

A POSTCOLONIAL INDEMNITY? NEW PREMISES FOR INTERNATIONAL SOLIDARITY WITH HAITIAN- DOMINICAN RIGHTS

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I. INTRODUCTION

“Will they get away with it again?” asks Amy Serrano, maker of *The Sugar Babies* documentary film (Serrano 2007), in a October 24, 2013, listserv email message sharing the news of a U.S. Department of Labor (2013) report documenting labor abuses in Dominican sugar production. To my ears, Serrano’s question raises a question: Who is the “they” to whom we must deny impunity? In what follows here, I make the case for broadening the circle of responsibility to include governments and powerful interests beyond the island of Hispaniola. When examined through the lenses of history, interests foreign to both Haiti and the Dominican Republic stand among the “they” from whom accountability is to be sought for the rights crisis that today confronts Haitian immigrants and Haitian descendants.

Serrano’s film, as well as her lobbying of the U.S. Department of Labor for Dominican sugar to be designated a forced labor commodity, and her Internet advocacy in favor of the imposition of U.S. trade sanctions against the Dominican Republic for its sugarcane growers’ mistreatment of Haitian-descendant workers, all make it clear who she thinks “they” are: the Fanjul family, owners of the La Romana sugar plantation, which has for more than half-a-century been the Dominican Republic’s largest single sugar producer. Another video documentary framed in a similarly prosecutorial style, *The Price of Sugar*, indicts the ‘sugar baron’ Vicini family for wrongs including recruitment of Haitian workers by deception, the murder of one migrant by a Vicini employee, and holding migrant workers locked up at night inside barracks under armed guard (Haney 2007). These two filmmakers’ way of *not* letting them “get away with it again” – exposing sugar producers’ misdeeds to the eyes of the world and advocating where possible for the imposition

of legal penalties against them – stands firmly in the main stream of international human rights professionals’ strategies for bringing wrong-doers to account and pushing the Dominican government toward greater compliance with human rights norms. This approach assumes that, if escalated strongly and persistently enough, a combination of litigation in international courts and naming-and-shaming before the court of world opinion can push the Santo Domingo government to enact liberal, rights-respecting reforms.

One important problem is that this approach is not working. Xenophobes in Dominican politics and media have counter-punched international human rights pressure, by pushing a narrative which holds the country to be ‘under attack’ from not just the silent infiltration of Haitian immigrants but also the outspoken contentiousness of international human rights activists. Anti-Haitian opinion has thus lost every confrontation overseas – fact-finding reports by independent human rights and labor rights monitors, testimony before U.S. Congressional committees, and decisions in the inter-American human rights system have all gone entirely against the Dominican government’s policies on Haitian rights – and yet xenophobia has won the political war at home. A series of laws, high-court verdicts, and bureaucratic measures internal to the Dominican Republic – a new Migration Law in 2004, the Junta Central Electoral (Central Electoral Board) *Resolución 12* in 2007, and the redrafting of the Dominican Constitution in 2009, all sustained on multiple occasions by Dominican high courts and culminating in the Tribunal Constitucional’s *Sentencia 168* of 2013 and the subsequent presidential *Plan de Regularización* and congressional *Ley 169* – has excluded the children of undocumented immigrants from eligibility for birthright citizenship and moved even to strip citizenship retroactively from Dominicans whose foreign-born parents registered their birth without official residency permits. Legal confrontations in Dominican and international courts seem thus to have had largely negative effects (Martínez 2014; Marsteintredet, this volume).

In this paper, I propose a third narrative, motivated first by my worry about the failure of international pressure tactics but also by my concern that a more complete accountability may be needed as the basis for a more complete justice. This narrative might usefully be brought into discussion alongside the path to justice that rights advocates imagine to be attainable through international pressure. I propose the creation of a social and economic rights truth commission, to look into what is owed, by whom, to Haitian migrant and Haitian-descendant workers, to compensate for years of under-remunerated labor, unfairly extracted

from them on the basis of restricted geographical and social mobility. I neither claim to bring forward new facts nor pretend to flesh out the case fully but sooner aim to say just enough to bring up the idea of a Hispaniola postcolonial indemnity for discussion. I want to raise some questions for discussion premised on the idea that the “they” who are “getting away with it again” include a range of international corporate actors who historically had an important hand in creating the rights crisis being faced by Haitian nationals and Haitian descendants in the Dominican Republic. In response to Serrano’s question, I ask this: Does the United States hold a special responsibility toward the Dominican Republic and its Haitian-ancestry people, on the basis of past meddling in Dominican affairs by U.S. government agencies and unfair exploitation of Haitian labor by specific U.S.-based businesses? A responsibility that goes beyond a history of U.S. support for military putchists, oligarchs and footloose core country capitalists in the Dominican Republic as in much of the rest of Latin America and the Caribbean? A special responsibility, of *direct* authorship of today’s systems of oppression? Does the “they” who are “getting away with it again” include not just the Fanjuls, Vicinis and the Dominican state but also the U.S. Marines and Department of State, as well as Citibank, the legacy holder of the assets of the National City Bank of New York, which owned the Dominican national debt at the moment when the Dominican Republic was first being incorporated into the U.S. neo-colonial orbit? And if we accept that U.S. interests bear not just indirect but direct, command responsibility, what does that then imply for U.S. government obligations today?

