

9-1-1992

Economic Development in Ravaged Haiti: Is Democracy Really the Answer?

Barbara L. Bernier

Follow this and additional works at: <http://elibrary.law.psu.edu/psilr>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Bernier, Barbara L. (1992) "Economic Development in Ravaged Haiti: Is Democracy Really the Answer?," *Penn State International Law Review*: Vol. 11: No. 1, Article 3.

Available at: <http://elibrary.law.psu.edu/psilr/vol11/iss1/3>

This Article is brought to you for free and open access by Penn State Law eLibrary. It has been accepted for inclusion in Penn State International Law Review by an authorized administrator of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Economic Development in Ravaged Haiti: Is Democracy Really the Answer?

Barbara L. Bernier*

I. Introduction

On Sunday, December 16, 1990, in fair and peaceful elections, the people of Haiti made what appeared to be a decisive change for democratic rule and social justice. Newly-elected Jean-Bertrand Aristide, Haiti's first democratically-elected president in more than 200 years, was a shining specter of hope for the Haitian people. A new constitution had provided for a decentralized government, but the enthusiastic vote for Aristide contrasted sharply with the vote in the parliamentary races.

On September 30, 1991, a military coup ousted Aristide. Since then, the 6,000-man Haitian army and police have carried out a campaign of terror and intimidation against supporters of Aristide, who was popular with Haiti's poor people.¹ In addition, more than 16,000² refugees fled the island, mostly in response to the political chaos and economic turmoil; the majority of those who escaped by sea were intercepted by the U.S. Coast Guard and held at Guantanamo Naval Station.

This article presents a historical framework of Haiti, discusses past and present political events and their impact on the people of Haiti, examines the economic conditions, explores the effect of both Haiti's foreign policy and United States' foreign policy in response to Haiti, analyzes the Haitian legal system, and offers critical suggestions for a new order.

* Associate Professor, District of Columbia School of Law; B.A., 1971, State University of New York at Plattsburgh; M.S.W., 1974 Adelphi University; J.D., 1978 Howard University School of Law; LL.M., Temple University School of Law.

The author would like to thank Cecelia Perry for wonderful editing and research assistance and the Haitian people for the inspiration. This article is dedicated to the memory of Mrs. Raymonde Bernier, a true Haitian lady who was the epitome of grace and beauty.

1. Hockenstaden, *Cutters Return First 381 of Fleeing Haitians*, WASH. POST, Feb. 4, 1992, at A11.

2. As of March 19, 1992, an estimated 16,464 Haitians had been interdicted. See *Haitian Centers Council, Inc. v. McNary*, 789 F. Supp. 541, 543 n.3 (E.D.N.Y. 1992).

II. Recent Historical Events Affecting Haiti

A. *United States Policy of Repatriation Upheld in Courts*

The United States has responded to the recent difficulties facing Haiti with a cool hand. On January 31, 1992, the United States Supreme Court authorized the Coast Guard to forcibly return about 10,000 Haitian boat people to their strife-torn island nation.³ In a brief order, the U. S. Supreme Court lifted a stay issued by U.S. District Judge C. Clyde Adkins in Miami pending full resolution of the legal issues.⁴ The district court's stay prohibited the defendants, the United States, from:

[F]orcesfully repatriating the individual plaintiffs or class members in their custody either until the merits of the underlying actions are resolved or until defendants implement and follow procedural safeguards adequate to ensure that Haitians with bona fide claims of political persecution are not forcesfully returned to Haiti.⁵

The district court found that there was a substantial likelihood that the plaintiffs (the Haitian refugees) would prevail on the merits under the First Amendment right of association and counsel and under Article 33 of the 1967 United Nations Protocol Relating to Status of Refugees.

On appeal, the United States first argued that the Haitian refugees had no enforceable rights under Article 33 since the Haitians had not reached U.S. territory when they were intercepted at sea. The United States further contended that even if the Haitian refugees had a First Amendment right of access, the relief granted was not related to their asserted rights.

