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## Haiti: Confronting an Immense Challenge

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# Haiti: Confronting an Immense Challenge

Irwin P. Stotzky\*

*Abstract*

This article analyzes the history of Haiti, from its origins as a slave colony of France, which was the richest colony in the Americas, to its war of independence leading to the first Black independent nation in the Americas, to its economic re-enslavement under the power of France and then the United States. The article discusses the great harm the French caused the Haitian people by imposing through force a ransom of billions of dollars that has led Haiti to its present position of being on the brink of becoming a failed state, with all of the disastrous consequences for the millions of Haitians that term implies. The article then discusses and analyzes several issues that Haitians must face to move from an authoritarian state to a more democratic one. These issues include corporatism, violations of the rule of law, and a general sense of anomie that has led to despair and abject poverty.

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## I. INTRODUCTION

The news from Haiti is bleak. This nation — which enjoys a rich and diverse culture, but also a long history of political turmoil, foreign intervention, and natural disasters — is currently simultaneously facing multiple crises that threaten its stability and development, including poverty, debt, political instability, gang violence, natural disasters, and the effects of the Covid-19 pandemic.<sup>1</sup> These crises raise the question of whether Haiti is a failed state and what factors have led to even asking this question. It also raises the question of what can be done to improve the lives of the Haitian people in their quest to move from an authoritarian political and social society to a democratic one.

Haiti's political situation has been unstable and volatile for decades, with frequent changes of government, coups, protests, and violence. The assassination of President Jovenel Moise on July 7, 2021,<sup>2</sup> whose administration was itself corrupt, created a power vacuum that allowed gangs to seize control of the capital and block the country's main port and fuel terminal. The country has been without a functioning parliament since January 2020 and faces a constitutional crisis.<sup>3</sup> The new government, led by Prime Minister Ariel

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<sup>1</sup> See Human Rights and Rule of Law in Haiti: Key Recent Developments December 2022 through May 2023 1 (Inst. for Just. and Democracy in Haiti (IJDH), 2023), [http://www.ijdh.org/wp-content/uploads/2023/06/HRU-June-2023-FINAL\\_updated-6.28.pdf](http://www.ijdh.org/wp-content/uploads/2023/06/HRU-June-2023-FINAL_updated-6.28.pdf) [hereinafter IJDH]; Haiti: Humanitarian Response Plan 2023 At a Glance 3–4, 6 (U.N. Off. for the Coordination of Humanitarian Aff. (OCHA), 2023), <https://reliefweb.int/report/haiti/haiti-humanitarian-response-plan-2023-glance-april-2023-enht> [hereinafter OCHA]; Sandra Wisner & Brian Concannon, *Debt and Dependence: Foreign Interference in Haiti and the Importance of Non-State Actor Accountability*, 21 Nw. J. Hum. Rts. 185, 185 (2023); Sandra Wisner & Beatrice Lindstrom, *COVID-19 Brings Renewed Urgency to Remedies for Cholera in Haiti*, ALJAZEERA (May 22, 2020), <https://www.aljazeera.com/opinions/2020/5/22/covid-19-brings-renewed-urgency-to-remedies-for-cholera-in-haiti>.

<sup>2</sup> Rebekah Riess & Tina Burnside, *Haitian-Chilean Citizen Sentenced to Life in Prison for Assassination of Haitian President Jovenel Moise*, CNN (June 3, 2023, 2:56 PM), <https://www.cnn.com/2023/06/03/world/haiti-president-assassination-rodolphe-jaar-sentenced/index.html>.

<sup>3</sup> Evens Sanon, *Haiti Prime Minister Appoints New Cabinet Amid Turmoil*, ASSOCIATED PRESS (Nov. 24, 2021, 7:11 PM), <https://apnews.com/article/business-caribbean-biden-cabinet-haiti-assassinationsa4ebaab13ebb6be6f4474f1740379d6f>.

Henry, which was formed on November 24, 2021,<sup>4</sup> has little legitimacy among the Haitian people, and faces strong opposition from the vast majority of the Haitian people, rival factions, and other civil society groups, all of whom are demanding a transitional government and new elections.<sup>5</sup>

The security situation is tense and unpredictable. Gang violence is one of the most pressing and pervasive problems, not only in urban areas like Port-au-Prince, but even in the rural areas.<sup>6</sup> Criminal heavily armed groups have a strong hold on the economic and social lives of millions of Haitians, terrorizing local populations with abduction, murder, sexual and gender-based violence, extortion, and forced displacement.<sup>7</sup> Gangs also compete for territorial control and resources, often clashing with each other and the police. The Haitian National Police (HNP) is overstretched, understaffed, lacks sufficient resources to do its job, and is often complicit in illegal gang activities.<sup>8</sup> The United Nations and other international actors claim that they have tried to support the HNP with training, equipment, and reform suggestions, but the help is often not enough and often not enthusiastically accepted, given the harm these international sources have done to Haiti in the past.<sup>9</sup>

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<sup>4</sup> See Tanya Wadhwa, *Haiti's De Facto Government Installs Transition Council to Guarantee General Elections*, PEOPLES DISPATCH (Feb. 10, 2023), <https://peoplesdispatch.org/2023/02/10/haitis-de-facto-government-installs-transition-council-to-guarantee-general-elections/>.

<sup>5</sup> *Id.*

<sup>6</sup> See IJDH, *supra* note 1, at 1–2; see generally OCHA, *supra* note 1, at 3–4 (“Gangs are now extending their influence beyond Port-au-Prince, including in the northern areas considered the country’s breadbasket, at a time when almost half the population is going hungry.”).

<sup>7</sup> See IJDH, *supra* note 1, at 1–3; 7–9.

<sup>8</sup> Luke Taylor, *Haitian Cops are Poorly Paid and Outgunned – and Part of the Problem*, THE GUARDIAN (Feb. 2, 2023, 6:30 AM), <https://www.theguardian.com/world/2023/feb/02/haiti-cops-outgunned-gangs>; see also *Official: Suspected Gang Members Kill Haitian Policeman Amid Spike in Violence*, ASSOCIATED PRESS (May 19, 2023, 2:48 PM), <https://apnews.com/article/haiti-police-killed-gangs-4b96fae31ad680137f6c559a890fbc29> (“Haiti’s National Police is severely understaffed and under resourced, with some 13,200 active-duty officers serving a country of more than 11 million people.”).

<sup>9</sup> Dánica Coto, *UN Warns Gangs Consuming Haiti Despite Help for Police*, ASSOCIATED PRESS (Mar. 15, 2023), <https://apnews.com/article/haiti-gangs-oas-police-dcbb40a0bccb3c9a43db6bd754ff0749>.

Recently, however, civilians have resorted to self-defense measures, in a movement known as “bwa kale,”<sup>10</sup> by taking up arms and attacking gang members. The movement started on April 24, 2023, when a crowd overpowered police, who had arrested fourteen presumed gang members, and used gasoline to burn the suspects alive.<sup>11</sup> This movement has resulted in a sharp drop in kidnappings and killings attributed to gangs. But the outbreak of mob justice is troubling because it could easily be used to target people who have nothing to do with gangs or violence and could lead to an explosion of even worse violence if the gangs seek retribution. Such actions, of course, are incompatible with a democratic system of government. This movement underscores the chaos in a country where no president has been elected in two years and underpaid and outgunned police offices have fled in large numbers. It is a result of an acute power vacuum.<sup>12</sup>

Poverty and hunger continue to haunt the nation. Indeed, Haiti remains the poorest country in Latin America and the Caribbean region and among the poorest nations in the world.<sup>13</sup> According to the World Bank, about 60% of the population lives below the national poverty line of \$2.41 per day, and 24% lives below the extreme poverty line of \$1.23 per day.<sup>14</sup> Poverty is even more severe in the rural

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<sup>10</sup> *Bwa kale* “literally means ‘peeled wood’ in Haitian Creole. It’s also a metaphor for an act of swift justice.” Evan Dyer, *In Haiti, a Grassroots Vigilante Movement is Fighting Back Against Gang Warfare*, CBC NEWS (May 8, 2023, 4:00 AM), <https://www.cbc.ca/news/politics/haiti-bwa-kale-port-au-prince-gang-warfare-1.6833758>. So far, the estimate from this movement is that approximately 164 people have been killed. See Dánica Coto, *Vigilantes in Haiti Strike Back at Gangsters with Brutal Street Justice*, ABC NEWS (June 4, 2023, 10:17 AM), <https://abcnews.go.com/International/wireStory/vigilantes-haiti-strike-back-gangsters-brutal-street-justice-99822535>.

<sup>11</sup> Frances Robles & Andre Paultre, *Vigilante Justice Rises in Haiti and Crime Plummets*, N.Y. TIMES (June 3, 2023), <https://www.nytimes.com/2023/06/03/world/americas/haiti-crime-gangs-vigilantes.html>. See Jilian Kestler-D’Amours, *Haiti Vigilante Push ‘Symptomatic’ of State’s Failures: Advocates*, ALJAZEERA (June 1, 2023), <https://www.aljazeera.com/news/2023/6/1/haiti-vigilante-push-symptomatic-of-states-failures-advocates>.

<sup>12</sup> *Id.*

<sup>13</sup> World Bank Group [WBG], *The World Bank in Haiti: Overview*, <https://www.worldbank.org/en/country/haiti/overview#:~:text=Haiti%20remains%20the%20poorest%20country,of%20191%20countries%20in%202021> (Oct. 26, 2023) [under “Context”].

<sup>14</sup> *Id.*

areas than in the urban areas. Haiti also suffers from high levels of food insecurity and malnutrition, exacerbated by natural disasters, climate change, political instability, and Covid-19. According to the World Food Programme (WFP), about 4.9 million people (42% of the population) are in need of urgent food assistance.<sup>15</sup> Chronic malnutrition affects 22% of children under five years old.<sup>16</sup> Moreover, even though the WFP and other humanitarian agencies have been providing some food aid and cash transfers to some vulnerable households, funding gaps and access constraints due to insecurity limit the effectiveness of those humanitarian efforts. Even if these agencies can provide some help, the efforts are simply insufficient to help most Haitians caught in the net of poverty.