A theoretical premise of my question is that conventional human rights approaches are often too restrictive in terms of geography. Human rights discourse by default supposes problems in other countries to be matters internal to those countries and not outcomes of global inequities. The unspoken assumption of international human rights is that the global order is a space that is inherently fragmented by national borders, analogous to what James Ferguson (1990) called an “anti-politics machine” in relation to development aid. The assumption behind the anti-politics machine of development aid, according to Ferguson, is that the countries providing aid recognize no responsibility for the development shortcomings of the countries being aided; those shortcomings are to be understood entirely as products of in-country processes. In like manner, nowhere in human rights reporting is there to be found consideration that the present rights crisis in the Dominican Republic may relate in any way to the exercise of power by leaders

elsewhere in the world, whether that pertain to the misdeeds of colonial rule and neo-colonial domination or the miscalculations of foreign intervention in the present global governance era. Where theory may make a practical difference here is that it does not suffice to consider the issues as just a Dominican matter nor even a binational problem that includes Haiti. Taking a *global* perspective – centering on the relationships between both of Hispaniola’s countries and the wider world – may helpfully broaden the dialogue by urging the United States to engage the Dominican Republic not from a position of false innocence but as one of the parties most directly implicated in the creation of today’s Haitian rights crisis in the Dominican Republic. For now, suffice to say in few words that I see a need for human rights discourse to develop *global historical reflexivity*. This paper is at base an argument for more, historically-deeper narratives of international connection in human rights.

If there is cause for surprise in this it is not because of anything new that I reveal but the opposite: the facts have been known for decades and yet have never been incorporated as more than ‘background’ in human rights reporting or litigation. Here, a second harmful limitation of human rights discourse comes into consideration, the assumption that the abuses are always ‘hidden’ and the role of the human rights investigator is to reveal these wrongs. The hidden wrong and its corresponding trope of revelation are part of the representational ‘DNA’ of human rights, which together stand at the core of what international law professor Susan Marks (2013:231) calls the “myth of the dangerous dark”: “A powerful theme of human rights literature and advocacy is that the worst abuses happen, so to speak, under cover of darkness” (ibid.:231). For example, the *Sugar Babies* and *Price of Sugar* films characterize the alleged enslavement of Haitian ancestry farm workers in Dominican sugar production as a ‘hidden wrong,’ even though by the time of the 2007 release of these films nearly 30 years had passed since allegations of Dominican sugar slavery first grabbed headlines worldwide in 1978. The implication that the wider world never even knew, nor had no direct hand in these wrongs, suggests a self-flattering “capacity for looking at the world without really seeing it” (Marks 2013:233). Historical amnesia about what moral philosopher Thomas Pogge (2008:208-209) calls the “common and violent history” of the world’s affluent and poor is a necessary condition for the rhetoric of revelation to dominate human rights representation. If there is no past, then anything human rights investigators report can look like a new revelation. As I noted in an earlier publication on the films and their impact at the U.S. Department

of Labor, “calling the plight of Haitian-ancestry cane workers in the Dominican Republic a ‘hidden wrong’ is not just nonsensical but verges on deceptive, in as much as it does not reveal to the viewer that there *is* a human rights track record particular to this case to consult” (Martínez 2012:1867-1868). What is old, then, is what is new in my paper, in the sense that evidence of historical U.S. complicity has never been brought up for discussion as a central part of the problem of today’s Haitian rights crisis.¹ One obvious corollary is that it behooves U.S. officials to take a less self-righteous approach. Rather than barking orders from atop a platform of spurious moral superiority, sincerity recommends a humbler, more horizontal mode of U.S. engagement, premised on the knowledge that evidence of U.S. complicity has long stood plainly in view.

The 2013 CARICOM (Caribbean Community) proposal for slavery reparations rehearses some of the methodological and conceptual problems that would be posed by my suggestion that we talk about a post(neo)colonial indemnity for Hispaniola, and so I begin by sketching the two agendas’ similarities and contrasts. I then provide a brief historical sketch of how U.S. governmental authorities and business corporations, during the U.S. military government of Haiti (1915 to 1934) and the Dominican Republic (1916 to 1924), set large-scale migration in motion from Haiti and established conditions of migrant hyper-exploitability in the Dominican Republic. I then raise the question of what is owed, to whom, by the foreign and Dominican agencies that have benefitted from the unfair exploitation of Haitian labor. Lastly, I point out that a conceptual and political axis for a global historical reflexive human rights approach may already be in place, in the switch from contemporary slavery to statelessness as the leading issue framing international advocacy for Haitian rights.