The Eleventh Circuit Court of Appeals agreed and dissolved the injunction, remanding it to the district court with instructions to dismiss on the merits the Article 33 claims.⁶

The appeals court subsequently issued another temporary restraining order (TRO) to consider the plaintiffs' claim under the Administrative Procedures Act (APA), which had been rejected earlier. The court held that it had jurisdiction to review the TRO and that the stay of preliminary injunction was warranted due to a strong likelihood that the government would prevail on the merits of the APA claim.⁷ On February 4, 1992, the Eleventh Circuit Court of Appeals reversed the district court's stay, vacated all injunctions,

3. *Baker v. Haitian Refugee Center*, 112 S.Ct. 1072, (1992).

4. *Haitian Refugee Center v. Baker*, No. 91-2653-CIV (S.D. Fla. Dec. 3, 1991).

5. *Id.*

6. *Haitian Refugee Center v. Baker*, 949 F.2d 1109 (11th Cir. 1991).

7. *Haitian Refugee Center v. Baker*, 950 F.2d 685 (11th Cir. 1991).

and referred the case with instructions to dismiss because the complaint failed to state a claim upon which relief could be granted.⁸

Despite the Supreme Court's authorization, the Bush Administration was reluctant to repatriate the Haitians, and consequently a decade-old policy of promptly returning virtually all Haitian refugees was temporarily broken.⁹ The Bush Administration, however, claimed that it feared an influx of an uncontrollable number of Haitians coming into the country and resumed the repatriation.¹⁰ As a result, on February 4, 1992, just four days after the U.S. Supreme Court reversed the Eleventh Circuit's decision, the U.S. Coast Guard cutters returned the first 381 Haitians.¹¹ Many of the returnees, who were denied political asylum in the United States, supported Aristide and feared violence and prosecution.

B. United States Withholds Identities of Repatriated Haitians

In *Ray v. United States Dep't of Justice*,¹² Haitians seeking political asylum sued to obtain information under the Freedom of Information Act (FOIA) on Haitian nationals who had been returned to Haiti. The Haitians argued that they were entitled to political asylum in the United States because it was well known that, if returned, they often faced prosecution. The district court ordered, among other things, that the state department disclose the identities of those redacted from the documents requested.¹³ The Eleventh Circuit Court of Appeals affirmed.¹⁴ The Supreme Court reversed, however, holding that the Haitian nationals were not entitled to such information since disclosure of the unredacted information would be a clear invasion of the returnees' privacy.¹⁵

The United States' treatment of Haitian refugees is further illustrated in the low percentage of Haitians granted political asylum in comparison to percentages of immigrants from other countries. For example, figures from the Immigration Naturalization Service (INS) show that between 1981 to 1990, 22,940 Haitians were inter-

8. *Haitian Refugee Center v. Baker*, 953 F.2d 1498 (11th Cir. 1992).

9. On September 23, 1981, Haiti and the United States had entered into a cooperative agreement to prevent the illegal migration of aliens from entering the United States. Interdiction Agreement, United States-Haiti, T.I.A.S. No. 10241.

Under the agreement, the United States had authority to board Haitian flag vessels on the high seas to make inquiries relating to the condition and destination of the vessels and the status of those on board. If Haitian refugees were on board in violation of the agreement, the agreement then called for the return of the refugees to Haiti. The agreement, however, did not call for the United States to return to Haiti immigrants who may qualify for refugee status.

10. Kamen, *Supreme Court Clears Way for Forced Return of Haitian Boat People*, WASH. POST, Feb. 1, 1992, at A3.

11. Hockenstaden, *supra* note 1.

12. *Ray v. United States Dep't of Justice*, 908 F.2d 1549 (11th Cir. 1990).

13. *Ray v. United States Dep't of Justice*, 725 F. Supp. 502 (S.D. Fla. 1989).

14. *Ray v. United States Dep't of Justice*, 908 F.2d 1549 (11th Cir. 1990).