Haiti is also highly exposed to natural hazards such as earthquakes, hurricanes, floods, landslides, and droughts. These natural disasters have caused widespread damage and loss of life. For example, in 2010, a devastating earthquake killed over 350,000 people,<sup>17</sup> displaced another two to three million people, and destroyed many of the important buildings in the country, such as the National Palace, particularly in Port-au-Prince.<sup>18</sup> In 2016, Hurricane Matthew killed over 500 people and severally affected 2.1 million people.<sup>19</sup> In 2021, Hurricane Grace killed sixteen people in Haiti and Mexico

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<sup>15</sup> See World Food Programme, *Haiti*, <https://www.wfp.org/countries/haiti> (last visited Oct. 26, 2023).

<sup>16</sup> UNICEF, *Haiti: Thousands of Children at Risk of Dying from Acute Malnutrition if Adequate Therapeutic Care is Not Provided, UNICEF Warns* (Aug. 5, 2022), <https://www.unicef.org/press-releases/haiti-thousands-children-risk-dying-acute%E2%80%AFmalnutrition-if-adequate-therapeutic-care>.

<sup>17</sup> Estimates regarding the death toll vary. *Compare* STAFF OF S. COMM. ON FOREIGN RELATIONS., 111TH CONG., HAITI AT A CROSSROADS, S. Rep. No. 111-51, at 1 (2010) (reporting “deaths of approximately 230,000 people), *with* GOV’T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY AND DEVELOPMENT OF HAITI 7 (Mar. 2010), <https://whc.unesco.org/document/106244> (reporting “more than 300 000 [sic] died”).

<sup>18</sup> Richard Pallardy, *2010 Haiti Earthquake*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/2010-Haiti-earthquake/additional-info#history> (last updated Aug. 9, 2023).

<sup>19</sup> WBG, *Rapidly Assessing the Impact of Hurricane Matthew in Haiti*, (Oct. 20, 2017), <https://www.worldbank.org/en/results/2017/10/20/rapidly-assessing-the-impact-of-hurricane-matthew-in-haiti>.

and severely affected over 800,000 people.<sup>20</sup> The August 14, 2021 earthquake killed more than 2,200 people and displaced more than 650,000 others.<sup>21</sup> On June 6, 2023, a magnitude 5.5 earthquake struck Haiti's southwest region destroying homes and creating panic in the country's Grand'Anse region.<sup>22</sup> At least four people died and 32 were injured.<sup>23</sup> This followed the previous weekend's torrential floods that turned the country's streets into raging brown rivers, killed at least 51 people, and injured at least 141 others.<sup>24</sup> Haiti's vulnerability to natural disasters is compounded by environmental degradation, deforestation, undeveloped infrastructure, lack of disaster preparedness, and extremely limited institutional capacity.

The economic situation in Haiti is also a disaster. For example, in 2021, the World Bank estimated a projected contraction of 1.8%.<sup>25</sup> The country suffers from low growth, high inflation, fiscal deficits, external imbalances, weak or even totally nonfunctioning governance, corruption, and environmental degradation. The World Bank, among other groups or experts, estimates that Haiti needs structural reforms to tackle its economic challenges and sustainably transform its economy.<sup>26</sup>

Given all of these problems facing Haiti, when Haiti is mentioned in the news, either in articles or on broadcasts, it is not surprising to hear the nation described as follows: Violence, tragedy, hunger, underdevelopment, natural disasters (an Earthquake that killed almost 350,000 people), hurricanes, corruption, dictators and private security forces, countless coup d'états, no properly functioning legal or health systems, extreme poverty, starvation,

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<sup>20</sup> BRAD J. REINHART ET AL., NATIONAL HURRICANE CENTER TROPICAL CYCLONE REPORT: HURRICANE GRACE (AL072021) 9–10 (NAT'L HURRICANE CTR. 2022), [https://www.nhc.noaa.gov/data/tcr/AL072021\\_Grace.pdf](https://www.nhc.noaa.gov/data/tcr/AL072021_Grace.pdf).

<sup>21</sup> HAITI EARTHQUAKE SITUATION REPORT #3 - SEPTEMBER 20, 2021 (Int'l Med. Corps 2021), <https://reliefweb.int/report/haiti/2021-haiti-earthquake-situation-report-3-september-20-2021>.

<sup>22</sup> Jacqueline Charles, *Four Dead, Homes Demolished as Earthquake Strikes Southwestern Haiti*, MIAMI HERALD (June 6, 2023, 6:19 PM), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article276136141.html>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *The World Bank in Haiti: Overview*, *supra* note 13.

<sup>26</sup> *See generally id.*

assassination of the president, thousands of desperate people fleeing someplace awful in horribly overcrowded wooden sailboats trying to survive an 800 mile extraordinarily dangerous journey to get to someplace better, but often leading to drowned people washing up on the gleaming beaches of Florida, in short, a failed state! Haiti is indeed a mess. With all of its problems, how is it possible that Haiti shares an island with the Dominican Republic, a nation which has an underground subway, health care coverage, public schools, filled up resorts, and impressive stretches of economic growth?<sup>27</sup> How is it possible that so many Caribbean island nations and many Latin American nations have developed into modern nations with at least a fair amount of wealth and a decent life for its people?

What has caused these nearly intractable problems? The usual answers include corruption by the leaders,<sup>28</sup> who have ransacked the nation for over two centuries, lucrative monopolies by the economic elite who pay few taxes and treat the vast poor majority with contempt, almost like slaves, and control every aspect of Haitian life. But what has been an open secret, well known to those who have an interest in Haiti, is that the causes of these maladies are intricately linked to a ransom forced on Haiti by international actors, particularly France. Later, the occupation of Haiti by the United States led to the takeover by Wall Street forces- particularly the National City Bank of New York-of the Haitian National Bank and the control of Haiti's foreign debt for over a decade.<sup>29</sup> The first people in the modern world to free themselves from slavery and create their own

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<sup>27</sup> Catherine Porter et al., *THE RANSOM, The Root of Haiti's Misery: Reparations to Enslavers*, N.Y. TIMES (May 20, 2022), <https://www.ny-times.com/2022/05/20/world/americas/haiti-history-colonized-france.html>. See *The World Bank in Dominican Republic*, THE WORLD BANK (Apr. 5, 2023), <https://www.worldbank.org/en/country/Dominicanrepublic/overview>.

<sup>28</sup> See Robert Muggah, *Haiti Is on the Brink of State Failure*, FOREIGN POLICY (Feb. 17, 2023, 9:17 AM), <https://foreignpolicy.com/2023/02/17/haiti-crisis-corruption-criminal-gangs-violence-humanitarian-assistance-state-failure-sanctions/>.

<sup>29</sup> See Selam Gebrekidan et al., *The Ransom: Invade Haiti, Wall Street Urged. The U.S. Obligated.*, N.Y. TIMES (May 20, 2022), <https://www.ny-times.com/2022/05/20/world/haiti-wall-street-us-banks.html> (“By 1920, National City Bank had bought out all shares of the national bank for \$1.4 million, effectively replacing the French as the dominant financial power in Haiti.”).



nation, the first free Black republic in the world,<sup>30</sup> after a bitter war of independence from France, were forced to pay reparations to the very nation they had defeated!

In May 2022, the New York Times published a series of articles describing the forced reparations and its effects on Haitian society, including an informed estimate of the cost in dollars needed to repay Haiti for the ransom.<sup>31</sup> These articles were a catalyst for a conference held at the University of Miami on March 24, 2023, to analyze and discuss the French demand for reparations and the case for restitution. The articles became the basis for this symposium issue by the Inter-American Law Review.

In this article, I review the history of Haiti that led to the reparations and the harm they have caused to the development of Haiti into a well-functioning modern society. I also discuss the deep-seated issues that the Haitian people will have to confront and hopefully resolve in its movement from an authoritarian to a more democratic society, even if France pays the reparations and restitution it owes Haiti.

## II. A LOOK BACK: HISTORICAL ISSUES AND THE RANSOM

The history of Haiti is a troubled tale of military violence and political corruption. With the singular exception of one regime that governed between 1818 and 1843, Haiti has been plagued by ceaseless coups, assassinations, and massive violations of human rights.<sup>32</sup> The only period of relative stability was between 1915 and 1934,

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<sup>30</sup> See Mario Joseph et al., *France Demanded Crippling Payments. Now Haiti Has a Legitimate Claim for Slavery Reparations*, MIAMI HERALD (Mar. 27, 2023), <https://news.yahoo.com/france-demanded-crippling-payments-now-181227171.html>.

<sup>31</sup> See e.g., Constant Méheut et al., *The Ransom: Demanding Reparations, and Ending Up in Exile*, N.Y. TIMES (May 20, 2022), <https://www.ny-times.com/2022/05/20/world/americas/haiti-aristide-reparations-france.html> (last visited Oct. 28, 2023) (“Our estimates found that over time, the payments to France cost Haiti from \$21 billion to \$115 billion in lost economic growth.”).

<sup>32</sup> Although Haiti enjoyed relative political stability under Jean-Pierre Boyer (1818-43), his methods were certainly not always just. See DAVID NICHOLLS, FROM DESSALINES TO DUVALIER: RACE, COLOUR AND NATIONAL INDEPENDENCE IN HAITI 68-82 (Cambridge Univ. Press 1979); see also MICHEL-ROLPH TROUILLOT, HAITI, STATE AGAINST NATION: THE ORIGINS AND LEGACY OF DUVALIERISM 47-50 (1990).

when the United States marines occupied the country in order to ensure United States commercial privileges.<sup>33</sup> When the troops were finally removed, conventional hostilities with the Dominican Republic resumed.<sup>34</sup>

Nevertheless, the ransom, while a significant reason for the failure of Haiti's development into a functioning modern state, is only

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<sup>33</sup> However, while the United States' occupation of Haiti may have "stabilized the currency and briefly reduced administrative corruption," its overall effect severely damaged Haiti in a variety of ways. TROUILLOT, *supra* note 32, at 102-03; see Jonathan Power, *Haiti Still Has a Chance to Survive*, CALGARY HERALD, Nov. 1, 1993, at A4 (noting while the U.S. build roads, hospitals, and contributed other improvements, "[t]hat was part of the story . . . big American companies [] bought up the best land and evicted the peasantry[,] for example); see also AMY WILENTZ, *THE RAINY SEASON: HAITI SINCE DUVALIER* 77 (1989) (noting the U.S. "wanted a stable Haiti friendly to American interests" and wanted "to protect U.S. business interests in Haiti"). Cf. HAITI - TODAY AND TOMORROW: AN INTERDISCIPLINARY STUDY 255-56 (1984). For a more detailed account of the U.S. occupation of Haiti, see HANS SCHMIDT, *THE UNITED STATES OCCUPATION OF HAITI, 1915-1934* (1971).

