olivier Accominotti, Marc Flandreau & Riad Rezzik, *The Spread of Empire: Clio and the Measurement of Colonial Borrowing Costs*, 64 Econ. Hist. Rev. 385 (2011) (examining how borrowing terms were impacted by colonial rule); Nicolas Degive & Kim Oosterlinck, *Independence and the Effect of Empire: The Case of 'Sovereign Debts' Issued by British Colonies*, *in* Sovereign Debt Diplomacies: Rethinking Sovereign Debt from Colonial Empires to Hegemony, *supra* note 47, at 94 (exploring potential of reduction in borrowing costs for empire colonies). By extension, investors may have expected a similar treatment for the Haitian loan.

they promised him . . . a price which they would not pay."[145] For this critic, the default represented an unwillingness to pay—not necessarily an inability to pay.

The indemnity was renegotiated on February 12, 1838, with the remainder of the indemnity reduced from 120 to 60 million francs. At the same time, Louis-Philippe I formally recognized Haiti as a free, sovereign, and independent state.[146] In a sense then, one might say that Haiti paid France for its independence twice. On this second occasion, Haiti could have, in theory, simply repudiated the debt that was widely viewed as unjust domestically. It did not; instead, it bargained for a more robust recognition of its independence from France in exchange for agreeing to a new reduced (albeit, still enormous) debt.

The French government passed a law on May 18, 1840, reducing the amounts to be paid to former colonizers. This generated an outcry from the latter, many of whom viewed France as responsible for compensating them when it recognized Haiti's independence.[147] Haiti managed to pay the required amounts up until 1843, and then had to impose another moratorium. Payments resumed in 1849 but were stopped between 1867 and 1869 because of the political situation in Haiti following Sylvain Salnave's coup.[148] The new government then started to pay again.

B. *Haiti's External Debt, 1825-2020*

Until recently there were no readily available long series for Haiti's GDP and external debt levels. A companion article uses different sources to assemble such series for the period 1825 to 2020.[149] As these sources report data in different currencies and different units, all data are converted into 2020 U.S. dollars using the relative gold content of the gold franc and U.S. dollar in 1825 and data on U.S. inflation over 1825 to 2020.

These calculations show that Haiti's original debt of 150 million gold francs is worth 760 million in current U.S. dollars.[150] At the same time, Haiti's GDP in 1825, estimated by Henochsberg at 54 million gold francs, corresponds to 275 million current U.S. dollars.[151] These figures yield an initial debt-to-GDP ratio of nearly 280%. As mentioned in the previous Section, 60 million gold francs of

[145] "Mais en vendant aux noirs un bien qu'ils possédaient, M. de Villèle ne pouvait ignorer qu'ils lui en promettaient un prix qu'ils n'acquitteraient point." NONAY, *supra* note 62, at 4.

[146] BLANCPAIN, *supra* note 23, at 70.

[147] Joachim, *supra* note 23, at 366-67.

[148] A Haitian general, Sylvain Salnave, took power in May 1867 and proclaimed himself president for life in June the same year. His rule ended following a revolution, and he was executed in January 1870. BLANCPAIN, *supra* note 23, at 11, 74.

[149] *See generally* Oosterlinck et al., *supra* note 11. The discussion in this Section closely follows the discussion in that paper.

[150] *Id.* (manuscript at 17).

[151] Simon Henochsberg, Public Debt and Slavery: The Case of Haiti (1760-1915), at 57 (Dec. 2016) (Paris School of Economics) (available at http://piketty.pse.ens.fr/files/Henochsberg2016.pdf) (listing GDP of Haiti in 1825 as 54.4 million gold francs, a 0.6 million increase over 1820).

debt (corresponding to approximately 300 million in today's U.S. dollars) were canceled in 1838, bringing Haiti's debt to 160% of GDP. From 1850 to 1875, the real value of Haiti's external debt decreased from $440 million to about $220 million, and GDP grew from $350 million to $550 million (all figures are 2020 US dollars), bringing external debt to 40% of GDP. While GDP kept growing over 1875 to 1915 (average annual real GDP growth was close to 2%), debt grew at a faster pace, bringing the debt-to-GDP ratio back to 52%.[152]

The beginning of the twentieth century was characterized by U.S. banks' increased interest in Haiti. Multiple scholars have documented the involvement of U.S. banks in controlling Haiti's financial affairs.[153] In 1910, the National City Bank of New York started acquiring the stock of the National Bank of Haiti. In successive years, National City Bank gained full control of the National Bank of Haiti and acquired a substantial amount of government guaranteed debt issued by a railway company.[154] The railway's debt led to a deterioration of the government's fiscal position and to a situation in which debt service absorbed more than 80% of government revenues.