15. *United States Dep't of State v. Ray*, 112 S.Ct. 541, 542 (1991).

cepted at sea by the U.S. Coast Guard. Of those, only 0.5% were found to be eligible for political asylum. In contrast, during fiscal year 1990, the United States allowed into the country 91.9% immigrants from China; 82.4% from the former U.S.S.R; 54.9% from Romania; and 20% from Cuba.¹⁶

C. *Haiti's Future*

It is important for a nation's internal and external relations to be firmly wedded to a strong rule of law. Considering the difficulties Haiti has faced, one can only wonder whether Aristide's 'Lavalas' (cleansing torrent) movement could have led Haiti to some kind of orderly democracy. It is clear, however, that strict conservative measures must be employed to bring this impoverished nation to economic freedom. To produce economic and political stability, Haiti must enact a strong rule of law, which as in any civilized nation, is based on the premise that the rule is accessible and fair. Absent laws to establish individual and property rights, a nation quickly falls into anarchy. Law is the undergirding of a politically stable nation; it binds a market economy and a political democracy. Through the discipline of the rule of law, a nation can prosper and operate efficiently. Thus, it is important for a nation's internal and external relations to be firmly wedded to a strong rule of law.

If Haiti is to turn around its present economic and political situation, it must consider ways to protect and promote liberty and property. Furthermore, it must facilitate ways to achieve economic growth, which is a complex undertaking since there is presently no stable political and legal system. It is incumbent upon the people to consider how much power should be entrusted to the government in general and how much power will be allocated to administrative bodies in particular. It will require the government and the people together to forge a mutually beneficial program. Once this framework is established, the Haitian people will be able to consider successful economic and democratic models.

If Haiti is to come into the twenty first century, it must first chart its future, which will require installation of a president. This process will also require consideration on the part of its leaders whose chief purpose should be the good of the country. Further, the Haitian people must find a way to address the recurrent class divisions and decide the extent of governmental responsibility to the vast majority of the population who are uneducated, have the lowest standard of living in the world, are undernourished, and are often

16. Randall Robinson, President of AFRICARE, Speech Delivered at the American Association of Law Professors Conference, Minority Law Professors Luncheon, Sunday, Jan. 5, 1992, San Antonio, Texas.

fraught with medical problems. Additionally, through the rule of law, the government must provide physical protection to its population from the savagery of the Toni Mocoutes, a vestige of the Duvalier regime, and encourage the return of those who fled in the 1950s and 1960s during the reign of Papa Doc and would gladly return to their homeland to help rebuild and rekindle the spirit of the nation. Finally, if the country is to grow and prosper, a coalition of all classes and political groups must be formed. Once this framework is established the Haitian people will be able to renew individual liberty and establish their place in the world as the proud and prosperous oldest Black republic that it once was.

III. Historical Overview

A. Colonialization

When Christopher Columbus' Flagship *Santa Maria* was wrecked in 1492, he discovered an island which he called La Navidad. It subsequently became the New World's first Spanish settlement. At the time of the discovery, the island had a large Indian population, estimated to range from 200,000 to 1,200,000 people.¹⁷ Within a century, European diseases, battles, and forced labor rendered the indigenous population non-existent. Furthermore, when France defeated Spain at the end of the fifteenth century, the two countries signed the Treaty of Ryswick, which solidified France's acquisition to that part of the island known as San Domingue.¹⁸

The San Domingue colony became an economic power for France producing sugar, coffee, cotton, and indigo, and providing two thirds of France's overseas trade.¹⁹ It also provided employment as well as supplied half of Europe's tropical produce.²⁰ The colony was also a great market for the African slave trade. The French philosophy regarding slave labor was to work the Africans until they died rather than encourage breeding among slaves. Importing new slaves every few years proved a better investment because the initial purchase could be amortized over four to seven years, providing an eight to twelve percent return.²¹ Thus, it was a better business strategy simply to keep a slave alive for only a few years, overwork him,

17. The estimates of the indigenous population vary depending on the source. See LUNDAHL & MAT. *THE HAITIAN ECONOMY—MAN, LAND AND MARKETS*, 69 (1983), also citing COOK, SHERBORNE F. & BORAH, W., *THE ABORIGINAL POPULATION OF HISPANIOLA IN ESSAYS IN POPULATION HISTORY* (1971).