II. A POSTCOLONIAL INDEMNITY

Whether it be called a “social and economic rights truth commission” or some other name, I ask, What is owed, to whom, by the foreign and Dominican agencies that set up and benefitted from the hyper-exploitation of Haitian labor in Dominican sugar?² If we can rightly call this a reparations agenda, then discussion of a Hispaniolan social and economic rights truth agenda will inevitably get tangled up with the call for reparations for slavery put forward by CARICOM states in 2013. The comparison is not in all ways exact but useful pointers may be gotten about what kinds of research still need to be done, through a comparison with the case made by Hilary Beckles (2013), head of the

CARICOM reparations commission.³

The crux of Beckles' argument is that a vast store of wealth was created in Britain and other Western European states on the basis of the exploitation of enslaved Africans and Afro-descendants. The development of the British economy, particularly in its financial and insurance sectors, is traceable to slavery-tainted profits. Those gains, multiplied through reinvestment, is a fund of illegitimately-gotten wealth – stolen property – which justly cannot all be kept by the states and business firms that hold it; justice dictates that a portion of the slavery-derived profits must be restored, with added compensation for damages, to the descendants of the enslaved. Beckles' case is strengthened by the material hardship and socioeconomic deprivation the descendants have endured as a result of their islands being stripped of wealth-generating resources. Also crying out for redress is the flagrant incompleteness of the kind of freeing that was accomplished through emancipation: in a pattern that would be repeated across much of the Americas, freed slaves received nothing at emancipation in the 1830s, while Parliament paid £20,000,000 to the former slaveholders. The effective freedom of the emancipated was thus constrained by denuding their societies of wealth even as the wealth of the former slaveholders was augmented. Contrary to the counter-argument of skeptics that reparations need not be made for an activity, slaving, that was legal at the time that it happened, Beckles points to abundant evidence that politicians, clergy and common people in eighteenth and nineteenth century Britain knew slavery to be wrong and called for it to be abolished.

The proposed project of a postcolonial indemnity for Hispaniola parallels Beckles' argument in some ways, while deviating from it in others. A first lesson that we can draw from Beckles is that it helps to document in dollars, pounds and Euros what has been earned as excess, illegitimate profit off the backs of rights-impaired Haitian migrants. This dollar sum is one important missing piece in the case for a Hispaniola indemnity and it is in this connection, more than any other, where the audacity of my proposal exceeds my expertise. More detailed archival work will be necessary.

Conceptual uncertainties would also need to be resolved about how to determine what fraction of the profits was unfairly earned: Is it only that share which corresponds to the wage differential between Haitians' low wages and what would have had to be paid to get Dominicans to bring in the cane harvest? Or is it something quite a bit bigger, considering that the very development, massive growth and century-long survival of the Dominican sugar industry depended in part

on abundant supplies of cheap immigrant labor? Economists, economic historians and students of public policy would need to hash out facts and methods.

Going beyond matters of evidence, a question of principle frequently raised by reparations skeptics seems to be easier to resolve when it relates to a postcolonial indemnity: Why should the current generation pay for the sins of the past? In truth, the time that has elapsed since the wrongs occurred is not great and certainly is not nearly as long as the 150 to 200 years which separates us today from the end of slavery in the Americas and the Caribbean. To paraphrase Faulkner, this past is not even past: we are not talking about centuries-old crimes but decades-old systems of exploitation, the effects of which Haitians and Haitian-descended Dominicans continue in important ways to suffer today. The relatively shallow time depth of the wrongs also may be significant if it is decided that the banks and sugar companies that directly benefitted most should be asked to pay the larger share of the indemnity.⁴ While none of these firms still exist in exactly the same form as they did in the early twentieth century, retracing the money trail to existing corporations should be easier than in the case of chattel slavery.

A second, factual question raised by reparations skeptics is whether today's poverty and social and political disadvantage are really an outcome of slavery. With the introduction to this special issue taking up the divisive issue of what historically underpinned Haiti's slide into poverty, what matters most, I think, is how Haiti first became vulnerable to the negative effects of misrule and environmental degradation. That happened as the nation was first stripped bare by colonial slavery and then forced to pay damages to the former slaveholders as a condition for peace with France. The poverty thus worsened continues to assail Haiti's people.