<sup>34</sup> Indeed, Haiti and the Dominican Republic have been at odds since the beginning of the nineteenth century, when, in 1793, France acquired Santo Domingo from Spain via the Treaty of Basel. French control over the island had already been disrupted by the slave revolt in 1791. In 1801, Haitian military leader Toussaint Louverture, after establishing his authority in Saint-Domingue, occupied Santo Domingo. He promulgated a constitution, which proclaimed him (as governor-general) sovereign over the whole island of Hispaniola, where Haiti and the Dominican Republic are today. The constitution gave subsequent Haitian rulers the so-called "legal basis" for their attempts to regain possession over the eastern part of the island (the Dominican Republic). After the French withdrawal from Saint-Domingue in November 1803, Toussaint's successors, Generals Jean-Jacques Dessalines and Henri Christophe, attempted to expel the French who still remained in Santo Domingo. But the French brought in reinforcements and forced the Haitians to retreat. While retreating, the Haitians looted and slaughtered Dominicans, which became the basis for indictments by Dominican historians of Haitian "barbarism. In 1821, President Jean-Pierre Boyer of Haiti, responding to overtures from some Dominicans, invaded the Dominican Republic. By February 1822, he had conquered the entire island. He reasserted the principle of indivisibility over the island. Boyer's invasion began a twenty-one-year period in which Haitians took over most of the administrative posts in Santo Domingo and ruled with an authoritarian hand. Boyer abolished slavery but revived forced labor. He closed the university and left many churches without priests. In February 1844, the Dominicans revolted and won their independence from Haiti. Hostilities between Haiti and the Dominican Republic continue today. See JAN KNIPPERS BLACK, *THE DOMINICAN REPUBLIC, POLITICS AND DEVELOPMENT IN AN UNSOVEREIGN STATE* 17-19 (1986).

a part of the problems that have harmed Haiti's development. But the ransom has been instrumental as a major factor in causing or exacerbating these other deep-seated problems. The history of Haiti is also one of sharply opposed interests, starkly competing visions of state and nation, and a rigid class structure, all of which have been factors in leading Haiti into its present problems and condition. If the "Haitian mind" or attitude is meant to signify the political, economic, and social positions of the vast majority, Haitians have been of one attitude only twice in their history. Their first coming together as a people was in 1791-1804, when they bravely stood together against slavery and French colonialism. Their second coming together as a people was in 1990, when at least a sixty-seven percent majority elected Jean-Bertrand Aristide to the presidency in the country's first democratic and free elections.<sup>35</sup> The events that have occurred since that election, however, reflect the deep divisions that have developed in this society between these two defining moments in the life of the Haitian nation. Class structure, not simply income or the forced reparations, and historical tides not simply the immediate past, are at the roots of Haiti's modern crisis. Indeed, a positive resolution of this crisis is impossible unless these cultural and historical issues are understood, confronted, and at least partially resolved.

Haiti is the product of a revolution against slavery and colonialism. It emerged as a nation in 1804, from the destruction of the French colony of Saint-Domingue.<sup>36</sup> By the late eighteenth century, approximately 1790, Saint-Domingue was reputed to be the most profitable colony of the western world. It established world production records for coffee and sugar.<sup>37</sup> It was, however, the worst place in the world to be a Black African slave. The French colonists imported many more enslaved Africans than almost any plantation society in the Americas, including the United States. It also killed these

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<sup>35</sup> *Jean-Bertrand Aristide*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/biography/Jean-Bertrand-Aristide> (Sept. 26, 2023); *Jean-Bertrand Aristide Fast Facts*, CNN, <https://www.cnn.com/2013/07/18/world/jean-bertrand-aristide-fast-facts/index.html> (June 28, 2023, 1:57 PM).

<sup>36</sup> This included all of Haiti and the Dominican Republic. See Murdo J. MacLeod & Robert Lawless, *History of Haiti*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/history-of-Haiti> (July 27, 2023).

<sup>37</sup> See SCHMIDT, *supra* note 33, at 19-21.

enslaved people at much more rapid rate through general mistreatment and harsh labor conditions. Finally, in August 1791, the slaves of Saint-Domingue revolted. Under the successive leadership of two figures who later became Haiti's national heroes-Toussaint Louverture and Jean-Jacques-Dessalines-they defeated Napoleon's army, allegedly at that time the strongest army in the world, after a brutal, protracted struggle. This was an incredible victory at the time for the Haitian people. Indeed, during this period it was almost impossible to believe that such a guerilla force could defeat the most powerful army in the world. Thus, the first major large-scale successful slave revolt in the Americas helped create one of the first independent states of the Americas and, not incidentally, the first Black state of the Americas.<sup>38</sup>

The revolution was both a revolution for social justice and a victory against French colonialism. It was also significant for broader reasons. It foreshadowed the independence of Latin America in general, and the destruction of African American slavery. Nevertheless, the European powers and the United States did not easily accept the revolution. They ostracized Haiti diplomatically. Even though they traded with Haiti, they did so only on the harsh terms they imposed. The reasons were clear. European powers controlled Caribbean colonies and freely and happily accepted African slavery. Representatives of Southern States in the United States, of course, argued vehemently against the recognition of Haitian independence, fearing that such recognition would encourage Black slaves in the United States to revolt. Thus, the United States did not recognize Haitian independence until 1862, when the Civil War brought an unexpected need for cotton and destroyed Southern power and influence in Washington.<sup>39</sup>

The French did try to take Haiti back in 1825.<sup>40</sup> While France did not reclaim its former colony, it did force Haiti to pay reparations for land and property, including each slave lost, that French

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<sup>38</sup> See Joseph et al., *supra* note 30.

<sup>39</sup> See Charles H. Wesley, *The Struggle for the Recognition of Haiti and Liberia as Independent Republics*, 2 J. NEGRO HIST. 369, 380-382 (1917); Noe Dorestant, *A Look at Haitian History 1803-2008, 200 Years of Independence*, HERITAGE KONPA.COM; Thomas Reinhardt, *200 Years of Forgetting: Hushing up the Haitian Revolution*, 35 J. OF BLACK STUD. 246, 249, 257 n.11 (2005).

<sup>40</sup> Irwin P. Stotzky, *The Truth About Haiti*, 26 CONN. J. INT'L. L. 1, 18 (2010).

citizens had forfeited during the rebellion.<sup>41</sup> The former French plantation owners originally encouraged the French government to invade Haiti and re-enslave the black Haitians.<sup>42</sup> But the French had no taste for another war. Instead, the French had a more insidious plan: France issued the Royal Ordinance of 1825, which called for huge indemnity payments.<sup>43</sup> “It is often referred to as the ‘independence debt.’ But that is a misnomer.<sup>44</sup> It was a ransom.<sup>45</sup>

“In addition to [a] 150 million gold Franc payment, France decreed that French ships and commercial goods entering and leaving Haiti [must] be discounted” by 50%.<sup>46</sup> This further weakened--indeed almost totally frustrated--Haiti’s ability to pay the ransom for recognition.<sup>47</sup> “According to the French . . . , the terms of the edict were non-negotiable.”<sup>48</sup> Indeed, the French sent twelve warships armed with 500 cannons to impress upon the Haitian people the seriousness of the situation.<sup>49</sup> According to a memorandum drafted by the colonists’ lawyers, France based its 150 million gold Franc indemnity requirement on profits earned by the colonists.<sup>50</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See Porter et al., *supra* note 27.

<sup>44</sup> *Id.*; see also Joseph, *supra* note 30.

<sup>45</sup> *Id.*

<sup>46</sup> J. Damu, *Haiti Makes Its Case for Reparations: The Meter is Running at \$34 Per Second*, FINAL CALL (Feb. 10, 2004, 2:29 PM), <http://www.hartford-hwp.com/archives/43a/628.html>.

<sup>47</sup> *Id.*

<sup>48</sup> Stotzky, *supra* note 40, at 19.

<sup>49</sup> Damu, *supra* note 46; see also Porter et al., *supra* note 27. Alex Dupuy argues that Jean-Pierre Boyer, at this time the leader of Haiti, did not accept the 1825 ordinance because he feared war with France. Rather, Dupuy claims that Boyer accepted the terms of the ordinance to solve the property issue between the former French colonial slave owners and the Haitian bourgeoisie, which would then allow French recognition of Haiti’s independence. He claims that opportunism by the Haitian elite is the real explanation for Haiti’s current problems. According to Dupuy, President Jean-Boyer and the elite class accepted the Independence Debt because maintaining the French plantation economy was advantageous to their economic interests. He argues that this fact undermines the coercion necessary for a restitution claim against France. See Alex Dupuy, *Haiti and the Indemnity Question*, 55 U. MIA INTER-AM. L. REV. (2023).

<sup>50</sup> Damu, *supra* note 46.

“In 1789, Saint Domingue . . . exported 150 million francs worth of products to France.”<sup>51</sup> In 1823, Haitian exports to France, England, and the United States totaled thirty million francs.<sup>52</sup> The lawyers argued that “one-half of the [thirty] million francs went toward the cost of production, leaving [fifteen] million francs as profit.”<sup>53</sup> The lawyers took the fifteen million francs balance and multiplied it by ten-years’ worth of lost profits for the French colonists because of Haiti’s war of independence. Making matters worse, the French required Haiti to secure a loan to pay the first installment on the indemnity.<sup>54</sup> France forced Haiti to borrow [thirty] million francs from a French bank, which then deducted the management fees from the face value of the loan and charged interest rates so exorbitant that, after Haiti completed repayment, it still owed six million francs.<sup>55</sup> The banker’s commission alone exceeded the Haitian government’s total revenue that year. “The 150 million gold Franc indemnity represented France’s annual budget and ten years of revenue for Haiti.”<sup>56</sup> “This became known as Haiti’s ‘double debt’” – the ransom and the loan to pay it.<sup>57</sup> It was such a huge debt that it boosted the fledgling Parisian international banking system.<sup>58</sup> Yet the double debt had an even more sinister effect: It led to Haiti’s poverty and underdevelopment.