18. E. ABBOTT. *HAITI—THE DUVALIERS AND THEIR LEGACY* 10 (1988) [hereinafter *Abbott*].

19. *Id.*

20. *Id.*

21. *Id.*

and merely replace him once he died.²²

Thus, although the slaves managed to retain their religion, languages, cultures, customs, and pride, they harbored resentment at the travesty of their condition. In one century, more than a million Africans died in the intolerable condition of slavery. However, slavery continued to thrive. While existing for even the briefest sojourn, the slaves in Haiti created Creole, a distinct language based largely on Norman French, to communicate; eventually the Dahomean religion, though outlawed by the French, prevailed over all other African religions to comfort the slaves in their wretched existence.²³

The French, recognizing that the African religions might pose a problem, decreed that all slaves must be baptized into Catholicism. The slaves' religious ceremonies were forbidden. Nonetheless the ceremonies took place:

The most famous of these meetings occurred at Bois-Cayman near Limbe, in the Plaine-du-Nord, over a long period during the summer of 1791. The gatherings were led by Boukman, a slave overseer and voodoo priest from one of the big nearby plantations. Other overseers from other plantations in the northern plains were invited. According to Robert and Nancy Hien in *Written in Blood*, when Boukman held his final ceremony on the night of August 14, a pig was slaughtered, all present drank the blood, and they swore allegiance on bended knee to Boukman's cause, which was death to all *blans*, the Creole word for white man, or foreigner. Legend has it that as the slaves drank their potion, a vengeful thunderstorm broke out above the meeting ground When the signal came forth from the drums that night, slaves from half a dozen plantations rose up, burned down their master's homes and slaughtered the planters and their families After two months of fighting, more than a thousand plantations had been destroyed. The revolution had begun.²⁴

The struggle against slavery continued for 13 years. The guerrilla-style tactics of the slaves exhausted the French physically and

22. *Id.* at 10, 11.

23. The French attempted to prevent revolt by tribal mixing. However, the result was the union of slavery under the powerful Dahomeans. Their religion was the most dominant and within time most slaves were converted to it. Thus, the religion of Dahomey became the voodoo of Haiti. It became (through evolution) the national religion that was secreted through the images of the saints of Catholicism. For more on Haitian voodoo see M. DEREN, *DIVINE HORSEMEN: VODOO GODS OF HAITI* (1970); F. HUXLEY, *THE INVISIBLES: VODOO GODS IN HAITI* (1986); C.L.R. JAMES, *THE BLACK JACOBINS TOUSSAINT LOUVERTURE AND THE SAN DOMINGO REVOLUTION* (1963).

24. A. WILENZ, *THE RAINY SEASON 75-76* (1989) [hereinafter WILENZ]. Slaves who had fled from the plantations and lived in mountain enclaves were very instrumental in the uprisings. They were called Marrons, which, in French, means a domesticated animal that had returned to its savage state.

financially. Napoleon's initial plans to eliminate the Haitian uprising swiftly failed, and was the beginning of the end of the French campaign to colonize the New World. Subsequently, France sold its remaining stronghold in the New World, the Louisiana Purchase, in 1803 to the United States.²⁵

Although the Haitians experienced unparalleled victory by being the only slave colony to become independent, the victory was not accepted in the world community.²⁶ In addition, Haiti's failure to participate actively in the world, was based on its inability to engage in commerce. The United States, due to its own political position vis a vis the slave economy, was active in blocking Haiti's entrance into such commerce.²⁷ Thus, without the ability to develop economically, Haiti was doomed to look back at its only shining hour: the successful revolt against the French, and to languish in the past.

To complicate matters further, the once Black slave/white master colony now had an added racial class, the Mulatto, which served as a creation of force and control for the French slave master. The exotic Mulattoes were never equal to the French planters.

