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Haiti's Legal Claim for Restitution: The Political Context for the Recovery of the Double-Debt

By Ira J. Kurzban*

This article discusses Haiti's efforts to seek restitution from France for the "Double-Debt" imposed in 1825. After Haiti gained independence in 1804 following a slave revolt, France threatened to invade and re-enslave the Haitian people if they did not pay compensation to French slave owners for their lost "property." This became known as the Double-Debt, as French and American banks profited by converting the debt into high-interest loans. In 2003, on the 200th anniversary of Haitian hero Toussaint Louverture's death, Haiti's president Jean-Bertrand Aristide announced his intention to demand repayment from France. This sparked retaliation from France and Haiti's elite, who sought to undermine Aristide's government. A legal team developed arguments that the 1825 agreement was unlawful given the threat of re-enslavement. A draft complaint was prepared but the 2004 coup against Aristide halted the legal proceedings. The article argues that the restitution claim remains legally valid and an important symbol in Haiti's fight for justice, despite political opposition.

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I. INTRODUCTION

On April 7, 2003, I was representing the Republic of Haiti when its democratically elected president, Jean-Bertrand Aristide, announced he was requesting reparations from the French government because it had imposed economic sanctions on Haiti in 1825. President Aristide’s announcement came on the 200th anniversary of the death of Toussaint Louverture.¹ The symbolism was not lost on the Haitian people.²

The 1825 sanctions, imposed under threat of war and re-enslavement of the Haitian people, were unlawful and unprecedented. Haitians were forced to compensate their former slave masters for ending their slavery. These sanctions impoverished Haiti for the next two centuries.³ This unlawful conduct was compounded by scandalous acts of French, and later U.S. banks, which profited by converting France’s demand for money into interest-bearing loans for the Haitian people.⁴ These bank loans generated significant revenue

¹ See Catherine Porter et al., *The Root of Haiti’s Misery: Reparations to Enslavers*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html>.

² Lauren Collins, *The Haitian Revolution and the Hole in French High-School History*, THE NEW YORKER (Dec. 3, 2020), <https://www.newyorker.com/culture/culture-desk/the-haitian-revolution-and-the-hole-in-french-high-school-history> (Louverture “led the most important slave revolt in history, effectively forcing France to abolish slavery, in 1794.”)

³ Porter, *supra* note 1.

⁴ E.g., Lazaro Gamio et al., *The Ransom: Haiti’s Lost Billions*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/interactive/2022/05/20/world/americas/enslaved-haiti-debt-timeline.html>. (The 1825 flotilla was followed by a second fleet from France in 1837, “intent on forcing” Haiti to continue reparation payments to France. Later, U.S. financial interests were led by the National City Bank of New York (precursor to Citigroup), which pushed the U.S. State Department to back removing gold from the vaults in Haiti’s National Bank. In December 1914, U.S. Marines arrived in Port-au-Prince, removed gold from the Haitian National Bank,

through hefty interest payments above the “debt” principal and became known in Haiti as the “Double-Debt.”⁵

The political context in which the restitution claims arose can be credited to a continuous effort by Haiti’s elite, the U.S. intelligence community, and so-called friends of Haiti—particularly the French and Canadian governments—to undermine the democratically elected government of President Aristide.⁶ Those efforts intensified after the president’s announcement seeking restitution, but their antecedents were obvious from the beginning of Aristide’s second term.⁷

II. PRESIDENT ARISTIDE UNDER ATTACK

On February 7, 2001, Aristide was inaugurated as president of the Republic of Haiti for his second term after winning the popular vote by 92%.⁸ Actions were taken to undermine his presidency,

and returned to New York with that gold. Within months, the United States occupied Haiti and forced Haiti to take loans from U.S. banks, securing interest and banking fees through 1947.).