American banks' concerns about their loans to Haiti also led to an American occupation which started in 1915 and lasted until 1934. During the occupation, a primary objective of government policy was to fully repay foreign creditors. In the early 1920s, the government floated bonds in the U.S. market for $23.7 million and used the proceedings to repay the French loan and National City Bank.[155] Haiti subsequently ran large primary surpluses, with debt service absorbing more than 30% of government revenues from 1925 to 1936. After a sudden drop in Haiti's export prices in 1937, the U.S. government allowed Haiti to reduce amortization payments, but from 1936 to 1946, debt service still absorbed more than 15% of government revenues. These large primary surpluses, together with an internal loan, denominated in U.S. dollars floated in 1947, allowed Haiti to reduce its external debt, which went from more than 50%

[152] *Id.* at 50.

[153] *See* Paul H. Douglas, *The American Occupation of Haiti* (pt. 1), 42 POL. SCI. Q. 228, 231 (1927) (detailing how three German-American banking firms formed National Bank of Haiti and "secured an agreement whereby they were designated as the exclusive banking agency of the government"); Peter James Hudson, *The National City Bank of New York and Haiti, 1909-1922*, 115 RADICAL HIST. REV. 91, 91-114 (2013) (describing how National City Bank of New York forced appointment of financial adviser and receiver general who controlled government and tried to monopolize access to credit in Haiti); PETER JAMES HUDSON, BANKERS AND EMPIRE: HOW WALL STREET COLONIZED THE CARIBBEAN 82 (2017) (discussing how National City Bank of New York's efforts to acquire Banque Nationale d'Haiti were among its most successful and controversial experiences in foreign banking).

[154] IMF, *Economic Survey of Haiti*, Staff Memorandum No. 546, at 11 (Nov. 28, 1950) (stating National City Bank of New York purchased "railway company guaranteed as to solvency by the Haitian government").

[155] IMF, *Financial Institutions in Haiti*, RD-926, at 3 (Feb. 9, 1949) [hereinafter IMF Report 1949] ("In 1922 and 1923, bond issues totalling $23.7 million (118.5 million gourdes) were floated in the U.S. market for repayment of the French loans, refunding of the internal debt, and to finance public works.").

of GDP in 1915 to less than 6% of GDP in 1950. This policy of debt service primacy, however, also had a negative impact on Haiti's economic development.[156]

As noted in *The Odious Haitian Independence Debt*,[157] starting from low levels in the early 1950s, Haiti's debt-to-GDP ratio increased by ten percentage points, reaching 15% during the presidency of François Duvalier (1957-1971). It then grew rapidly over 1971 to 1986 during the regime of Jean-Claude Duvalier. The debt-to-GDP ratio peaked at 45% in 1987 and then decreased at a rapid pace over the next twenty years (partly thanks to the Heavily Indebted Poor Countries Initiative),[158] bottoming at 5% in 2011, when debt started increasing, again reaching 15% of GDP in 2019.

C. *Quantifying the Harm: The Economic Cost of the 1825 Debt*

Assuming that Haiti successfully mounts a legal claim against France, it would be entitled to some monetary remedy. The precise nature of that remedy would depend on the tribunal and the applicable legal theory. As Hanoch Dagan shows, there are a range of possible remedies, ranging from a restitutionary measure of the benefit that was realized by France as a result of the indemnity, to a remedy designed to provide compensation for the harms inflicted on Haiti.[159] And the choice of remedy reflects a judgment about the values the remedy is designed to promote.[160] In the discussion that follows, we do not delve into the question of which measure of damages would ultimately be chosen. However, we do focus on a question relevant to any attempt to compensate Haiti for the harm inflicted by the wrongful debt: Can that harm be quantified? In the broader context of the harms caused by colonial rule, former colonial powers have often claimed that quantification is impossible.[161] And we can imagine

[156] *Id.* at 3-4, 7.