On this count it also matters that, in the case for an indemnity for Hispaniola, it is easier to specify to whom the reparations are owed. A conceptual hole in the slavery reparations argument is that reparations would take the form government-to-government transfers, thus confusing states and whole nations – say, Jamaica or Barbados – with the people whose ancestors were harmed by slavery. Can those states be trusted to spend the funds in ways that benefit the disadvantaged? And is everyone who lives in a Caribbean state truly the descendant of someone harmed? Where the problems of accountability and deservingness intersect is in the uncertainty of whether it is morally justifiable to pay reparations if the greatest beneficiaries are not likely to be the poor but political leaders and the bourgeoisie. And while everyone would benefit

from rebuilding roads, health care systems and public schools, justice dictates that the poor should benefit disproportionately from reparations for slavery. By contrast, the Hispaniola postcolonial indemnity would focus specifically on helping the poor break through all the layers of disadvantage and oppression that have held them in subordination to the domestic bourgeoisie and international capital. One important question here, for study and debate among economists and economic historians, is whether poor Dominicans deserve compensation, too, for the downward wage pressure that Haitian immigration has exerted on them as the immigrants' direct labor market competitors.

Finally, the legal and moral justification for a Hispaniola indemnity parallels the argument for slavery reparations in some ways while diverging from it in others. In both cases, we are talking about a property case with a moral heart. On the legal side, the United States' armed invasion and usurpation of sovereignty in both countries was arguably itself an infringement of international law. Worsening that injustice was the reprehensible conduct of the U.S. invaders, including forced labor, torture, and atrocities. It matters legally as well as morally, too, that, just as with slavery in eighteenth century Britain, the U.S. seizure of power in Haiti and the Dominican Republic was recognized at the time to be wrong.

Political progressives denounced the U.S. invasions of both countries as an act of international and racist aggression. Emily Balch (later to win the Nobel Peace Prize for her pro-disarmament work) led an investigation to Haiti, funded by the Women's International League for Peace and Freedom, and wrote most of that group's resulting report, *Occupied Haiti* (Balch 1969). American functionary Arthur Millspaugh (1931), who, as financial adviser-general receiver of Haiti, 1927-1929, was friendly to the stated aims of the U.S. military government, even so took a jaundiced view of its effects, pointing to evidence that little or no progress, economic or political, had been made as a result of U.S. rule. He particularly regretted the negative effect that forced labor in road building had on Haitians' views of the Marines and by extension the United States. In 1922, a select committee of the U.S. Senate had gathered testimony and released a report on the American occupation of Haiti, detailing allegations of extrajudicial killings, torture, forced labor and other abuses by U.S. troops.⁵ That committee was formed largely in response to an article by Herbert Seligmann (1920), published in *The Nation*, which began, "To Belgium's Congo, to Germany's Belgium, to England's India and Egypt, the United States has added a perfect miniature in Haiti." Seligmann and others succeeded in painting the

occupation as a moral indignity for occupier and occupied alike. Haitian opinions were harsher still. Haitian nationalist, L elio Laville (1933) styled the Americans to be modern slavers for facilitating (and then taxing!) emigration to Cuba. Other contemporary Haitian observers (*Union Nationaliste* 1930:15; Renaud 1934:172-174) asserted that the major reason why Haitians started to emigrate in their thousands to Cuba and the Dominican Republic was the dispossession of thousands of smallholders after the occupiers lifted Haiti's constitutional ban on foreign land ownership. In back-to-the-future style, new slavery allegations, which first emerged among Haitian nationalists in the 1930s, seeking anti-American talking points, would be picked up again by Haitian exiles in the late 1970s, seeking anti-Duvalierist talking points. As with chattel slavery, contemporaries agreed that it was legally and morally questionable for the United States to have incorporated Hispaniola by force into its neocolonial orbit. And as with the CARICOM reparations proposal, what may count for more is the immorality rather than the illegality of it all (Brophy 2014:169). The moral core of the argument for a Hispaniola indemnity seems solid, even as its legal shell seems vulnerable especially to the difficulty of putting a reliable price tag on how much surplus profit was earned by international sugar corporations, shipping lines and banks on the backs of underpaid Haitian labor.

The thorniest matter about a Hispaniola indemnity may be the comparison with slavery itself. The CARICOM case is in effect premised on the assertion that colonial slavery was a systematic crime against humanity, which effectively matches or surpasses the high bar of precedent set when Germany agreed to pay indemnities to survivors of the Holocaust and Britain compensated tortured Mau Mau suspects in Kenya. Tacitly, these precedents seem to say that reparation can be justified only by a crime against humanity. While I think that the bar should not be set that high, acceptance of the validity of the CARICOM claim for slavery reparations might paradoxically undermine almost all other cases of international redistributive justice. If being as bad as or worse than industrial slavery is to be the standard that international economic crimes must meet or surpass, then a huge justice gap will swallow all other exploitation-driven rights crises, which are less violent and coercive than chattel slavery, genocide or torture. Indignation about the worst forms of injustice may paradoxically prescribe indifference to other injustices that are marginally less heinous.

III. U.S. 'FINGERPRINTS'

Turning back to the U.S. record in Hispaniola, it may be useful to anticipate three points of emphasis. First, you do not even have to talk about structural causality to establish international historical responsibility vis-à-vis today's Haitian rights crisis in the Dominican Republic. Even as structural causality points to conditions of labor vulnerability set in place by the great powers' historical hostility toward Haiti, there is a higher level of responsibility, *command responsibility*, which flows from having not just set up the conditions for unfair exploitation but also having organized and benefitted from it.