It cost Haiti 150 million gold francs in return for national recognition, and the United States and Britain sided with France. The French government bled the nation and rendered it a “failed state.” It was a merciless exploitation that was designed and guaranteed to collapse the Haitian economy and society.<sup>59</sup> Haiti became “the first and only country where the descendants of enslaved people paid reparations to the descendants of their” enslavers, and for generations.<sup>60</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*; see also Porter et al., *supra* note 27.

<sup>56</sup> Stotzky, *supra* note 40, at 19; see Damu, *supra* note 46.

<sup>57</sup> Porter et al., *supra* note 27.

<sup>58</sup> *Id.*

<sup>59</sup> Sir Hilary Beckles, *The Hate and the Quake*, THE BAHAMAS WKLY. (Jan. 17, 2010, 10:23 AM), [http://www.thebahamasweekly.com/publish/international/The\\_Hate\\_and\\_the\\_Quake\\_by\\_Sir\\_Hilary\\_Beckles9850.shtml](http://www.thebahamasweekly.com/publish/international/The_Hate_and_the_Quake_by_Sir_Hilary_Beckles9850.shtml).

<sup>60</sup> Porter et al., *supra* note 27.

Haiti was forced to pay the sum until 1947,<sup>61</sup> when the last installment was made. During the nineteenth century, “the payment to France amounted to up to 70 per cent [sic] of [Haiti’s] foreign exchange earnings.”<sup>62</sup> The money was in exchange for recognizing the country as a sovereign nation. Haiti was isolated at birth—ostracized and denied access to world trade, finance, and international development. It is one of the most vicious examples of national strangulation recorded in modern history.

In its 1825 “independence debt” demands, France demanded five annual payments of 30 million francs. This amount was far beyond Haiti’s ability to pay. For example, the first payment by itself was about six times Haiti’s revenue that year.<sup>63</sup> The “double debt,” the 150 million gold francs and the loan requirement, after interest and big commissions for French bankers, led to a 156 million gold franc debt.<sup>64</sup> In late 1837, a second French fleet sailed into Port-au-Prince with the intent of pressuring Haiti to continue reparation payments. France then agreed to reduce its original demand to 90 million francs.<sup>65</sup> But for over six decades, Haiti made payments totaling 112 million francs, which is about 560 million in today’s dollars.<sup>66</sup> Many economists and financial historians conservatively estimate that if the money had remained in Haiti, it would have added \$21 billion to Haiti’s economy over the last two centuries.<sup>67</sup> More than

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<sup>61</sup> Damu, *supra* note 46.

<sup>62</sup> Beckles, *supra* note 59.

<sup>63</sup> Porter et al., *supra* note 27.

<sup>64</sup> *See id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* In April 2003, President Aristide sent France a petition demanding restitution in the exact amount of \$21,685,135,571.48 for the reparations that France forced on Haiti. This payment did not account for interest, penalties, or the Haitian suffering inflicted by colonization and slavery. Haiti raised the claim on the 200th anniversary of the death of one of the leaders of the Haitian slave revolt, a national hero, Toussaint Louverture. But France refused to pay. *See* Carol J. Williams, *Haitians Refuse to Take No For an Answer on Restitution*, WASH. POST (June 29, 2003), <https://www.washingtonpost.com/archive/politics/2003/06/29/haitians-refuse-to-take-no-for-an-answer-on-restitution/558ab670-10f0-46a0-9f0f-ebf7b7e91a54/>. In August 2010, political activists, artists, and scholars sent a petition to France demanding that France give Haiti \$17 billion in reparations for this injustice to be used for earthquake reconstruction projects. France, of course, rejected the petition. *See* Robert Marquand, *France Dismisses Petition for it to*

a few experts have claimed that if Haiti had not been forced to pay the “Double Debt,” the country could have met the growth rates of its “neighbors across Latin America.”<sup>68</sup> That would put the estimate at a \$115 billion loss for Haiti over time.<sup>69</sup>

The “Double Debt” helped push Haiti into a cycle of debts. These debts hobbled the country for over a century, taking away much of its revenue and harming, even stopping, its ability to build infrastructure and the essential institutions needed for Haiti to become a well-functioning, independent nation. What is perhaps even more insidious, is that generations after the Haitian people rebelled against their enslaved status under French rule and created the first free black nation in the Americas, they and their children were forced to work, sometimes for little or no salary, first for the benefit of the French, then the Americans, then their own dictators and members of the elite class. The ransom led to extreme poverty—slums, crumbling roads, nearly starving individuals, a health system on the brink of not functioning, a broken educational system, and deep structural problems, such as corporatism and failure to uphold the rule of law—which resulted in little, if any, hope for a better future.

### III. DEEPER STRUCTURAL ISSUES<sup>70</sup>

The revolution failed for an even more significant and insidious reason than the “Double Debt.”<sup>71</sup> “The Haitian elites attempted to treat the rural masses in much the same way as France and other Western nations had treated them.”<sup>72</sup> Almost immediately after Haiti gained independence, the elites attempted to recreate the plantation economy that had flourished under, and in favor, of the French.<sup>73</sup> Former slaves, however, despised plantation labor; they

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*Pay \$17 Billion Dollars in Haiti Reparations*, CHRISTIAN SCI. MONITOR (Aug. 17, 2010), <https://www.csmonitor.com/World/Europe/2010/0817/France-dismiss-es-petition-for-it-to-pay-17-billion-in-Haiti-reparations>.

<sup>68</sup> Porter et al., *supra* note 27.

<sup>69</sup> *Id.*

<sup>70</sup> This section borrows heavily from my previously published work. See Stotzky, *supra* note 40, at 20-22.

<sup>71</sup> *Id.* at 20.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*



simply refused to return to a state of slavery. Instead, they “settled as small peasants on land bought or reconquered from the state or abandoned by large landowners.”<sup>74</sup>

The urban elites devised a complicated but effective strategy to counter this problem.<sup>75</sup> The first part of the strategy was economic. The elites used the fiscal and marketing systems of the country to create wealth producing mechanisms for themselves. These mechanisms, in turn, allowed the elites to steal the productive labor capacities of the peasants. The elites became traders, politicians, and State employees. They prospered by living off the peasants’ labor. Taxes collected by the import-export bourgeoisie at the urban markets and custom houses—and paid by the peasants—provided almost the entire source of government revenue.<sup>76</sup> “In 1842, for example, perhaps as much as ninety percent (90%) of government revenues were collected at the customhouses. In 1891, more than ninety percent (90%) of State income came from the heavy hand of import and export taxes.”<sup>77</sup>

Coffee production, representing the majority of Haiti’s exports in agricultural goods, took central prominence in the fiscal policies crafted by the Haitian elites.<sup>78</sup> They taxed the product almost beyond its limits. As the favorite peasant crop to exploit, the coffee crop accounted for approximately sixty percent (60%) to ninety percent (90%) of government revenues from the late 1800s to the first half of the twentieth century.<sup>79</sup> “Moreover, until recently, charges on coffee amounted to a forty percent (40%) tax on personal income.”<sup>80</sup> But, after more than 200 years of independence, the government has yet to collect income taxes from most merchants, civil servants, or middle class employees.”<sup>81</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> See Michel-Rolph Trouillot, *Haiti’s Nightmare and the Lessons of History*, 27 NACLA REP. ON AMS. 46, 47–48 (1994) [hereinafter *Haiti’s Nightmare*]. This dual strategy was “set up during the presidencies of Alexander Pétion (1807-18) and Jean-Pierre Boyer (1818-43).” *Id.* For an analysis of these points, see TROUILLOT, *supra* note 32, at 69–71.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*; see also *Haiti’s Nightmare*, *supra* note 75.

<sup>79</sup> Stotzky, *supra* note 40, at 20.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

In addition to coffee, successive Haitian governments heavily taxed food and other necessities, such as flour, oil, kerosene, and matches.<sup>82</sup> “Indeed, when coffee exports fell, taxes on the necessities rose to offset this shortage. Luxury items for the elite, however, entered the country free of any tariffs.”<sup>83</sup>

The economic response of the elites posed serious obstacles to the creation of any form of democratic government.<sup>84</sup> The elites made sure that they received their wealth, even if it meant killing the nation.<sup>85</sup> “The State reproduced itself by living off the peasants and abusing them; the urban classes reproduced themselves by taking over the State and the wealth of the peasantry.”<sup>86</sup>

These choices by the elites inevitably led to the needless deaths of innumerable people, destruction of any progressive political movements, and, of course, political instability.<sup>87</sup> To limit the problems of political and social instability, the second part of the elite’s strategy took effect.<sup>88</sup> The strategy was to isolate the peasantry on its small mountain plots and therefore keep them away from politics.<sup>89</sup> It was a brilliant, but corrupt strategy. The very peasants who unknowingly subsidized the elites and the State had no input whatsoever in how it was to be run.<sup>90</sup> They were kept away from the political process “legally” and illegally through manipulation and harsh repression.<sup>91</sup> For example, before the twentieth century, it is highly unlikely that any elected politician ever received as many as 1,000 legitimate votes.<sup>92</sup> Before the Duvalier dictatorship, many

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* Even today, these luxury items, intended for the economic elite, often enter Haiti without any required tariffs.

<sup>84</sup> *Id.*

<sup>85</sup> Stotzky, *supra* note 40, at 20.