25. *Id.* at 76. Napoleon had planned to make short shrift of the rebellious Haitians on his way to establishing New Orleans as a beachhead for the French Army. From there, he would continue his New World conquest until the French flag flew over all of North America, not just the enormous region of Louisiana and some parts of Canada. Instead, unable to keep Haiti, he turned his back on the Americas. As E. J. Hobsbawm writes in *The Age of Revolution: 1789-1848*, 'The failure of Napoleonic France to recapture Haiti was one of the main reasons for liquidating the entire remaining American Empire, which was sold by the Louisiana Purchase (1803) to the U.S.A. Thus a further consequence . . . was to make the USA a continent-wide power.' E.J. HOBBSAWM, *THE AGE OF REVOLUTION: 1788-1848*, 69 (1962).

26. WILENZ, *supra* note 24, at 76. The colonizers of the world—France, Spain, Portugal, England—feared the newly independent slaves and the youthful United States, whose economy was still based on slavery, wanted nothing to do with the new republic. France hated the Haitians who had defeated her—'gilded Negroes,' Napoleon had called them—and refused to recognize Haiti.

27. *Id.* See ABBOTT, *supra* note 18, at 18.

'Toussaint's revolution,' Genovese observes "did not seek to turn the blacks of Saint Dominique into Europeans but to lead them toward a recognition that European technology had revolutionized the world and forced all people to participate in the creation of a world culture at once nationally varied and increasingly uniform. From that moment, the slaves of the New World had before them the possibility of a struggle for freedom that pointed towards participation in the main-stream of world history rather than away from it.'

Haiti, however, found herself barred from participation in world commerce, the all-important prerequisite for entry into world history, and it was the United States more than any other nation that blocked her. By her audacity in freeing her own slaves, and in defying every notion of black inferiority by defeating three European giants, Haiti had committed the unpardonable sin. As Senator Thomas Hart Benson remarked in 1826, 'We receive no mulatto consuls or black ambassadors from [Haiti]. And why? The peace of eleven states will not permit the fruits of a successful Negro insurrection to be exhibited among them.' . . .

Beginning with a trade embargo in 1806, the United States began a century of commercial ostracism that sabotaged Toussaint's vision of an international commercial orientation and forced Haiti's neck into an economic noose that strangled bright hopes and pushed her further down the road to economic and social catastrophe.

Rather, they were viewed as a hybrid that was superior to the slave class. Although some Mulatto children were treated in the same fashion as their African brothers and sisters, some were endeared by their French fathers who sent them to France for education and provided gifts of property and money. Often attaining greater civil rights than the African, nevertheless the Mulattoes were subjected to special laws which persecuted them under the caste system in this society.²⁸

B. *Post-Colonization Era*

The Republic of Haiti emerged as a segmented society.²⁹ The separation of classes was defined by language, education, religion, and skin color in addition to economics. The elite comprised about three percent of the population, looked to France for inspiration, and shunned anything that remotely resembled Africa. The literate elite spoke French while the masses spoke Creole.³⁰ The elite dominated such aspects of life in Haiti as commerce and governmental functions. Further, they lived in the urban capital while the masses lived in the rural parts of the country. The elite were practicing Catholics while the masses continued to practice the African-based folk religion—voodoo. The French, and later the Americans, attempted to wipe out voodoo but were unsuccessful.³¹

C. *Emergency of New Leaders*

The development of a modern nation was the dream of Haiti's

28. See ABBOTT, *supra* note 18, at 13. Legislation was restrictive and vindictive. They were pitted against the slaves, could not hold public office and deprived of most civil liberties accorded whites. They could, however, own slaves and property. They assimilated the values, manners, and culture of France, and disassociated themselves from the African. They were a separate class from the African and the French slave owner.

29. H. SCHMIDT, *THE UNITED STATES OCCUPATION OF HAITI, 1915-1934* 20-21 (1971) [hereinafter SCHMIDT].

The free gens de color of colonial Saint Dominique, mostly mulattoes but also including some blacks, had adopted the cultural values of dominant white French society despite having been subjected to vicious racial "discrimination by the whites White racist values ascribed status according to lightness of skin pigmentation The physical norms of the dominant white segment of French colonial society were carried over into independent Haiti by the gens de color, who now constituted an educated elite among a large number of illiterate former slaves.