[157] Oosterlinck et al., *supra* note 11.

[158] For details on the Heavily Indebted Poor Country initiative aimed at helping some of the poorest nations in the world get out of debt traps, see *Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative*, INT'L MONETARY FUND (Mar. 23, 2021), https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/11/Debt-Relief-Under-the-Heavily-Indebted-Poor-Countries-Initiative.

[159] *See* HANOCH DAGAN, UNJUST ENRICHMENT: A STUDY OF PRIVATE LAW AND PUBLIC VALUES 12 (1997) (categorizing alternative measures of recovery, including harm, proceeds, profits, proportional profits, and fair market value); *see also* Hanoch Dagan, *Restitution and Slavery: On Incomplete Commodification, Intergenerational Justice, and Legal Transitions*, 84 B.U. L. REV. 1139, 1140 (2004) (analyzing these issues in context of reparations for slavery).

[160] DAGAN, *supra* note 159, at 22 (listing "harm" measure of recovery as vindication of "invader's claim to share the entitlement with its holder without unduly harming her" and "fair market value" as vindication of "resource-holder's well-being").

[161] For instance, Mallard describes objections by colonial powers to the argument that former colonies should inherit property in the metropole in proportion to the economic value extracted from the colony, which posited that it would be impossible to quantify any such contribution. *See* Grégoire Mallard, *We Owe You Nothing: Decolonization and Sovereign*

similar objections here. Thus, we attempt to quantify the economic cost imposed on Haiti in 1825, focusing on the indemnity payments (and for now, putting aside the matter of France having extracted favorable customs treatment of its goods).

To address this question, in a companion paper we assume that instead of paying France, Haiti had created a sovereign wealth fund and endowed it with the amount requested by France. Given that 40% (60 million gold francs) of the original debt was canceled in 1838, we assume an original debt of 90 million gold francs and assess the implications of different assumptions on the current value of 90 million gold francs from 1825.[162]

Computing the value of Haiti's 1825 debt in today's money assuming a real return of 0% yields a value in 2020 dollars of approximately $450 million, or 3% of Haiti's GDP in 2020. A zero real return is, however, very conservative because Haiti could have used the funds it paid to France to buy gold reserves and these gold reserves would now be worth $1.6 billion, or 12% of Haiti's GDP. If, instead, Haiti had been able to invest the funds it paid to France in an asset with a real yield of 1%, these funds would now be worth $2.9 billion (22% of Haiti's GDP), assuming a 3% real return (3% real has been assumed to be a safe real rate for most of the twentieth century), the 90 million francs paid to France would, instead, now be worth $125 billion—or nine times Haiti's GDP. Finally, one could simply assume a real rate of return equal to Haiti's real GDP growth over 1825-2020 which was about 2.1%. In this case, the original debt would now be worth 160% of GDP or $22 billion in 2020 U.S. dollars.[163]

There are two issues with the counterfactual calculations described above. First, they assume that for nearly 200 years all the governments of Haiti had wisely invested the 90 million francs that the government paid to France. However, if a country has a large proportion of its GDP (not to mention a multiple of its GDP) stashed away in a sovereign wealth fund, the temptation to spend these funds is large. And even if the law prevents withdrawing the funds from the sovereign wealth fund, the fund could be used as collateral for new borrowing. Given the kleptocratic nature of some of Haiti's rulers (think about the Duvaliers), it is hard to think that the sovereign wealth fund equivalent that we describe above would have persisted for 190 years. In this sense, the above discussion overstates the costs of the French debt.

It is, however, possible, if not likely, that the debt accumulated at independence was part of the reason for the institutional and policy failures that make Haiti one of the poorest countries in the Western Hemisphere. It is thus possible that the kleptocratic regimes that stunted Haiti's development are a

Debt Obligations in International Public Law, *in* SOVEREIGN DEBT DIPLOMACIES: RETHINKING SOVEREIGN DEBT FROM COLONIAL EMPIRES TO HEGEMONY, *supra* note 47, at 189, 207.

[162] Oosterlinck et al., *supra* note 11 (manuscript at 19-20).