<sup>86</sup> *Id.*

<sup>87</sup> *Haiti’s Nightmare*, *supra* note 75.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* Historians regard the legislative elections in Port-au-Prince as one of the few legitimate electoral victories of nineteenth century Haiti. Yet in 1870, fewer than a thousand Port-au-Prince residents had the right to vote. Interview with Leon-Francois Hoffman, Professor and expert on Haitian culture, Princeton Univ. Dep’t of Romance Language and Literatures (Jan. 1993-Aug. 2010).

peasants could not even name the president.<sup>93</sup> The peasants mainly encountered the State through the *presepte* (precept), who collected the market taxes, and through the *chef seksyon* (section chief), a member of the Army, who functioned as the sole representative of all three branches of government in the rural parts of the country.<sup>94</sup> It is clearly not an exaggeration to claim that the rural areas of Haiti were a colony of the urban elites. Even today many of the rural areas and the urban ghettos remain colonies.<sup>95</sup>

Moreover, two aspects of Haitian life emerge from this sketch. First, the same elite groups that have traditionally exercised political and economic control of Haiti, have totally rejected and ostracized the present majority.<sup>96</sup> Second, the elites have coopted the state and used it as the key mechanism of both rejection and control.<sup>97</sup> Stated otherwise, the elites believed and continue to believe their lifestyle to be more important than the survival of the vast majority of the Haitian people.<sup>98</sup> That choice meant using the state to expropriate the economic output of the majority and simultaneously to repress them.<sup>99</sup> As many Haitians and others have so eloquently argued, the Haitian State is predatory; it has always operated against the nation and Haitian people it claims to represent.<sup>100</sup>

The 1915-1934 U.S. occupation of Haiti did not alleviate, but instead exacerbated this situation. The occupation left the country

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<sup>93</sup> *Haiti's Nightmare*, *supra* note 75.

<sup>94</sup> *Id.*

<sup>95</sup> *See id.* The Haitian Creole language, as well as the Haitian culture, emphasizes the overwhelming rift between the elites and the peasants. The great divide is registered in several complex and subtle ways. The languages of Haiti and their uses suggest a variety of barriers. For example, "the word *leta* in Creole means both 'the state' and 'a bully.'" The urban elites refer to the rural peasants as *moun an-dewo*, which means "outsiders." There are other more subtle language barriers. All Haitians speak Haitian Creole. Less than eight to ten percent of the population, however, speak French reasonably well enough to claim some form of fluency in that language. Moreover, "only a tiny minority within the elite[]" class are truly bilingual in both French and Creole. French is required in schools and in court. *See id.* This bars the vast majority from progressing and using the law to improve their lives. Interview with Leon-Francois Hoffman, *supra* note 92.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Haiti's Nightmare*, *supra* note 75.

<sup>100</sup> *Id.*

with a weaker civil society and a solidified state apparatus. First, the U.S. Marines reinforced the fiscal and economic power of Port-au-Prince.<sup>101</sup> They did this most obviously by centralizing the customs houses.<sup>102</sup> Second, and more significantly, the occupying forces consciously contributed to the centralization of political power in Port-au-Prince by “pacifying” the countryside.<sup>103</sup> This took the form of “modernizing” the so-called rural police (*chef de sections*) and by creating a new Haitian army, the very army that the first two democratically elected presidents in the history of Haiti attempted to dismantle and contain.<sup>104</sup> That army, and the private security forces, the *Tontons Macoute*, created by Duvalier, and later the paramilitary forces known collectively as “*Attaches*,” who were mostly the children, and successors of the *Macoute*, kept the populace in line by their harsh violent acts of murder and torture.<sup>105</sup> Moreover, the U.S. depicted the invasion as a civilizing mission.

Centralization meant that power could be more efficiently organized. Thus, it became easier for dictators to control the state,<sup>106</sup> which led to the Duvalier dictatorship and a reign of terror that lasted until the election of Jean-Bertrand Aristide,<sup>107</sup> the first democratically elected President in the history of Haiti, in 1990.<sup>108</sup>

But there was another power behind the invasion: Wall Street! More specifically, the National City Bank of New York, the predecessor of Citibank, had bought all the shares of Haiti’s national

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> “The largest and most important of these paramilitary” forces was the “Front for the Advancement and Progress in Haiti [(FRAPH)], founded after the military coup that overthrew” President Aristide on September 30, 1991. Larry Rohter, *Mission to Haiti; Haiti’s Attaches: Deadly Heirs to the Tontons Macoute*, N.Y. TIMES (Oct. 4, 1994), <https://www.nytimes.com/1994/10/04/world/mission-to-haiti-haiti-s-attaches-deadly-heirs-to-the-tontons-macoute.html>.

<sup>106</sup> Stotzky, *supra* note 40, at 21.

<sup>107</sup> See *Haiti’s Nightmare*, *supra* note 75.

<sup>108</sup> See *Jean-Bertrand Aristide*, *supra* note 35.

bank.<sup>109</sup> The U.S. government guaranteed the shares would be repaid.<sup>110</sup> This allowed the bank to lend even more money to Haiti. The American bank ended up controlling almost all of Haiti's foreign debt and, over the next decade, "sucked up" a fourth of Haiti's revenue but did little to develop Haiti.<sup>111</sup> Indeed, the New York Times analysis found that from 1825 to 1957, the Haitian international debt "drained an average of 19 percent of the country's annual revenue."<sup>112</sup> In some of those years, the New York Times found the international debt took up to more than 40 percent of the annual revenue.<sup>113</sup> As Thomas Piketty has argued, "the first economic impact of this drain was the absence of funds to invest in education, health, and infrastructure."<sup>114</sup> In the long term he continued, "this drain has totally disrupted the process of state building."<sup>115</sup>

Moreover, during the U.S. occupation, the Haitian Army became the power behind the throne, the determining factor of Haitian politics. Any notion of stability from that point meant dictatorship. First it was the regime of Francois ("Papa Doc") who ruled with an iron fist between 1957 and his death in 1971 with a maniacal private security force-the *Tontons Macoute*.<sup>116</sup> Duvalier consolidated his power quickly and ruthlessly, eviscerating individual liberties and political opposition with equal dispatch. Over 40,000 Haitians reportedly lost their lives as the victims of official brutality.<sup>117</sup> He stole

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<sup>109</sup> Porter et al., *supra* note 27. Indeed, this bank pushed the U.S. State Department to support removing the gold from Haiti's National Bank. U.S. Marines then arrived in Port-au-Prince in December 1914 and took the gold from Haiti's National Bank back to New York. Within a few months, the U.S. invaded Haiti, and forced Haiti to take loans from U.S. banks, thus securing large interest and banking fees for those banks. Gebrekidan et al., *supra* note 29.

<sup>110</sup> Porter et al., *supra* note 27.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *See Haiti Coup Leader Sentenced to Life*, N.Y. TIMES, July 31, 1991, at A3, <https://timesmachine.nytimes.com/timesmachine/1991/07/31/issue.html>. *See generally* JAMES FERGUSON, PAPA DOC, BABY DOC: HAITI AND THE DUVALIERS 30-59 (1987); *see generally* BERNARD DIEDERICH & AL BURT, PAPA DOC & THE TONTONS MACOUTES (2005).

<sup>117</sup> FERGUSON, *supra* note 116, at 57 (estimating the number of people murdered as up to 60,000, with millions more exiled).

over \$500 million in foreign aid and taxes and deposited money into personal accounts in Haiti and abroad.<sup>118</sup> Officials at all levels of government, taking their cue from Duvalier, took part in similar acts of corruption.<sup>119</sup>

Papa Doc remained in power for over fourteen years, and, in order to ensure a legacy of Duvalier control over the country, organized a fraudulent election on January 31, 1971, in which voters “approved” his nineteen year old son, Jean-Claude (“Baby Doc”) as his successor.<sup>120</sup> When his father died, Jean-Claude became “President for Life.” His rule was almost as repressive as his father’s. In 1986, however, when the levels of economic disparities and political corruption reached ungovernable proportions, Baby Doc fled Haiti for exile in France in a United States cargo plane with his family and seventeen “associates.”<sup>121</sup>

From 1986 until the election of Jean-Bertrand Aristide, the first democratically elected president in the history of Haiti in 1990, several military officials controlled the nation as dictators.<sup>122</sup> With the landslide election of Aristide, the majority of excluded ordinary people began to participate in the political system for the first time.<sup>123</sup> As Robert Fatton states, “panic seized the dominant class. It dreaded living in close proximity to *la populace* and barricaded itself against Lavalas.”<sup>124</sup>

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<sup>118</sup> TROUILLOT, *supra* note 32, at 213–14, 226.

<sup>119</sup> *Id.* at 175–77.

<sup>120</sup> On January 22, 1971, the official gazette, *Le Moniteur* . . . carried the amendments” that were to be voted on in the national referendum. One of the amendments included lowering the minimum age for the presidency from forty to eighteen. The ballot stated that “Jean-Claude had been chosen to succeed his father” and listed two questions plus the answer: “Does this choice answer your aspirations? Do you ratify it? Answer: Yes.” The official count was 2,391,916 in favor and, of course, not a single vote was opposed. DIEDERICH & BURT, *supra* note 116, at 397.

<sup>121</sup> Fearing for his life and after a series of riots broke out across Haiti in February 1986, Duvalier fled Haiti. Randal C. Archibold, *Jean-Claude Duvalier Dies at 63; Ruled Haiti in Father’s Brutal Fashion*, N.Y. TIMES (Oct. 4, 2014), <https://www.nytimes.com/2014/10/05/world/americas/jean-claude-duvalier-haitis-baby-doc-dies-at-63.html>.

<sup>122</sup> See generally *Haiti’s Nightmare*, *supra* note 75.

<sup>123</sup> Cf. ROBERT FATTON, JR., HAITI’S PREDATORY REPUBLIC: THE UNENDING TRANSITION TO DEMOCRACY 115, 142 (2002)

<sup>124</sup> *Id.* at 86.

Nine months later, the army dealt with this popular threat in the usual violent way, with a coup d'état. Aristide then went into exile in the United States.<sup>125</sup> Over the next three years, the army and its supporters systematically murdered approximately 5,000 Aristide supporters.<sup>126</sup> When the United States eventually allowed Aristide to return in October 1994, he took a surprising and unprecedented step: he abolished the army that had deposed him.<sup>127</sup> In 2000, the Haitian electorate gave Aristide a second overwhelming mandate when the party Fanmi Lavalas won more than ninety percent of the seats in parliament, and he was elected president for the second time.<sup>128</sup> As soon as he was re-elected, a systematic campaign to bankrupt and destabilize his second government set the stage for a paramilitary insurrection and another coup d'état.<sup>129</sup> In 2004, thousands of United States troops again invaded Haiti in order to "restore stability and security" to their "troubled island neighbor."<sup>130</sup>

France and the United States claimed that Aristide's ouster was necessary to avoid a looming civil war.<sup>131</sup> But there was another and perhaps more important reason: Aristide had sent a demand to the French government for the repayment of the independence debt.<sup>132</sup> The Aristide government had hired international lawyers to assemble legal arguments for the restitution of the reparations and a researcher to look through French archives.<sup>133</sup> With the restitution for the independence debt, Aristide planned to invest in schools,

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<sup>125</sup> Méheut et al., *supra* note 31.