30. *Id.* at 22.

31. *Id.* at 22.

Vodoun has served historically as a bulwark of Haitian folk culture and as a rallying point for mass political action and resistance against foreign domination. In colonial Saint Domingue, vodoun was the medium by which slaves maintained their common identity and conspirational liaisons The white French clergy and later the American marines realizing the importance of vodoun in the impervious resistance of the masses to foreign encroachments, tried unsuccessfully to prevent ceremonies and outlaw vodoun.

earlier leaders. However, without international or American support, the continued battles to conquer the legacies of slavery were doomed to failure.³² Even with the advent of freedom, the separation of Blacks and Mulattoes, illiteracy, social and political unrest, and economic stagnation continued. Leaders came and went, each attesting to the ideologies of their predecessors, such great leaders as Toussaint, Dessalines, and Christophe. The war had brought almost thirteen years of destruction to the land and the people.³³

Christophe built upon the economic successes of Dessalines and declared himself king. He was benevolent whereas Dessalines was savage, evidenced by his support for the class divisions in Haiti. Christophe ruled like a king and left a magnificent monument, the Citadelle La Ferrière, as a symbol of his reign of power. Unlike Dessalines, he encouraged whites to assist in the development of the country. He even employed the English educational system complete with English teachers.³⁴

While Christophe ruled the Black-dominated North, Petion ruled the mulatto-dominated south. While Toussaint, Dessalines and Christophe continued the plantation system, which moved the country forward economically, Petion passed land legislation where laborers became owners, and restored confiscated lands to the Mulattoes. This marked the beginning of the end of Haitian agriculture. Petion also lured Blacks from Christophe's hard driving north through the easy going, although less economically sufficient south.

For the next twenty-five years, Petion's policies plunged Haiti into abject misery and poverty. The Blacks who had worked the soil now had only the army or servitude in the city as alternatives to an impossible living condition. Mulattoes, due to their education, dominated the civil service and controlled the economy and thus, effectively shut out the Blacks.

Petion was succeeded by Boyer, who conquered the North after Christophe's death. Boyer also conquered the remaining two-thirds of the island and sought recognition of Haiti's independence from

32. *Id.* at 22-23. See ABBOTT, *supra* note 18, at 19.

33. See ABBOTT, *supra* note 18, at 19.

Like Toussaint Louverture before him, Jean-Jacques Dessalines took drastic measures to reconstruct the ruined economy. Basically, he established a state surfdom, where all men except a tiny group of administrators were either soldiers or laborers attached to a plantation, as were all women. Because these farmers were now freedmen, slavery's whip was abolished and the working day was shortened Though many blacks ran away to the hills, most remained and the plantations again flourished, with all French and white-owned lands appropriated to the Haitian state. These constituted over two-thirds of all plantations, so Dessalines's agricultural policy translated into full coffers for the state, which rented out its huge landholdings to the highest bidders.

Id.

34. See ABBOTT, *supra* note 18, at 22.

France.

The country's socio-political and economic situation continued on this track until a revolt in 1843 forced Boyer into exile. The revolt also signalled the end of Mulatto presidencies. The Blacks leaders who succeeded Boyer were either too old or infirm to contribute to the success of the republic.³⁵

By the mid nineteenth century, President Lysus Salomon came into power. He was the republic's last hope to put aside its corruption and violent ways. He did not succeed, and the other presidents who followed maintained the status quo until the country was unsuccessfully invaded by the Americans in 1915.

IV. Twentieth Century

A. *The American Invasion*

The late nineteenth century presented an opportune time in American history to establish political and military control in the Caribbean and the Pacific. During this period it was crucial for America to demonstrate its capacity to compete as an industrial power. The British, Germans,³⁶ and French established colonies throughout the world, thus providing the stimuli for the nascent imperial ambitions of the United States.³⁷

Outwardly, America claimed that its desire to occupy Haiti was to plant democratic liberalism. The underlying philosophy, however, was two-pronged: (1) to promote the economic interests for Ameri-

35. See ABBOTT, *supra* note 18, at 25-26.

The only President of note was Soulouque.