Second, I argue that command responsibility imposes an even more stringent moral obligation than structural causality on the dominant state(s) that created the problem, a responsibility of a remedial, 'if you broke it, you own it' kind. Looking just at agencies of the United States government and U.S.-based multinational corporations, the case is strong that U.S.-based institutions bear *direct* responsibility for human rights infringements on both sides of the island. Without casting doubt on the validity and seriousness of structural causality, it is clear that specific governmental and business actors had a hand in creating today's wrongs. Less easy to resolve is the question of what form accountability should take.

My third point is that none of this implies letting Dominican interests off the hook. Assigning command responsibility broadens responsibility, not narrows it. Rather than pointing a finger of blame at one country's corporate actors, it is more useful to think about a *compound perpetration* of abuses, in which the agents of a globally dominant state instituted a rights-abusing system in a neo-colonized state, which it had invaded militarily and bound commercially to its sphere of influence, only to hand on that system of rights abuse more or less intact to a successor client state regime. If compound perpetration means having had a direct hand in establishing practices that continue to produce harm today, albeit under the command of a host-country elite, then clearly both the neo-colonizers and the successor host-country elites can justly be brought to discuss how to respond to their responsibility for past harms.

Seen through the lens of command responsibility and compound perpetration, the United States is neither an unwitting consumer of unethically-produced sugar nor an otherwise non-implicated party in relation to today's Haitian rights crisis in the Dominican Republic. It is, rather, one of the parties most directly responsible for today's problems: U.S. authorities and business agents set large-scale immigration in

motion from Haiti and laid down relationships of hyper-exploitability between the migrants and agro-capitalists in the Dominican Republic.

A labor recruitment system, involving the dispatch into the Haitian countryside of company-paid touts – termed, in Spanish, *buscones* (‘seekers’) – was instituted under U.S. watch and for the benefit of U.S.-based multinational sugar companies. Recruitment of Haitian workers along these lines was first done following the United States’ military invasion and seizure of power in Haiti in 1915 and in the Dominican Republic in 1916, and was initially regulated through U.S. military government ordinances (Castillo 1978:47-58). Even as transportation routes shifted, what remained constant over rest of the twentieth century was the recruitment of contingents by Haitian-speaking touts, who would be paid a per capita fee by the cane growers upon each migrant contingent’s arrival. With recent years’ massive declines in sugar production, growers mostly no longer need to recruit in Haiti (Verité 2012:58-59) but well into the 2000s they employed *buscones* to recruit in Haiti, whether with formal government approval or clandestinely. The U.S. military takeover of government on both sides of the island, from 1916 to 1924, thus set conditions that restricted the mobility of tens of thousands of sugar *braceros* each year. And U.S.-based sugar companies were preeminent among the beneficiaries of a system of plantation labor exploitation that would later be dubbed ‘Dominican sugar slavery.’

The National Coalition for Haitian Refugees (NCHR) and in particular Jocelyn McCalla played a catalytic role in persuading Americas Watch to take up the issue of Dominican sugar slavery. When international human rights and labor rights monitors first denounced the migrant labor scheme as a new system of slavery in the late 1970s,⁶ what triggered indignation was the bilateral treaty that sent a one-million-dollar-plus cash bribe each year from the Dominican parastatal, the *Consejo Estatal de Azúcar* (State Sugar Council) to Haitian President Jean-Claude Duvalier, for the right to recruit 15,000 or more contract workers. By legally committing the *bracero* to work only for the employer who had paid his passage from Haiti, the bilateral treaty in effect handed the Dominican security forces a standing justification for forcibly relocating Haitian immigrants to the sugar plantations. Any undocumented Haitians found off estate grounds could be detained and shipped to a sugar estate, under the legal pretext that they had abandoned their contractually-assigned places of work (Americas Watch 1992:3 and 24-28).

When the bilateral treaty collapsed with the overthrow of Duvalier in 1986, human rights monitors shifted the basis of the new slavery

allegation to evidence of recruitment by fraud and the relocation and retention of migrant workers by force (Americas Watch 1990:11-29). Once on the plantations, workers would be turned back if caught by plantation security guards on the roads heading out (Americas Watch 1989:17-19). Overtime labor with no extra pay was forced on the cane cutters when fires in the cane fields or shortfalls in the supply of cane to the mills required production to be stepped up. And migrant workers were routinely cheated by the company personnel who weighed the cane in calculating the cutters' piece-rate wages. Most shocking of all were reports of practices that evoked images of chattel slavery, of migrants being locked inside their barracks at night and kept under surveillance by rifle-toting overseers on horseback while in the fields by day.