<sup>126</sup> Rachael Bunyan, *25 Years After 'Operation Uphold Democracy,' Experts Say the Oft-Forgotten U.S. Military Intervention Still Shapes Life in Haiti*, TIME MAG. (Sept. 24, 2019), <https://time.com/5682135/haiti-military-anniversary>.

<sup>127</sup> Tristan Clavel, *Haiti's Revived Military Could Pose More Security Risks Than Solutions*, INSIGHT CRIME (July 28, 2017), <https://insight-crime.org/news/brief/haiti-revived-military-could-pose-more-security-risks-than-solutions/>. This act has been called the greatest human rights development in Haiti since emancipation.

<sup>128</sup> Peter Hallward, *Securing Disaster in Haiti*, COUNTERPUNCH (Jan. 28, 2010), <https://www.counterpunch.org/2010/01/28/securing-disaster-in-haiti/>.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Méheut et al., *supra* note 31.

<sup>132</sup> *See id.*

<sup>133</sup> *Id.* See Ira J. Kurzban, *Haiti's Legal Claim for Restitution: The Political Context for the Recovery of the Double-Debt*, 55 U. MIA. INTER-AM. L. REV. (2023).

hospitals, roads, tractors, water for peasants, all the infrastructure the country could never afford because of the double debt.<sup>134</sup> Aristide presented a bill to the French in the amount of \$21,685,135,571.48.<sup>135</sup> The figure was mocked for its size and precision by the French diplomats and even denounced by some Haitian intellectuals as Aristide's attempt to maintain power and distract people from the nation's problems. But the economists and historians hired by the New York Times to vet the estimate of the debt show this figure may have been correct and even modest.<sup>136</sup> Moreover, according to the New York Times, the French ambassador to Haiti at this time, Mr. Burkard, claimed that France and the United States orchestrated "a coup against Aristide by forcing him into exile," and that Aristide's demand for restitution, while not the principal reason for his removal, stopped his "noisy campaign," a campaign that threatened to harm relations with all former French colonies.<sup>137</sup> That problem, Mr. Burkard claimed, made Aristide's ouster "all the better."<sup>138</sup> But Aristide responded to France's actions and Burkard's statement in an interview with the New York Times as follows: "Why after 200 years is Haiti this impoverished?" He continued: "Why were we condemned to live in poverty-not just poverty but misery. An abject misery tied to 1825."<sup>139</sup> None of his successors have pressed the restitution issue. In 2003, the French government dismissed his claim of restitution. Some twelve years later, French President Francois Hollande acknowledged that France did owe Haiti a debt before his staff quickly stated that it was not a monetary one.<sup>140</sup> But Aristide argued that while the Haitian revolution started in 1791, it took many years before his enslaved country people became free, and years more before they claimed independence. "It's not finished," he said.<sup>141</sup> The articles in this symposium issue demonstrate he was right!

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<sup>134</sup> *See id.*

<sup>135</sup> *Id.*

<sup>136</sup> Porter et al., *supra* note 27.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Stéphanie Trouillard, *Hollande's Vow to Settle 'Debt' to Haiti Sparks Confusion*, FRANCE 24 (May 12, 2015, 7:19 PM), <https://www.france24.com/en/20150512-hollande-vow-haiti-debt-france-settle-slavery-confusion>.

<sup>141</sup> Méheut et al., *supra* note 31.



The ransom, the ruthless treatment of the masses by the elite, the Duvalier dictatorship, featuring violence and the use of state funds as personal bank accounts by the Duvaliers and their minions, and foreign intervention, have led to even more incredibly difficult issues that must be overcome for any chance of the Haitian people to lead a better life, a life of dignity. These issues include corporatism, violations of the rule of law, and a general sense of anomie that pervade the people in all of their activities.

Thus, a multitude of issues have to be faced and resolved for Haiti to move toward a democratic system that protects the vast majority and gives them a path to a better life.<sup>142</sup> Indeed, the effect of the “Double Debt,” even if not the sole cause, has been a significant cause of the problems facing the Haitian people.<sup>143</sup> Under the best of circumstances, Haiti cannot be changed structurally without some yielding of power by the haves—the economic elite. But, of course, rulers who profit from stasis are disinclined to risk change. Moreover, if it is to be the policy of the United States, France, and the rest of the international community, which it appears to be, to sustain at all costs the present distribution of economic power in Haiti,

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<sup>142</sup> See Mark L. Schneider, *Trouble in the Hemisphere - Haitians are Central to Ending Their Country's Crisis, but They Cannot do it Alone*, MIAMI HERALD, Aug. 2, 2023, at A13. Schneider offers six suggestions to assist Haiti. First, “the United States, Canada, and [other countries] must end the [notion] that Haitians can solve the problem themselves.” In particular, the notion that Henry is at the core of solving these problems is flawed because “Henry is not legitimate” under Haitian law because “he was never confirmed by the Senate.” Politically, Henry is not legitimate, according to Schneider, because Henry failed to “prevent the disappearance of the legislative assembly and Senate.” Second, Schneider suggests that the Biden administration should tell Henry to step down or concede power to a broad “coalition, including Montana group leaders.” Third, the Biden administration should announce an “investigation into former President Michel Martelly, his prime minister Laurent Lamothe and other members of the Haitian elite” for their roles in allowing “gangs to acquire arms and power.” Fourth, after a “consensus transition government, with shared executive power,” has been formed, an international force “should be deployed to enable the HNP to end gang control in Port-au-Prince.” The United States, Canada, and Brazil “should provide the necessary command, control, communication, intelligence and muscle” to the formal leader, which is reported to be Kenya or Jamaica. Fifth, “a joint international and HNP force [must] bring food, medical relief and shelter.” Sixth, the transition government, supported “by the joint international and HNP forces, can [] set in place building blocks for a democratic transition through elections.”

<sup>143</sup> Méheut et al., *supra* note 31.

including the refusal to pay Haiti the restitution it is owed, hardly anything can be done that will necessarily have long-range beneficial political and social consequences and thus allow Haiti a path to a more democratic system.

Legitimacy of the state requires the participation of Haiti's majority in deciding the fate of the country. It requires the recognition of all sectors of Haitian society—particularly the urban elites and their foreign partners—that Haiti is fundamentally a nation of poverty-stricken rural peasants and city slum residents who must be incorporated into the life of Haiti as equal partners. To put it another way, Haitian democracy will have to develop in the rural areas and the city slums, or it will not develop at all, and the nation will remain as a failed state. But, because of the present security issues and the failure of state institutions to develop into properly functioning ones, the elite seem extremely frightened about their own lives. Perhaps this is the moment they will work in solidarity with the vast majority to confront the almost overwhelming issues the nation faces, which have been largely but not solely created by the “Double Debt.”<sup>144</sup>

Another prominent obstacle Haiti faces in the transition process to a more modern and just state, in addition to the class divide that allows the elite to control the economic and political forces in Haiti, and the other serious issues discussed above and mainly caused by the ransom, is the corrosive power of the phenomenon known as corporatism.<sup>145</sup> Indeed, for a transition to democracy to succeed, the Haitian people must dissolve the network of de facto power relationships which corporations create and jealously protect by taking advantages of the power vacuum **created** by the supposed representatives of popular sovereignty. Under the umbrella of authoritarian rule, a number of social groups representing particular interests sculpt a place for themselves after a bargaining process which includes their support for the present regime.<sup>146</sup> Such groups include

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<sup>144</sup> *Id.*

<sup>145</sup> For an interesting discussion of the concept of corporatism and its relationship to the state and society in Latin America, see *AUTHORITARIANISM AND CORPORATISM IN LATIN AMERICA* (James Malloy ed., 1977).

<sup>146</sup> Irwin P. Stotzky & Brian Concannon, Jr., *Democracy and Sustainability in Reconstructing Haiti: A Possibility or a Mirage?*, 44 U. MIA INTER-AM. L. REV. 1, 17 (2012).

the military, religious organizations, coalitions of entrepreneurs, and sometimes even the so-called independent press.<sup>147</sup>

Corporatism is usually expressed and functions in complicated ways. There is some, often a minimum, of control by the state over these interest groups and organizations, many of which are part of civil society, and there are a variety of official and unofficial mechanisms that are used to alter their operation.<sup>148</sup> Simultaneously, however, these organizations exert enormous pressures upon government actors and agencies. These pressures allow the corporative forces to obtain favored treatment of various kinds, allowing for a legal monopoly of particular interests. Sometimes this monopoly power of cooperative interests is unaccompanied by any significant state influence over these forces. In other situations, alternative legal or even constitutional privileges short of monopoly may be granted that shield the organization from the raw competitive forces of popular expression, such as a free market.

Corporatism is an insidious and powerful force that is exceedingly difficult to overcome. Haiti is a prime example of the devastation created by corporatism. For example, between 1991 and 1994 the military corporative forces assumed total power and influence in, and completely destroyed the attempted building of democratic practices and institutions of the newly elected Aristide government.<sup>149</sup> The military forces consolidated their rule by intentionally and ruthlessly suppressing Haiti's diverse and vibrant civil society. They assassinated 5,000 people, brutalized and tortured thousands of others, and forced perhaps 500,000 people to go underground.<sup>150</sup> Until the 1990 coup d'état, Haiti boasted a huge assortment of

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<sup>147</sup> *Id.*

<sup>148</sup> For example, some governments, with Haiti being a prime example, allow private interests to control or monopolize certain industries, such as the power and telecommunication industries.

<sup>149</sup> For a thorough discussion and analysis of the violence used by those who overthrew the Aristide government, see generally IRWIN P. STOTZKY, *SILENCING THE GUNS IN HAITI: THE PROMISE OF DELIBERATIVE DEMOCRACY* (1997).