⁵ *See id.*

⁶ *See* Günter Handl, Tulane Univ. School of Law, Address at the University of Miami Inter-American Law Review Symposium: *Haiti: Reparations & Restitution, Panel II: Legal Claims & Economic Remedies* (Mar. 24, 2023), <https://inter-american-law-review.law.miami.edu/2023-symposium-haiti-reparations-restitution/>. [hereinafter Symposium]. The legal claim was ultimately drafted under a theory of restitution. Restitution provides a remedy where a defendant has been unjustly enriched through an unlawful act or a breach of contract. Recovery amounts are based on the defendant’s gain, not the plaintiff’s loss. Reparations aim to provide a remedy for damage caused by a harmful act and thus reestablish the plaintiff to a level it maintained prior to the harmful act.

⁷ *E.g.*, Jeffrey D. Sachs, *From His First Day In Office, Bush Was Ousting Aristide*, L.A. TIMES (Mar. 4, 2004), <https://www.latimes.com/archives/la-xpm-2004-mar-04-oe-sachs4-story.html> (Sachs noted that on George W. Bush’s first day in office, the United States “froze all multilateral development assistance to Haiti,” resulting in predictably severe inflation, an environment ripe for rebellion. He also reported that the U.S. military moved equipment to the Dominican Republic one year prior to Aristide’s removal, and that under George H.W. Bush, the CIA reportedly gave financial support to paramilitary groups behind the first coup attempt against Aristide in 1991.).

⁸ *See, e.g.*, *Aristide Wins Haitian Election with Nearly 92% of the Vote*, WALL ST. J. (Nov. 30, 2000), <https://www.wsj.com/articles/SB975538026295273874>.

however, ultimately resulting in a second coup against him on February 29, 2004.

Immediately after President Aristide's re-election, Gérard Gourgue, with the Democratic Convergence Party, established a parallel self-declared government.⁹ This multi-party government alliance refused to run in the election because it knew it would lose given the overwhelming popularity of Aristide and his Fanmi Lavalas Party.¹⁰ However, this opposition group had the support of anti-democratic forces in the United States that sought the ouster of Aristide.¹¹

By July 2001, the first of many commando raids began against Haitian government facilities.¹² By December 2001, ex-soldiers from Haiti's disbanded military occupied and attacked the National Palace with 50-millimeter weapons.¹³

One year later, the Group of 184, led by André "Andy" Apaid,¹⁴ who carried a U.S. passport and was supported by the International

⁹ E.g., *WORLD*, WASH. POST (Feb. 7, 2001), <https://www.washingtonpost.com/archive/politics/2001/02/07/world/a7c2442c-3511-4385-a6bf-50c67403c4a0/> ("Democratic Convergence, the 15-party opposition alliance, named former presidential candidate Gerard Gourgue as provisional president, setting up a power struggle with Aristide. Evans Paul, a Convergence leader, called for people 'to rise up' and peacefully demonstrate their rejection of Aristide today in front of the National Palace, where his inaugural address is to begin at noon.").

¹⁰ David Beer, *Chapter 3 Haiti: The Gangs of Cite Soleil*, PRISM (May 24, 2016), <https://cco.ndu.edu/News/Article/780129/chapter-3-haiti-the-gangs-of-cit-soleil/>.

¹¹ See *id.*

¹² *Haiti is Calm After Failure of Assault*, N.Y. TIMES (Dec. 19, 2001), <https://www.nytimes.com/2001/12/19/world/haiti-is-calm-after-failure-of-assault.html>.

¹³ *Id.*

¹⁴ *The Situation in Haiti: Hearing Before the Subcomm. on the W. Hemisphere of the Comm. on Int'l Relations*, 108TH CONG. 108 (2004) (statement of Rep. Maxine Waters D-CA). "André Apaid was a Duvalier-supporter." Apaid owned roughly 16 sweatshops in Haiti and was accused of not paying taxes. *Id.* at 98. He was considered amongst the "highest profile leaders" of the Group of 184 faction and heavily involved with Washington and the IRI. *Id.* at 75 (statement of Robert Maguire, Ph.D., Dir. of Programs in Int'l Affairs, Trinity College); *id.* at 108 (Waters statement). See Jacqueline Charles, *Canada slaps sanctions on a powerful Haitian businessman and gang leaders*, MIAMI HERALD, (June 23, 2023) <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article276676481.html>. (The Canadian government recently froze Apaid's assets for

Republican Institute (IRI), was formed in the Dominican Republic.¹⁵ This “group” was seen as an alternative to the Fanmi Lavalas Party and President Aristide.¹⁶ Demands were constantly and routinely initiated against President Aristide, claiming that he should “negotiate” with this unelected group comprised of Haiti’s elite that had the backing of the U.S. intelligence community.