[163] A 4% real return would yield a current value of nearly $800 billion, which corresponds to 5,900% of Haiti's GDP.

consequence of the independence debt.[164] If this is the case, the calculations reported above would understate the real cost of the 1825 debt. Thus, the second problem with the counterfactual exercise described above is that it assumes that the high stock of external debt at independence had no effect on GDP growth. However, as also recognized by IMF staff in 1949, the focus on "immediate revenue yields" presumably linked to the need of servicing external debt likely had negative implications for Haiti's economic development.[165]

The economic literature on the effects of debt on growth assumes that moderate levels of debt are good for growth because they help finance investment, but high levels of debt are bad for growth because they cause large economic distortions.[166] Estimating the threshold at which debt starts having a negative effect of growth is a complicated exercise, but this is not an issue for estimating the negative growth effects of Haiti's 1825 debt. As mentioned, the standard assumption is that moderate levels of debt are good for growth because they allow countries to finance useful public expenditures. However, Haiti's 1825 debt did not buy anything useful. It is thus reasonable to assume that, from the beginning, Haiti was in a situation where debt is bad for growth.

In 2018, Haiti's income per capita was approximately $1,400 (it was $1,200 in 2020, we use 2018 figures to abstract from the growth collapse associated with the COVID-19 pandemic), using standard estimates of the growth effect of debt, in *The Odious Haitian Independence Debt*, we obtain a counterfactual 2018 GDP per capita of $8,100.[167]

To assess the value of this growth differential, assume that we could increase Haiti's GDP from $1,400 (the 2018 value) to the $8,100 of the counterfactual and compute the present value of thirty years of this $6,700 annual flow difference with a 5% discount rate. This calculation yields a present value of $103,000 per capita, which, multiplied for Haiti's population of 11 million, gives us $1.1 trillion. An enormous number.

[164] To say nothing of the continued interference and support for various dictators and other kleptocrats by global powers such as France, Germany, and the United States in Haitian internal affairs over the years. *See* Leslie Alexander, *A Pact with the Devil? The United States and the Fate of Modern Haiti*, ORIGINS (Feb. 2011), https://origins.osu.edu/article/pact-devil-united-states-and-fate-modern-haiti/page/0/1 [https://perma.cc/572P-N7UT] ("As the Cold War set in after World War II, the most devastating impact of U.S. interference in Haiti was the government's ongoing support of the Duvalier regime, which ruled Haiti from 1957 to 1986.").

[165] IMF Report 1949, *supra* note 155, at 3-4 (providing comprehensive summary on Haitian financial institutions—both public and private—in 1949).

[166] Antonio Fatás, Atish R. Ghosh, Ugo Panizza & Andrea F. Presbitero, *The Motives to Borrow* 25 (Int'l Monetary Fund, Working Paper No. WP/19/101, 2019) ("Regardless of the motives to borrow, high levels of government debt can have adverse effects on the economy, as they may limit the capacity to run counter-cyclical fiscal policy and reduce private sector investment through the standard crowding-out channel; by tightening credit constraints; by creating the expectation of higher future distortionary taxation; or by increasing uncertainty.").

[167] Oosterlinck et al., *supra* note 11 (manuscript at 21).

In *The Odious Haitian Independence Debt*, we also work with a much more conservative assumption on the negative growth effect of Haiti's 1825 debt. Specifically, we assume that the negative effect is just *one-fifth* of the lowest estimate of the negative effect of debt found by Pattillo, Poirson, and Ricci.[168] In this case, Haiti's GDP growth over 1844 to 2018 would increase from 0.6% to 0.8%, yielding a counterfactual 2018 GDP per capita of $1,700.[169] Even this modest increase of GDP per capita would have a present value $4,600 dollar per person and a total value of nearly $51 billion (three times Haiti's GDP in 2018).

Taken together, these exercises suggest that the economic cost of the 1825 debt is likely to be a multiple of Haiti's 2018 GDP.