<sup>150</sup> Irwin P. Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883, 887 (1999). President Aristide asked me to organize and lead an investigation into the murders of approximately 5,000 people committed by the military forces that illegally overthrew his government in a coup d'état and put him in exile for almost the remainder of his term. The number dead is an underestimate of the systematic assassinations by the coup forces.

peasant associations, grassroots development projects, trade unions, student organizations, church groups, and independent radio stations.<sup>151</sup> In the rural areas, local groups, generally known as “popular organizations,” formed literacy programs, rural development projects, and farming cooperatives, often with international support.<sup>152</sup> The military systematically repressed virtually all forms of independent associations in an attempt to deny the Haitian people any organized base for opposition to the brutal dictatorship. The strategy seemed to be that even if the international community successfully returned Aristide to power, he would find it almost impossible to transform his popularity into the kind of organized support necessary to exert civilian control over the army and in creating a democratic institutional structure that would aid in that endeavor.

Aristide’s main accomplishment upon his reinstatement to office was to abolish the military, which since that time had started to regroup.<sup>153</sup> Since 1994, at least two of the democratically elected governments have attempted to prosecute military officials and their accomplices who were involved in massive human rights violations. For example, in August 1995, a mid-level member of the paramilitary group Front for the Advancement and Progress in Haiti (FRAPH) was convicted for the murder of Antoine Izmary, a prominent businessperson and supporter of Aristide.<sup>154</sup> This was the first time in Haitian history that anyone has been convicted of a major human rights violation.<sup>155</sup>

There have also been on-going investigations of other human rights offenses committed by the de facto regime between 1991-1994 since the return of Aristide in 1994 and his reelection as president in 2000. On September 20, 2000, after an investigation that started shortly after President Aristide’s reinstatement in 1994, the Haitian government began the prosecution of former military leaders for the massacre of at least fifteen residents of a poor

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<sup>151</sup> Interview with Leon-Francois Hoffman, *supra* note 92. See also Kenneth A. Reinert & Jon E. Voss, *Rural Grassroots Organisations in Haiti: A Case of Wasted Potential*, 7 DEV. IN PRAC. 1, 65, 65 (1997).

<sup>152</sup> See *id.* at 65-68.

<sup>153</sup> See Larry Rohter, *Aristide Weakens Army and Makes It Dependent on Him*, N.Y. TIMES, (Jan. 15, 1995), <https://www.nytimes.com/1995/01/15/world/aristide-weakens-army-and-makes-it-dependent-on-him.html>.

<sup>154</sup> See STOTZKY, *supra* note 149, at 120-135.

<sup>155</sup> Cf. *id.* at 123.

neighborhood in Gonaives in April 1994.<sup>156</sup> The Raboteau slayings were part of a series of violent attacks undertaken by the coup leaders to break support for Aristide.<sup>157</sup> At the trial, only twenty-two of the defendants actually appeared in court.<sup>158</sup> On November 9, 2000, sixteen of the twenty-two were convicted of taking part in the massacre.<sup>159</sup> Twelve of the sixteen, including the military commander of the town at the time of the massacre, Captain Castera Cenafils, and a grassroots figure turned paramilitary leader, Jean Tatoune, were sentenced to life in prison with hard labor.<sup>160</sup> The other four defendants received sentences of up to nine years imprisonment. Six defendants were acquitted.<sup>161</sup> All of the convicted defendants were also ordered to pay the equivalent of \$2,300—a large amount in Haiti—to a fund to benefit the families of the victims.<sup>162</sup>

On November 16, 2000, a Haitian court sentenced the thirty-seven defendants who did not appear in court, and were tried *in absentia*, to life in prison with hard labor.<sup>163</sup> The absent defendants included coup leaders Raoul Cedras and Philippe Biamby, both of whom received asylum in Panama; former Port-au-Prince police chief, Michel Francois, who escaped to Honduras; and FRAPH paramilitary leader Emmanuel Constant, who cut a deal with the C.I.A. and was living in New York City.<sup>164</sup> According to the prosecutors, these absent defendants had been the masterminds behind the

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<sup>156</sup> See INST. FOR JUST. AND DEMOCRACY IN HAITI, REVERSING POST-RABOTEAU MASSACRE TRIAL IMPUNITY: BRIEFING PAPER ON TWENTY YEARS OF ERODING COMMITMENTS TO JUSTICE AND THE OPPORTUNITY TO RETURN TO ACCOUNTABILITY IN HAITI 2–3 (July 2020) [hereinafter IJDH BRIEFING PAPER].

<sup>157</sup> See Interview with Brian Concannon, Executive Director, Inst. for Just. and Democracy in Haiti (1995–2010). Mr. Concannon helped prosecute the case with Mario Joseph, who is perhaps the preeminent Haitian human rights lawyer.

<sup>158</sup> IJDH BRIEFING PAPER, *supra* note 156, at 4.

<sup>159</sup> *Id.*

<sup>160</sup> The Associated Press, *Haiti Court Convicts 16 in '94 Coup Massacre*, N.Y. TIMES (Nov. 12, 2000), <https://www.nytimes.com/2000/11/12/world/haiti-court-convicts-16-in-94-coup-massacre.html>.

<sup>161</sup> IJDH BRIEFING PAPER, *supra* note 156, at 4.

<sup>162</sup> The Associated Press, *supra* note 160.

<sup>163</sup> IJDH BRIEFING PAPER, *supra* note 156, at 4.

<sup>164</sup> See Interview with Brian Concannon, *supra* note 157. See also The Associated Press *supra* note 160. For more on Constant's deal with the C.I.A., see STOTZKY, *supra* note 149, at 169–71.

attack.<sup>165</sup> The absent defendants would have been arrested if they returned during Aristide's presidency but would have had the right to a new trial if they had returned.<sup>166</sup> During this period, the Haitian government asked a number of nations, including the United States, to extradite several former military officials who had been indicted in Haiti for committing murders during the coup period.<sup>167</sup> The United States, as well as some other countries, have refused to do so.<sup>168</sup>

These trials seemed to buoy the confidence in the Haitian government in attacking the military corporatist power. But continuing these types of prosecutions has proved to be an almost impossible task because security is an absolute necessity to pursue this strategy. The failure to understand the corrosive power of corporatism in Haiti and the fear of placing international forces in harm's way,<sup>169</sup> led to a failure by the multinational forces to disarm the Haitian military and paramilitary forces, in spite of the fact that such a campaign was clearly compatible with the United Nations Security Council Resolution 940.<sup>170</sup> Part of this misunderstanding was the belief that removal of all privately held weapons in Haiti would have seriously disturbed the balance of power in Haitian society, dangerously concentrating all fire power in the hands of a democratically elected government whose long term commitment to the rule of law and democracy could not be guaranteed. This failure to trust the Haitian people's choice, led to unnecessary suffering and to the reemergence of military and paramilitary corporative power. It led to a surge in garden variety crimes, attacks on Parliament and the Haitian National Police, an increasingly large number of drug related murders committed by former military officials who have formed criminal gangs,<sup>171</sup> and the second violent overthrow of the democratically elected Aristide government in 2004. Things have become even worse since his overthrow.

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<sup>165</sup> Brian Concannon, *Justice for Haiti: The Raboteau Trial*, INT'L CRIM. LAW 641, 641-45 (2001).

<sup>166</sup> IJDH BRIEFING PAPER, *supra* note 156, at 5.

<sup>167</sup> Interview with Brian Concannon, *supra* note 157. *See also* Concannon, *supra* note 165, at 646.

<sup>168</sup> *Id.*

<sup>169</sup> Concannon, *supra* note 165, at 641-46.

<sup>170</sup> *See* S.C. Res. 940, ¶ 4 (July 31, 1994).

<sup>171</sup> *See, e.g.*, STOTZKY, *supra* note 149, at 203.

The Catholic Church is another significant corporative source in Haiti. The Catholic Church hierarchy in Haiti has for many years been siding with the military and economic elite.<sup>172</sup> Moreover, the Vatican is the only nation in the world to have recognized the political legitimacy of the 1990 military coup.<sup>173</sup> It has even been a catalyst for the repression of those who publicly practice Vodoun, even though many Haitians, including members of the economic elite, practice it in private.<sup>174</sup> Local churches, however, have long helped the people of Haiti by nurturing the populist groups in rural areas.<sup>175</sup>

The entrepreneurial sector constitutes another significant corporative force directed at the democratically elected government. It seeks to obtain a variety of privileges or protective measures and preserve those previously secured. In Haiti, the entrepreneurial sector has been successful in boycotting many measures designed to achieve progressive levels of taxation.<sup>176</sup> It has also been successful in the complete privatization of nine formerly owned state industries, securing them and reaping huge profits.<sup>177</sup> This elite class has ruled Haiti since its independence in 1804, often using the state resources as its personal bank account and keeping the vast majority of Haitians in a state of extreme poverty, even slavery.<sup>178</sup>

The great enigma, which is directly related to the controversy surrounding the economic and social crisis, is whether the previous economic groups remain dominant or have even increased their power by having changed their positions as privileged contractors of the state to positions as owners and thus monopolistic providers of the privatized public services.

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<sup>172</sup> See generally David Nicholls, *Haiti: The Rise and Fall of Duvalierism*, 8 THIRD WORLD Q. 1239, 1244–47 (1986). “For many years local parishes had been sponsoring, often with aid from international agencies, various development projects and cooperative enterprises.” *Id.* at 1246.

<sup>173</sup> See John Otis, *If Haiti’s Military-Backed Government Were to Throw a Cocktail . . .*, UNITED PRESS INT’L (Mar. 1, 1993), <https://www.upi.com/Archives/1993/03/01/If-Haitis-military-backed-government-were-to-throw-a-cocktail/> 8883730962000/.

<sup>174</sup> See Nicholls, *supra* note 172, at 1244–45.

<sup>175</sup> See generally Reinert & Voss, *supra* note 151, at 65.

<sup>176</sup> Stotzky, *supra* note 40, at 30–31.

<sup>177</sup> *Id.* at 31 n.109.

<sup>178</sup> *Id.* at 31.

In Haiti, the question has an unusual twist to it. During most of Haiti's history, the military did the bidding of the elite classes, protecting their economic monopolies and brutally suppressing the vast poor majority.<sup>179</sup> In turn, the rich paid off the dictator. During the coup d'état against Aristide, things changed. The military took over the ports and landing strips, thus enabling its high-ranking officers to prosper in the illicit drug trade.<sup>180</sup> The military also tried to control the state monopolies.<sup>181</sup> It was alarm over incursions into the economy that led the economic elite to support the return of Aristide to office, at least tentatively. During the next two democratically elected presidential administrations, the elite retained its power and reestablished its relationship with the military.<sup>182</sup> But the rising power of gangs has caused great concern for the elite and its hold on power.