Going beyond the human rights case that Dominican sugar was a slave labor commodity, a more complete picture of the injustices emerged from the work of scholars, including Franc Báez Evertsz (1986), Wilfredo Lozano (1998) and Martin Murphy (1991). Seen from this academic standpoint – which stood free from the human rights monitoring imperative to focus on the most flagrant rights infringements – it was economic constraints and ethnic/racial/class prejudices, and not forced labor per se, which affected all Haitian workers in sugar, rice and coffee fields, and hence were fundamental to agro-industry surplus profits. Adding important nuance to the case for excess profits having been earned by sugar corporations as a result of the employment of Haitian harvest labor, this research concluded that the low cost and elastic supply of migrant labor made it possible for growers to throw tens of thousands of manual workers at the harvest instead of spending money on mechanizing the cutting, lifting, loading and hauling of the sugar cane (Murphy 1991:63-67). This enabled growers and mill owners to profit handsomely in a challenging world market. And the disposability of the labor eventuated terrible human costs, as expenses were skimped also by providing neither protective gear for the cutters nor adequate health care, housing or potable water in the *bateyes* (company residential compounds for farm workers). While it seems questionable whether Haitian workers were ever in significant numbers recruited by deception or held against their will, it seems obvious that the *braceros'* well-being was of no concern to the growers and that economic constraints and ethnic/race/class prejudices rendered the migrants far more vulnerable to exploitation than a native Dominican work force would have been.

In many of their details, these abuses date back to the Americans' time, as Ramón Marrero Aristy's (1963) nationalist novel, *Over*, gave

testimony to in 1939. And not only was the mode of importation and retention of Haitian labor abusive of the migrants' rights; it also resulted in the establishment of a vulnerable population of Haitian nationals and Haitian-descendant Dominicans numbering in the hundreds of thousands. Every year a small minority of the seasonal workers did not return to Haiti but stayed after the cane harvest's end and eventually settled in the *bateyes*. They and their Dominican-born offspring have snowballed into a population recently estimated to stand at over 600,000, roughly two-thirds of whom are Haitian nationals and one-third, Dominican-born people of Haitian ancestry (ONE 2013).

Other negative human rights consequences for immigrant workers would flow from the early twentieth-century U.S. military takeover of government in both Haiti and the Dominican Republic. Neither of the Duvaliers was ever 'our S.O.B.' to the American presidents of their time, as Trujillo was said to have been called by Franklin D. Roosevelt, but the establishment of national constabularies in both countries enabled the dictators to impose absolute control (Calder 1984:61-62). As Franklin Franco (1992:467, my translation) observes, "The first groups of natives to enter into ... [the] Guardia Nacional Dominicana lent their aid to the persecution of the guerrilla movement that had developed in the East, where they got a baptism in the commission of crime, torture and abuse against the population." The two countries' militaries also extended and entrenched the roles played by their respective governments' forces of order in channeling Haitian labor toward Dominican sugar estates. Establishment of the *Guardia Nacional* made policing the movements of Afro-Caribbean immigrants across Dominican national territory a practical possibility. It was only after the American occupation that Dominican police officers were first reported to be rounding up Haitian immigrants in non-sugar-producing areas of the Dominican Republic (Baud 1992:316). In 1937, Trujillo unleashed the "*corte* (mowing-down)" of Haitians living in the Dominican frontier region and northern Cibao Valley, in which over 10,000 Haitian men, women, and children were murdered, without warning or mercy, by Trujillo loyalists, the ripple effects of which continue to be felt to this day. None of this would have been possible without either the state security forces set up under U.S. rule or the tacit blessings of the U.S. government for authoritarian solutions in its Latin American 'backyard.'

Among the beneficiaries were not just sugar manufacturers based in the Dominican Republic but also U.S., Canadian and Dominican owned sugar mills, the shipping companies that exported the raw sugar, sugar refiners and merchandisers in the Canadian and Western European

markets to which Dominican sugar was mainly exported prior to the Cuban Revolution, and the mainly U.S.-based banks that invested in Dominican sugar. Two defining trends in Dominican sugar production during the first quarter of the twentieth century were massive expansion in scale (as reflected in both production totals and concentration of ownership) and increasing domination of the industry by foreign monopoly capital. From half-a-million *tareas* in 1908 (Cassá 1982:224), the land under sugar plantation control grew to nearly three million by 1925 (Lozano 1976:158). According to the national census of 1920, big sugar and big lumber, both predominantly foreign-owned, occupied about 75 per cent of the country's arable land (ibid.:160). While U.S. occupation authorities went on record as being opposed to handing over the country's best land to U.S. agroindustry, that was in fact largely what happened:

A combination of naïve predispositions, of inexperience, and of strong influences from interested outside sources led to the creation of policies which were in many cases contrary to the occupiers' original intentions. . . . New laws of the military government greatly improved the sugar companies' ability to procure land for their expanding domains and thus assured that the dominance of a one-crop economy, already possessed of a firm foothold in 1916, would be unshakable after 1924 (Calder 1984:43).