II. CONSTRUCTING A PLAUSIBLE LEGAL CLAIM

The question of when and where legal tools might be used to help achieve redistribution of resources from former colonial masters to their erstwhile subjects is one that has received but limited attention in the legal literature. Our goal, as part of this Symposium on Law, Markets, and Distribution, is to try and re-open those questions in the context of the Haitian Debt of 1825. We use the term "re-open" because these questions have come up before; specifically, in 2004 when President Aristede's government had put in place concrete plans to bring legal action against France.[170]

The question whether France owes Haiti compensation for the 1825 indemnity comes up in the press regularly and did so again in 2020 and 2021 in the context of the Black Lives Matter movement, but there is little in the way of serious academic treatment of the underlying legal questions.[171] Below, we set out the basics of why a successful legal claim would be difficult, although perhaps not impossible, to make. And ultimately, having a plausible claim, rather than a winning one, might be all that Haiti needs to obtain a significant recovery.

[168] *See* Catherine Pattillo, Hélène Poirson & Luca Ricci, *External Debt and Growth* 19-20 (Int'l Monetary Fund, Working Paper No. 02/69, 2002).

[169] *Id.*

[170] De Cordoba, *supra* note 5 ("Aided by U.S. and French lawyers, the Haitian government is preparing a legal brief demanding nearly $22 billion in 'restitution' for what it regards as an act of gunboat diplomacy.").

[171] There are, however, a number of excellent student papers on the topic. *See generally, e.g.*, Kristen Casey, Kathy Fernandez & Nikoleta Nikova, *France's Overdue Debt to Haiti*, 54 N.Y.U. J. INT'L L. & POL. 34 (2022) (arguing France breached customary international law while dealing with Haiti); Austin Hart, The Haitian Independence Debt: A Memorandum to the Haitian Government (Mar. 2, 2021) (unpublished manuscript) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3796331) (concluding Haiti possesses plausible legal claim for restitution); Mandy Boltax, Injustice for Haiti: France's Enduring Debt to the First Black Republic (Mar. 17, 2021) (unpublished manuscript) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3805740) (exploring whether Haiti has viable claim under international law to make France pay restitution).

As a threshold matter, it is not difficult to conceptualize a plausible legal claim. Judged by contemporary standards, it is easy to see the case as one involving an odious debt. The term refers to a debt incurred by a regime that lacked popular consent (a "despotic" regime), provided no benefit to the populace where the lenders had reason to know of these facts.[172] The typical odious debt scenario involves a debtor country that repudiates a debt, raising the doctrine in defense of the lender's action for payment. Here, of course, the debt has long since been paid. But in principle, there is no reason why a borrower could not receive restitution for amounts already paid, perhaps on a theory that a lender that has received payment for an odious debt has been unjustly enriched. The borrower would have a steep hill to climb. For instance, it would need a credible explanation for why it could not have disavowed the debt at some earlier point. But the fact that the borrower has paid the loan is not a categorical bar to recovery.

Of course, any claim by Haiti against France would need to posit a legal wrong that violated standards in effect at the time of the loan (or at the time of the challenged conduct, if the claim focused on French conduct after 1825). But other legal doctrines also support a right to restitution and, perhaps, even compensation for the long-term harm caused by the debt. It is not difficult to characterize French conduct as wrongful in ways that arguably violated international law as it existed in 1825. As our discussion in Part I makes clear, the history of the loan's negotiations is complicated. The idea for the indemnity may have originated with Haitian officials, and the amounts they were prepared to accept were relatively large. But it is also true that Haiti assumed the obligation to indemnify France under threat of French gunboats and that the dispossessed French plantation owners were lobbying their government for more forceful interventions. Given that the French financial institutions who subsequently arranged for Haiti to borrow funds to pay France the indemnity were hand in glove with the French government,[173] one might be able to implicate them in this odious arrangement as well.

International law at the time may not have forbidden the use of force as a means to procure assent to a treaty. But the Haitian scenario is unique in several ways. First, to our knowledge, it is the only case in which a powerful state imposed a large debt as the price for recognition of a new state's independence. Second, this was not a case where the existence of a new state was uncertain. Haiti had clearly achieved de facto independence; in effect, French denial of recognition served only to block it from forming meaningful economic relations with other states. Third, the enormous amount of the debt can be viewed as an attempt to extract the economic benefits of colonial rule—in effect, diverting much of the Haitian economy into French coffers. Our economic analysis in

[172] Lee C. Buchheit, G. Mitu Gulati & Robert B. Thompson, *The Dilemma of Odious Debts*, 56 DUKE L.J. 1201, 1203 (2007) (defining "despotic" regime and citing the absconding dictator as the classic example).

[173] *See supra* Section I.A.