In any movement from authoritarian governance toward a more democratic nation, these corporative forces will have to be weakened. That is not an easy task. The corporative forces will try to preserve their power relations and privileges through the transition, generating different types of crises, such as a military or economic threat, which exert tremendous pressure on the fragile economic and political regime.

Connected in multitude of ways and indeed inextricably bound up with these two features of any transition and consolidation process (the economic, political, and social crises and the problems of corporatism) is a third factor—the failure to fulfill the requirements of the rule of law in both the formal and informal aspects of public and private life.<sup>183</sup> In Haiti, as in virtually every nation undergoing the transition from an authoritarian system, or even from a dictatorship to a functioning democracy, this failure manifests itself in the concentration of power in the executive branch of government, often with the help of the elite, leading to massive human rights abuses and a total disregard of other branches of government.<sup>184</sup> For example, during the 1991-1994 coup period, members of the Haitian

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<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> See Stotzky, *supra* note 40, at 31.

<sup>182</sup> *Id.* at 32.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*



military and paramilitary forces systematically assassinated and tortured thousands of people, including government officials who attempted to uphold the rule of law.<sup>185</sup> Indeed, the military blatantly ignored judicial orders to arrest soldiers or officers accused of human rights abuses.<sup>186</sup> It ignored the basic rights guaranteed by the Haitian Constitution and laws passed by Parliament which threatened its hold on power. Haitian prisons, for example, were death traps. Innocent pretrial detainees were often packed like sardine cans, causing illness and death.<sup>187</sup> There was no judicial independence. The abuses continue today. In light of this and Haiti's history of these abuses, a Creole proverb aptly summarizes the Haitian people's view of law: "Law is paper; bayonet is steel."<sup>188</sup>

The violation of legal norms, however, is not restricted to formal military or de facto government officials. Unfortunately, such behavior is a distinguishing feature of political and social life at large and has existed throughout the nation's history. The failure to follow the rule of law is evident in both social practices and in the actions of government officials.

This tendency toward unlawfulness does not, however, infect only public officials. Unfortunately, it equally infects the general society. This mentality correlates with a general trend toward anomie in society as a whole. It manifests itself in such things as enormous black markets, tax evasions, corruption in private economic activities, non-observance of efficient economic norms, and non-compliance with the most basic rules of society, such as elementary traffic and urban regulations.<sup>189</sup>

This general tendency towards illegality in public and social life normally appears in one of two ways.<sup>190</sup> People may adopt a "finalist attitude," where they agree with the goals of a rule but do not follow the commands of the rule.<sup>191</sup> Conversely, they may adopt a "formalist attitude," where they blindly comply with the commands of the

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<sup>185</sup> *Id.* at 32 n.110.

<sup>186</sup> *See generally id.*

<sup>187</sup> *See Stotzky, supra* note 40, at 32.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at 32–33, 33 n.113.

<sup>190</sup> *Id.* at 33.

<sup>191</sup> *Id.*

rule but ignore its goals.<sup>192</sup> Both of these attitudes are incompatible with and thus contribute to the continuing difficulty of securing adherence to the rule of law.<sup>193</sup> They adversely affect the attempt to create a moral consciousness in the citizenry.<sup>194</sup>

The problem may be intractable because it is so pervasive and, therefore, difficult to change. This unlawfulness mentality is often the product and cause of collective action problems, such as those with structures that game theory labels “prisoners dilemma,”<sup>195</sup> and “chicken game.”<sup>196</sup> Frequently, the combination of expectations, interests, possibilities of actions, and their respective payoffs is such that the rational course of action for each participant in the process of political or social action advises that person not to comply with a certain norm, despite the fact that general compliance with it would have been for the benefit of everybody-in Pareto’s term<sup>197</sup>-or almost everybody.

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<sup>192</sup> *Id.*

<sup>193</sup> Stotzky, *supra* note 40, at 33.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* A “prisoner’s dilemma” is a situation where individual decision-makers have an incentive to make choices in a way that results in a less-than-optimal outcome for the individuals as a group. The economy is replete with examples of prisoner’s dilemmas which can have outcomes that are either beneficial or harmful to the economy as a whole. The common thread is as follows: a situation where the incentives faced by each individual decision-maker would induce them each to behave in a way that makes them all collectively worse off, while individually avoiding choices that would make them all collectively better off. The tragedy of the commons is one such example. It may be to everyone’s collective advantage to conserve and reinvest in the propagation of a common pool of natural resources to be able to continue consuming that resource, but each individual always has an incentive to instead consume as much as possible, which then depletes the resource. Finding some way to cooperate would clearly make everyone better off.

<sup>196</sup> *Id.* Chicken game is a game in which two people drive two extremely fast cars toward each other from opposite ends of a long straight road. If one of them swerves before the other, he is called a chicken. If neither swerve, they will crash. The worst possible payoff is to crash into each other. The best payoff is to have your opponent be the chicken. The next to worst possibility is to be the chicken. The last possibility is to have both drivers swerve. Then, neither has less honor than the other, so this is preferable to being the chicken.

<sup>197</sup> *Id.* “Pareto efficiency,” or “Pareto optimality,” is an economic state where resources cannot be reallocated to make one individual better off without making at least one individual worse off. Pareto efficiency implies that resources are allocated in the most economically efficient manner but does not necessarily imply

This kind of anomie may be called “dumb anomie,”<sup>198</sup> since it refers to situations in which the compliance with a certain norm would have led the social actors to a more efficient result-in Pareto’s terms- than what they obtain in the actual situation of not observing norms. This “dumb anomie” is intimately connected with both the stunting and the reversal of economic and social development. First, there is a direct conceptual connection between that kind of anomie and failures in economic activity. Indeed, “dumb anomie” is identified by the results of processes of interaction, including economic ones, which do not observe certain norms. Second, it is clear that anomie affects the process of capital accumulation. For example, when the behavior of people intervening in the process of production-even that of judges and government officials- is not sufficiently predictable, productive investments decline or claim disproportion profits.

Therefore, for a successful transition to a new structure that will improve the lives of the vast majority of Haitians, and to make a successful transition to a democratic society in Haiti, it is critical for the international community to help Haitians consolidate the rule of law. This is important not only to secure respect for fundamental rights and for the observance of the democratic process, but also to achieve satisfactory levels of economic and social development. But the international community seems to have misunderstood the contours of the rule of law, placing its resources almost solely into “strengthening the judiciary.”<sup>199</sup> Even those efforts have not appreciably improved the system of justice. In point of fact, despite the international community’s so-called “best efforts” to help strengthen the integrity of the judicial system, it remains corrupt and inefficient. Indeed, years of corruption and governmental neglect have left the judicial system nearly moribund. For example, a shortage of adequately trained judges and prosecutors, among other systemic problems, has created a huge backlog of criminal cases, with many detainees waiting months or even years in pretrial detention

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equality or fairness. It has also been used to define social circumstances, as I assume in my discussion.

<sup>198</sup> *Id.* at 33 n.114. Carlos S. Nino also used this term in describing this phenomenon in Argentina. See CARLOS S. NINO, UN PAIS AL MARGEN DE LA LEY (1992).

<sup>199</sup> Stotzky, *supra* note 40, at 34.

before getting a court hearing.<sup>200</sup> If an accused person is ultimately tried and found not guilty, there is no redress against the government for time served.<sup>201</sup> While it is certainly necessary to strengthen the judiciary, this is simply insufficient to achieve the goal of establishing the rule of law in Haiti. But strengthening the judiciary means helping to overcome the problem of “dumb anomie.” The judiciary must be improved by making it more independent, reliable, and efficient. To achieve that goal, Haiti must satisfy the guarantees that derive from the ideas of due process of law.

#### IV. CONCLUSION

While many of these problems and the legacy of history can only be overcome by the Haitian people, the international community's help is essential, because the actions of the international community—particularly the “Double Debt,” Wall Street's “activities,” and international military intervention—have been a major cause of Haiti's problems. But only the correct international incentives directed at the real problems will help the Haitian people create a viable sound democratic revolution. So far, of course, these incentives have not been properly employed.

The deepest roots of Haiti's problems lie not simply or most significantly in the country's politics or in its cultural history. Institutional reforms of the type championed by the international community, such as total privatization of formerly state owned industries or “judicial reform,” will simply not work until the more serious problems are confronted. While the moral turpitude of the elites is real, Haiti's political problems lie in the social and economic organization of the country. To put it another way, Haiti's crisis lies in social inequality and economic maldistribution. Unless and until these difficult issues are addressed, there is little hope for positive changes for the millions of Haitians trapped in despair and destitution. If they are addressed, however, it is likely that positive changes in the

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<sup>200</sup> *Id.* See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports On Human Rights Practices – Haiti (2004) [hereinafter Country Report – Haiti].

<sup>201</sup> *Id.* See Country Report – Haiti, *supra* note 200.

political sphere will follow.<sup>202</sup> The only hope Haiti has for creating a more just society and a valid democracy, is the creation of a new socioeconomic arrangement, which will be difficult to initiate, and even harder to maintain. The absence of material deprivation is a prerequisite for the conditions necessary to create a viable, modern democratic society.

The only answer to Haiti's many problems is the requirement that the unwashed majority must play a strong role in deciding the fate of the country. Under the best of circumstances, Haiti cannot be changed structurally without some yielding of power by the economic elite and policies by the international community that will lead to that result. France paying Haiti the reparations and restitution it is certainly due and the United States also paying Haiti back the money that Wall Street financiers took by controlling Haiti's foreign debt and stealing its resources would be a good start!

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<sup>202</sup> See Schneider, *supra* note 142. To address the "structural challenges" in rebuilding Haiti's "social and economic infrastructure," Schneider encourages the United States and other countries to "authorize the full 10-year funding estimate" set forth in the "draft Global Fragility Act framework for Haiti." This funding can allow Haiti to build a stronger education system and a "network of public and non-profit primary healthcare centers, secondary-care clinics and hospitals." *Id.*