On January 31 and February 1, 2003, U.S., French, and Canadian diplomats met in Canada at Meech Lake, the Canadian government’s conference center, to plan a second coup against President Aristide.¹⁷ The meeting was led by Roger Noriega, who later that year became Assistant Secretary of State for Western Hemisphere Affairs for the United States,¹⁸ Denis Paradis, the Secretary of State of Canada (Francophonie Region), and member of Parliament.¹⁹ The goal was to finally get rid of Aristide, as Vice President Dick Cheney triumphantly stated after the February 2004 coup.²⁰

his anti-democratic role in support of Haitian gangs and the current destabilization of Haitian society.).

¹⁵ *Who We Are*, INTERNATIONAL REPUBLICAN INSTITUTE, <https://www.iri.org/who-we-are/> (last visited Sept. 23, 2023)(Members of the IRI, founded in 1983, today continue to position themselves as experts in “responsive politics, political processes . . . and party building . . . [to establish] free, fair, and accountable democratic leadership around the globe.” The IRI’s website claims the institute has worked in more than 100 countries, and with “other global leaders,” to advance those goals.).

¹⁶ Jeb Sprague, *The Fanmi Lavalas Political Project*, NACLA (October 31, 2008), <https://nacla.org/article/fanmi-lavalas-political-project>.

¹⁷ E.g., PETER HALLWARD, DAMMING THE FLOOD: HAITI, ARISTIDE, AND THE POLITICS OF CONTAINMENT 91 (2007); Richard Sanders, *A Very Canadian Coup: The top 10 ways that Canada aided the 2004 coup in Haiti and helped subject Haitians to a brutal reign of terror*, CANADIAN CENTRE FOR POLICY ALTERNATIVES (Apr. 1, 2010), <https://policyalternatives.ca/publications/monitor/very-canadian-coup>.

¹⁸ *Roger Francisco Noriega (1959-)*, OFFICE OF THE HISTORIAN, <https://history.state.gov/departmenthistory/people/noriega-roger-francisco> (last visited Oct. 14, 2023).

¹⁹ Nikolas Barry-Shaw & Dru Oja Jay, *New documents detail how Canada helped plan 2004 coup d’état in Haiti*, THE BREACH (July 15, 2021), <https://breachmedia.ca/new-documents-detail-how-canada-helped-plan-2004-coup-detat-in-haiti/>.

²⁰ Lydia Polgreen & Tim Weiner, *Drug Traffickers Find Haiti a Hospitable Port of Call*, N.Y. TIMES (May 16, 2004), <https://www.nytimes.com/2004/05/16/world/drug-traffickers-find-haiti-a-hospitable-port-of-call.html>. In 2020, there was an unsuccessful parliamentary effort in Canada to obtain the notes and documents related to the meeting at Camp Meech between

After President Aristide's announcement on April 7, 2003, stating that he was seeking restitution from France, the French were startled and determined to end any discussion of restitution.²¹ At the time, Jacques Chirac was president of France and Dominique de Villepin was France's foreign minister.²² France's initial reaction to the restitution claim was delivered by de Villepin, who stated that France had given 200 million euros to Haiti as part of the European Union's two-billion-euro in aid to Haiti in recent years.²³ de Villepin's spokesperson said the problem in Haiti was due not to the Double-Debt, but to "[b]ad governance [and] the degradation of security."²⁴

By October 2003, de Villepin created a committee on Franco-Haitian relations: the *Comité Indépendent de Réflexion et de Propositions sur les Relations Franco-Haïtiennes*. Véronique Albanel, a professor, philosopher, and sister of de Villepin, was made a special envoy and sent to Haiti from France.²⁵ Régis Debray, a famed French philosopher and progressive author, was also sent to Haiti as

the United States and Canada. See *Petition to the House of Commons, March 22, 2021* (Pet. No. 432-00682).