Part I reveals the lasting consequences to the Haitian economy. And fourth, the French gunboats did not merely represent a threat of force but the potential threat of reenslavement. These aspects of the debt are unique to the Haitian context and might form the basis of a plausible claim under international law.

The elephant in the room is race. It is hard to know how to incorporate it, yet it pervades every portion of the story. How much of this huge indemnity was a function of French outrage that it had been bested by the people that France had formerly enslaved? And were Haitians willing to pay much higher amounts to escape the colonial yoke because they recognized the price of entry into respectable global society was necessarily going to be higher because of the race of their people?

To be sure, France could raise potent counter-arguments and defenses to each of these theories, but it might prove embarrassing to mount such a defense before a tribunal with jurisdiction over a claim by Haiti. And a desire to close an embarrassing conversation has the potential to result in a settlement.[174]

CONCLUSION

These concluding thoughts largely come from our prior work, *The Odious Haitian Independence Debt*.[175] The barrier is in getting before a tribunal. Leaving aside the possibility of suing French banks, the most likely forum for a dispute between Haiti and France would be the International Court of Justice. Unfortunately, jurisdiction before that Court requires French consent, which France seems unlikely to provide. Likewise, the doctrine of foreign sovereign immunity—a rule of customary international law—would likely bar litigation in courts in Haiti and other countries outside of France. Still, even the jurisdictional question may have solutions. For instance, trade agreements—including the Cotonou Agreement between the European Union and the Organization of African, Caribbean, and Pacific States—might provide both a substantive claim and recourse to an arbitration tribunal for resolving disputes.

In the course of working on this Essay, we spoke informally to a number of the lawyers who were involved in the 2004 attempt to bring such a claim when President Aristide was in office. Ultimately, no lawsuit or arbitration claim was filed; President Aristide was overthrown in a coup in 2004 and the subsequent government was not interested.[176] But the lawyers had wrestled both with the jurisdiction question and that of finding a legal basis for a restitution claim under

[174] For example, payments were made to African American men who were exposed to syphilis as part of the Tuskegee Syphilis Study and were denied appropriate treatment. Although the product of a settlement in a class action, the case was settled because "the United States was rightfully and grievously embarrassed." Pollard v. United States, 69 F.R.D. 646, 649 (M.D. Ala. 1976).

[175] Oosterlink et al., *supra* note 11.

[176] As noted earlier, some suggest that the coup and the new government's unwillingness to trigger the ire of France were related. *See* Farmer, *supra* note 5 (suggesting that France had hand in Aristide's removal).

the laws in existence in 1825. Our sense from talking to them was that they had confidence that Haiti could force France to defend itself against claims arising out of the Haitian Independence Debt.[177]

On the merits, Haiti's claim would be a long shot. But even long shots have value, including in scenarios involving disputes arising out of colonial obligations. One example involves the recent Chagos litigation. There, not one but three international tribunals ruled in favor of Mauritius against the United Kingdom (and, effectively, the United States) in its claims that some of its islands were improperly taken a half century ago—as quid pro quo for the United Kingdom giving Mauritius independence[178]—and that the failure to return them amounts to incomplete decolonization. These rulings do not formally bind the United Kingdom, which has yet to return the territory, let alone pay compensation for the improper taking. But this and other recent cases represent small steps towards acknowledging, and providing some redress for, the harm associated with colonial rule.

These are complicated matters and we do not have good answers for them. But they are important. And, as our back of the envelope calculations show, they are not only important from an academic point of view but because of the lasting harm caused by the debt. Certainly any remedy designed to compensate for this harm could lead to large financial transfers to Haiti; a country in severe distress as of this writing. The same is true of a restitutionary remedy measured not by the harm to Haiti but by the benefit wrongfully obtained by France. More research is needed in order to bring clarity in this often forgotten episode in the history of sovereign debt.

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[177] For an interview with one of the lawyers on the team, Gunther Handl of Tulane University Law School, see Clauses & Controversies, *Episode 55 ft. Gunther Handl: Does Haiti Have a Legal Right to Compensation from France?* (Oct. 18, 2021) (downloaded using Apple Podcasts).

[178] Waibel, *supra* note 47, at 216-17 (stating tribunal found quid pro quo and that separation of Chagos was based on will of people concerned).