With the best lawyers in their pay along with improved legal grounds to contest the titles of customary landholders, the sugar corporations displaced uncounted Dominican farmers and ranchers unjustly of their land and livelihoods. By 1925, U.S.-based corporations owned 84.3 per cent of the sugar industry, the greater part of this being the property of just two conglomerates, the Cuban-Dominican and South Porto Rico companies (Lozano 1976:172). As their names suggest, these firms also controlled comparably large holdings on Hispaniola's neighboring islands (Cassá 1994:229). A further sign of sugar's monopoly character was the close integration of U.S.-owned banks with the two big sugar corporations (Franco 1992:465). Not only were credit, production and export vertically integrated within the U.S.-owned sugar sector but the aggressive entry of U.S. financial capital brought even the fiercely independent Vicini Group to rely on foreign credit. The U.S. banks paralleled the sugar companies in turning what was already a rich man's game into a field dominated by U.S. corporations (Lozano 1976:171 and 168).

Many a detail could be added but the evidence suggests that U.S. misconduct in the Dominican Republic fell even lower than the low standard set by U.S. support for authoritarian rulers and U.S. extractive industries elsewhere in Latin America and the Caribbean. Not just

conditions or structures of exploitation and oppression are at issue, in other words; in addition to past U.S. support for a pro-oligarchic, anti-poor political economy, there is evidence of direct U.S. responsibility for the design and implementation of rights-abusing migrant labor recruitment schemes.

IV. MAKING IT REAL

Why argue for a Hispaniola indemnity? Considering all that is stacked against it, it seems a hopeless cause. Before a social and economic rights truth commission could be empaneled, all these conditions would need to fall into place: U.S. government officials would need to be talked down from their perch of moral self-righteousness and accept talking about their own share of responsibility; the Dominican state and bourgeoisie would have to accept a portion of blame comparable to that borne by the world's great powers; international human rights professionals would need to be persuaded that negotiation may be as productive as confrontation; and everyone would need to be convinced that an international crime of grossly unfair exploitation deserves a tribunal comparable to those which have investigated crimes against humanity.

Yet there are occasions when impossible things are worth talking about. What might make a Hispaniola indemnity one of those is firstly the need for new thinking about how to achieve justice. In the case at hand, the tried-and-true of international pressure tactics has been tried but failed. Second, a principled discussion remains to be had in the case at hand about what justice would look like: Would justice be achieved simply if the Dominican state were to cease doing wrong? Or would there be a need for something more, involving the redistribution of a fair share of illegitimately appropriated wealth to the right-holders and their descendants?

To begin where we already are, one piece of the indemnity case is already in place: the theorization of the main issue as statelessness. The statelessness framing of the Haitian rights crisis fits perfectly with the global historical reflexivity for which I advocate in that statelessness always demands that a historical account be given for how a whole segment of society became vulnerable to being excluded from citizenship. Statelessness demands analysis as a system. Seen from this perspective, the Dominican Republic is just one of a number of postcolonial states worldwide that are grappling with the challenge of defining the nationality and legal rights of the descendants of earlier generations of immigrant workers or forced laborers, first brought to

their countries to serve European and North American colonial or neo-colonial export manufacturers with cheap and easily disciplined labor (Manby 2009). Global history is written across the statelessness issue in ways that are paradoxically avoided by most expositions of the wrong of contemporary slavery, which miniaturize the scene of enslavement to the dyad of a slave and a slaveholder.

It bears recalling here that the statelessness issue first came into view through the work of membership-based groups dedicated to the defense and promotion of rights for Haitian descendants. No analysis of this shift in activists' framing of Haitian rights would be complete without noting the leadership of in-country rights defenders – perhaps most prominently, MUDHA (*Movimiento de Mujeres Dominicano-Haitianas*) and MOSCTHA (*Movimiento Sociocultural para los Trabajadores Haitianos*) – who starting in the 1990s partnered in strategic litigation with international human rights law clinics. These groups had already shown their independence from international human rights monitors' anti-slavery campaigning by framing the Haitian rights crisis more inclusively, to encompass not just the *braceros* but *batey* women, Haitian migrants living outside the sugar plantations, and Dominicans of Haitian ancestry. The membership-based civil society groups led by Haitian immigrants and Haitian descendants have also not restricted their activism to the civil and political rights favored by international monitor groups but have instead pursued a broad-spectrum rather than a reductionist approach. They see the rights infringements, injustices, and social exclusions that confront Haitian nationals and Haitian descendants not as discrete types of abuses but as interrelated and mutually supportive injustices. Like a layer of an onion, each wrong is also a source of other injustices, permits other wrongs to occur, or acts to block the targets of abuse from obtaining protection or redress. Rather than peeling away at just one of the most obvious rights abuses – as international rights advocates have done – these organizations seek to pierce the onion's core by simultaneously militating for economic development, women's empowerment, cultural revitalization, and constitutional rights (Martínez 2011). In methods, too, these organizations sought not to assemble legal cases so much as build their constituency's ability to promote and defend its own rights, in order to avoid creating a situation in which everything is known by the lawyer and nothing is known by the client (Osiatyński, 2009:101, quoting Filipino human rights activist, Carlos Medina).