²¹ Constant Méheut et al., *The Ransom: Demanding Reparations, and Ending Up in Exile*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/2022/05/20/world/americas/haiti-aristide-reparations-france.html>.

²² Eleanor Beardlsey, *Political Duel By Longtime Rivals Captivates France*, NPR (Feb. 26, 2010), <https://www.npr.org/templates/story/story.php?storyId=123748172>.

²³ See *Haiti: EU sets up autonomous framework for restrictive measures*, EUROPEAN COUNCIL (July 28, 2023), <https://www.consilium.europa.eu/en/press/press-releases/2023/07/28/haiti-eu-sets-up-autonomous-framework-for-restrictivmeasures/#:~:text=The%20EU%20has%20allocated%20more,current%20insecure%20and%20volatile%20context>.

²⁴ Carol Williams, *Quixotic Haiti Seeks French Restitution*, L.A. TIMES (June 14, 2003), <https://www.latimes.com/archives/la-xpm-2003-jun-14-fg-haiti14-story.html>.

²⁵ E.g., *Ousted Haitian president launches 'abduction' asuit*, ABC NEWS (Mar. 31, 2004), <https://www.abc.net.au/news/2004-04-01/ousted-haitian-president-launches-abduction-suit/162084> [hereinafter *Ousted*]. See also John Lichfield & Andrew Buncombe, *Aristide plans to sue France and the US*, INDEPENDENT (Mar. 11, 2004), <https://www.independent.co.uk/news/world/americas/aristide-plans-to-sue-france-and-the-us-565908.html> (noting Debray and Albanel as central figures in the events surrounding the 2004 coup and Aristide's removal from Haiti—Aristide's legal team planned lawsuits for kidnapping and forced exile, and lawsuits against de Villepin, Albanel, and Debray).

the head of the committee to discuss the matter with the government of Haiti in December 2003.²⁶ Debray and Albanel, anchors of the French delegation, were instructed not to discuss or even acknowledge restitution, but instead to say France only had a moral obligation to Haiti and that France should cooperate with Haiti in health and education development.²⁷ For example, I attended a meeting where, in the face of the restitution claim for billions of dollars, Debray countered and suggested that France could establish French language schools for Haitians.²⁸

III. PRESIDENT ARISTIDE INITIATES HAITI'S LEGAL CLAIM FOR RESTITUTION

In April 2003, President Aristide asked me to establish the legal team to draft a complaint and develop a legal strategy to obtain restitution against France for the Double-Debt. Conservatively, the amount to recover was \$21 billion dollars.²⁹ The strategy to support the restitution claim was: (1) to educate the public about the debt, (2) pursue claims diplomatically, and (3) prepare a legal case.

Beyond the legal aspects of the restitution claim, the team and I looked at the political context. At one point, we even contacted people who managed the “debt clock” in Times Square, in New York City, to set up a similar debt clock for Haiti’s debt.

By June 2003, the government of Haiti had established a Restitution Commission and began holding meetings in Haiti on how to

²⁶ *E.g.*, Méheut, *supra* note 21.

²⁷ *See id.*

²⁸ Régis Debray, *Rapport au ministre des affaires étrangères, M. Dominique de Villepin, du Comité indépendant de réflexion et de propositions sur les relations franco-haïtiennes*, FRENCH REPUBLIC, 15 (Jan. 1, 2004), <https://www.vie-publique.fr/rapport/26900-rapport-au-ministre-des-affaires-etrangeres-m-dominique-de-villepin-d>. In the committee’s final report to de Villepin, education was one of the four “Propositions” to solve Haiti’s issues. *Id.* at 75-84. Debray listed Reconstruction of the French Institute as the lead educational plan. *Id.* at 75. President Aristide is notably not one of the many persons within Haiti listed as interviewed by the committee in developing the 2004 short text/report to the French government; Apaid (Group of 184) and Paul (Democratic Convergence), both prominent opposition leaders, were cited as persons in Haiti relied upon by the French committee to develop the report released one month before the coup. *Id.* at 101, 104.