This holistic kind of issue framing and activism was radical but it was also being ignored internationally until a new set of actors entered

the scene. A pivotal moment was an extended field visit by Berkeley international human rights lawyer Laurel Fletcher and her then-student, Roxanna Altholz, in 1998. They submitted an unpublished report to the Inter-American Commission on Human Rights setting forth priorities articulated by frontline Haitian rights defenders, including Haitian labor rights activists and *batey*-born leaders of Haitian-Dominican membership-based community organizations. The Berkeley lawyers' involvement would ultimately bring about a decisive turn toward combatting statelessness, largely through a strategy of repeated litigation in Dominican and international courts. It is for this reason that I have said that "the only thing that may be worse than an excess of legalism is a deficit of legalism" (Martínez 2014:107): unlike social justice filmmakers, human rights lawyers have to make sure that their allegations will stand up to skeptical scrutiny.

A final but perhaps most important aspect of statelessness is the believability and emotional power that this framing of the Haitian rights crisis holds for people in the Dominican Republic, in whose hands ultimately rests the power to resolve this crisis. Public opinion seems to move somewhat independently of trends among the 'talking classes' of politicians and political commentators, with Haitian descendants' claims to belonging to the Dominican nation eliciting increasingly favorable public responses. AmericasBarometer polling has shown that support among Dominicans for granting citizenship rights to Haitian-ancestry Dominicans has grown since 2006, a period during which the Dominican political class has, by contrast, taken stridently anti-Haitian positions (Orcés 2013). This trend was confirmed by a poll carried out by Gallup in February 2014, which found that 58 per cent of the Dominicans surveyed believe that the Dominican-born offspring of undocumented Haitian immigrants 'are Dominicans' (Hoy 2014). Similarly, a Telenoticias Newlink Research (2013) survey yielded a 69 per cent response in favor of Dominican citizenship for everyone born on Dominican soil, regardless of parentage. This polling data suggests that a new chapter may be ready to open in the struggle for Haitian rights, involving greater than hitherto seen use of internet and social media appeals, couched in film language but also exposing Dominicans to the sound of Haitian descendants speaking with impeccably Dominican accents and voicing aspirations to which all Dominicans can relate. In today's gloomy Haitian rights landscape, then, a ray of hope is that media experts may prove as valuable in the next fifteen years as legal experts have been in the last fifteen.

V. CONCLUSIONS

One thing gained through promoting greater global historical reflexivity in human rights is an expansion of the “they” who must not be permitted to get away with past wrongs again. In the case of Hispaniola, the United States and European Union countries are not impartial or morally superior interveners but prior holders of a debt to people trapped in poverty. That status urges a more cooperative and less confrontational role for the international community, and this, it can be hoped, may make possible a dialogue aimed at escaping the impasse generated through the pursuit of justice entirely through confrontation in a prosecutorial style. Confrontational approaches have no doubt made it clear who the rights-holders are and what entitlements are at stake but seem now to be yielding diminishing returns and resistance. International human rights advocates may have made a strategic error in speaking about the Dominican people as perpetrators and accomplices to rights abuses instead of speaking *to* them as people who can be morally persuaded of the rightness of liberal rights. And only by transitioning from a prosecutorial ‘bringing to account’ of wrong-doers to a restorative agenda can the question even be raised of what responsibilities might flow from the excess profits, earned for generations through the under-remunerated labor of a rights-impaired immigrant workforce. If we stick to the retributive imaginary that has governed international human rights approaches to date, we will never get around to asking this, different kind of question: What debt is owed to those immigrants and their descendants? And by whom, and in what form, is that debt to be paid?

NOTES

¹ A notable exception is Muñoz 2013.

² I thank Catherine Buerger for coining the phrase “social and economic rights truth commission”.

³ I thank Mats Lundahl for suggesting this parallel to the CARICOM slavery reparations agenda.

⁴ Based on public opinion survey results, public policy scholar, Thomas Craemer (2015:653) concludes that “reparations proposals that specify a potential provider’s and a potential recipient’s connection to slavery tend to receive significantly more support than general reparations proposals.”

⁵ 67th Congress, 2nd Session, Senate Report No. 794.1, “Inquiry into Occupation and Administration of Haiti and the Dominican Republic.”
http://www.history.navy.mil/library/online/haiti_inquiry.htm.

⁶ The first international denunciation was issued by the Migration Secretariat of the World Council of Churches in 1978, but the report most often credited with first raising international awareness of the plight of Haitian workers in the Dominican Republic is that issued the following year by the Anti-Slavery Society (1979).

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