²⁹ *Id.* at 15.

proceed. The Restitution Commission decided to work with Günther Handl and the Bichot & Associés law firm in France. Handl was the principal author of the legal theories that Haiti can still rely on today. He wrote a detailed memorandum of law on November 7, 2003, addressing the issues of restitution. That month, the commission established a legal theory which was the principal basis for impugning the validity of the 1825 Agreement between France and Haiti in which Haitians were required to pay their former slaveholders.³⁰ The theory was one for contractual restitution and not simply reparations. The restitution claim was grounded in the international illegality of the conditions under which the 1825 Agreement concluded—the threat of re-enslavement.³¹

At first, the major obstacles to instituting the legal claim were identifying who the plaintiffs might be and a forum in which to bring such a suit. The commission debated whether it could bring suit on behalf of families of former enslaved persons, as well as whether the Haitian government could initiate claims against French banks or against the decedents of French citizens who received the sanctions paid by Haitians. Regarding a forum, the Bichot firm indicated that the Republic of Haiti might be able to file a claim for restitution in a French court against the Republic of France. But after extensive research, the firm decided that the Haitian state could not bring the suit in a domestic French court. Thus, the main question became whether there was a viable international forum. The International Court of Justice was not available because France was not a signatory. The commission members then discussed the potential of using the Cotonou Agreement to create a partnership agreement between Haiti and France.³²

³⁰ Méheut, *supra* note 21.

³¹ See Symposium, *supra* note 6.

³² The Cotonou Agreement, adopted in 2000, served as the framework for relationships between EU nations and African-Caribbean-Pacific (ACP) nations with the goal of reducing poverty and the gradual integration of ACP nations into the world economy vis-à-vis economic partnership agreements. Beyond free trade agreements, the pillars of the agreement were development, economic and trade cooperation, and political agency. As of 2022, Haiti is the only Caribbean nation to not ratify the agreement. See Ionel Zamfir, *EU economic partnership agreements with ACP countries: Which way forward?*, Euro. Parl. Research Service (Nov. 2022), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738220/EPRS_BRI\(2022\)738220_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738220/EPRS_BRI(2022)738220_EN.pdf).

By January 2004, the commission had drafted a complaint, but was still trying to determine where to bring the action. By February 2004, the commission offered to retain the Bichot firm in France. However, at the same time, the political efforts to destabilize and ultimately destroy the democratically elected government were rapidly escalating.³³

A. Coup to Quiet the Restitution Claim

As part of the disinformation and destabilization campaign launched against President Aristide, the so-called intellectuals and business leaders in Haiti attacked and dismissed the idea of restitution, calling it a joke and without any basis. The French Committee, led by Debray, wrote a report characterizing the debt demand as “hallucinatory accounting;” that no one in the democratic opposition in Haiti takes the matter seriously and that the desirable consequence would be for Aristide to step down.³⁴ French president Chirac’s ambassador, Yves Gaudeul, warned of the “imminent ‘political storm,’” stating “‘even if the sky seems blue . . . Hang on tight.’”³⁵ Likewise, both Albanel and Debray acknowledged that at various

³³ *E.g.*, Walt Bogdanich & Jenny Norberg, *Mixed U.S. Signals Helped Tilt Haiti Towards Chaos*, N.Y. TIMES (Jan. 29, 2006), <https://www.nytimes.com/2006/01/29/world/americas/mixed-us-signals-helped-tilt-haiti-toward-chaos.html> (Brian Dean Curran, U.S. Ambassador to Haiti prior to Aristide’s removal, discussed the IRI, specifically Stanley Lucas, whom the IRI positioned in Haiti. Lucas worked contrary to official U.S. policy, was deeply ingrained in anti-Aristide movements, and pushed opposition groups to refuse negotiations with Aristide. Lucas flew “hundreds of opposition members—but no one from Mr. Aristide’s Lavalas party—to a hotel in the Dominican Republic for political training” where some leaders of the armed opposition were, coincidentally, at the hotel. The United States officially dismissed Curran’s concerns; however, Colin Powell’s top official for Latin America admitted to the “change in policy” and that the United States “wanted [a] change to give the Haitians an opportunity to choose a democratic leader[.]”).

³⁴ Debray, *supra* note 28, at 11.

³⁵ HALLWARD, *supra* note 17, at 227. See *e.g.*, Méheut, *supra* note 21 (“France’s ambassador to Haiti at the time, Thierry Burkard, said in an interview that France and the United States had effectively orchestrated ‘a coup’ against Mr. Aristide, and that his abrupt removal was ‘probably a bit about’ his call for reparations from France, too. ‘It made our job easier’ to dismiss the reparations claims without Mr. Aristide in office, Mr. Burkard noted.”).

times, they delivered threats to President Aristide and told him that he would be removed unless he dropped the restitution claim.³⁶

On February 5, 2004, a military force led by Louis Jodel Chamblain – the former head of FRAPH – a right-wing paramilitary death squad in Haiti,³⁷ equipped by the United States and trained in the Dominican Republic, began an insurgency in Gonaives, Haiti.³⁸ By February 29, 2004, the coup was complete, and President Aristide was forcefully removed to the Central African Republic. The draft complaint for restitution disappeared.

In March 2004, Gérard Latortue, a Haitian exile living in Boca Raton, Florida, was quickly appointed the new Prime Minister of Haiti. Latortue's perceived strength was courtship of neo-conservatives in Washington, including those in the Pentagon.³⁹ He had never previously been elected to any public office in Haiti. After the coup against President Aristide, one of Latortue's first acts was to announce to the French government in mid-April 2004 that Haiti's pursuit of the restitution claim "is closed" and had been "illegal, ridiculous and was made only for political reasons."⁴⁰ Just four months

³⁶ See, e.g., Ousted, *supra* note 25 (noting Aristide's legal claims after the coup, including against Albanel and Debray).

³⁷ E.g., Lydia Polgreen, *Top Rebel, a Convicted Killer, Surrenders to Police in Haiti*, NY TIMES, Apr. 23, 2004, at A6 ("[Mr. Chamblain] was a founder of the Front for the Advancement and Progress of Haiti, or ("FRAPH"), an instrument of terror wielded by the military junta that took over Haiti in 1991. The group killed thousands over the next three years, according to human rights organizations and the Haitian government.").

³⁸ See *Haiti: Recycled Soldiers and Paramilitaries on The March*, HUMAN RIGHTS WATCH (Feb. 27, 2004), <https://www.hrw.org/report/2004/02/27/haiti-recycled-soldiers-and-paramilitaries-march>. (Human Rights Watch called Chamblain "[t]he most disturbing figure in the rebel leadership," noting that "Chamblain escaped to the Dominican Republic in 1994" after being implicated in numerous murders and at least one massacre. Various members of insurrectionary forces had exiled in the Dominican Republic prior to the 2004 coup. Chamblain returned to Haiti in late 2003 to early 2004. The coup was completed in February 2004. Guy Phillipe, also serving in 2004 as the leader of the insurrectionary forces, was trained by the United States in Ecuador.).

³⁹ There are clear parallels between Gérard Latortue and Ahmed Chalabi of Iraq.

⁴⁰ *Haiti Drops Its Demand for Refund from France*, WALL ST. J. (Apr 20, 2004), <https://www.wsj.com/articles/SB108241560696887142> [hereinafter *Haiti Drops its Demand*].

earlier, Latortue told the Miami Herald that restitution to Haiti was “the moral and politically responsible thing to do.”⁴¹

Today, Haiti still suffers from the impoverishment brought by the Double-Debt and France’s unlawful conduct in 1825. However, the legal claim for restitution remains valid and viable.

⁴¹ Jacqueline Charles, *Aristide Pushes for Restitution from France*, MIAMI HERALD, Dec. 18, 2003, at A1 (Less than four months prior to Latortue’s rise, Latortue called the restitution claim “the moral and politically responsible thing to do.”). See *Haiti Drops Its Demand*, *supra* note 39. (The Wall Street Journal referred to Latortue as “Haiti’s new U.S.-backed leader,” noting that “Mr. Aristide [was] driven into exile Feb. 29 in the face of . . . U.S. and French pressure [after Aristide] launched a vigorous campaign to get back 90 million gold francs Haiti paid Paris in reparations . . .”).