Two years into his reign the event occurred that transformed Soulouque from a minor and incompetent President into a personage known as 'Soulouque the Ignorant' . . . So in 1849, when the Virgin Mary appeared in downtown Port-au-Prince and relayed God's desire that he become Emperor, Soulouque was more than willing.

As Faustin, he and his Queen, Adelina, and an extensive court of instantly created nobles, ruled for a decade, overthrown only in 1859 after destroying Haiti with corruption, debt, debased currency, and a series of military defeats after repeated attempts to recapture the Dominican Republic. Soulouque's legacy to his successor was a country in even worse condition than when he had inherited it, with its fundamental problems still unresolved, including its ruinous class/caste structure, whereby blacks dominated the powerful army and mulattoes ran the country, owned the land and controlled the economy.

Id.

36. "D" Confidential Tentative Plans for Employment of Naval Forces Stationed in Haitian Ports — Port-au-Prince" (Ca. July 1914); NA, RG45, WA-7 Box 631, *quoted in* SCHMIDT, *supra* note 29, at 242.

See also concerning German involvement in Haitian Commerce — SD 838.00/1667, J.H. Stabler to W.J. Bryan, May 13, 1914. Roger L. Farnham, vice president of National City Bank, estimated that 90% of Haitian business was controlled by Germans on the eve of American intervention. Senate Hearings, 1922, at 110, *quoted in* SCHMIDT, *supra* note 29.

37. See SCHMIDT, *supra* note 29, at 4. The construction of a modern fleet of ships, coupled with the industrial revolution, permitted American to flex its muscles by military landings in Formosa, Japan, Uruguay, Mexico, Korea, Columbia, Hawaii, Egypt, Haiti, Somoa, Argentina, Chile, Nicaragua, and China.

can investors and (2) to promote among the Haitians the philosophy, espoused by Booker T. Washington in 1895, called the Atlanta Compromise, which relied upon "abnegation of intellectual, cultural and social aspirations for Blacks in favor of manual-technical education and material betterment through efficient performance at low skill trades."³⁸ Thus, this cornerstone of the American hard-line attitude towards its own black citizens was simply transferred to the Haitian occupation. America's total disregard for the pluralistic nature of Haitian society struck a negative chord not only within the traditional Black community but to the overall society of Haiti.

Mulattoes, who retained their European orientation, were shocked when contact was made by white American marines—who treated all Haitians as "negroes" and made no distinction between Blacks and Mulattoes, educated or not.³⁹ This was the only time in Haitian history where the younger generation, regardless of skin color or status, embraced the cultural heritage of the African ancestry. It was also during this period that young Francois Duvalier developed the concept of Noiriste by writing articles on Haitian ethnology. He later emerged as a champion of this international concept. Duvalier's logical writings would later serve as a basis for enforcement of his political philosophy regarding the position of Blacks in Haitian culture. The American occupation galvanized and solidified the popularity of Duvalierism, which eventually resulted in brutality and the loss of thousands of Haitian lives twenty years after the occupation ended.

Furthermore, America realized that the continued German presence in Haiti was detrimental to its own interests in Haiti. The Germans embraced the Haitians; the Germans married Haitians so that their descendants could circumvent the property ownership laws, and established themselves in finance and public utilities. The Germans also influenced political life in Haiti by providing much needed capital to finance revolutions. Investing in revolutions provided high rates of return for the German merchants who advanced sizable loans to revolutionary causes in exchange for high rates of interest, but failed to produce anything for the benefit of the Haitian

38. See SCHMIDT, *supra* note 29, at 13, 14. "In Haiti the materialistic, technical progressive impulse was given free rein, since the human objects, Haitian 'Negroes' whose culture was held in contempt, had no rights and were not permitted to interfere with the more enlightened designs of the occupiers." *Id.* at 14. In American racial discrimination the term and social category "Negro" included people of all proportions of Negroid ancestry while in Haiti and elsewhere in Latin American important distinctions were made between mulattoes and Blacks. The United States applied its own racial ideology in Haiti, disregarding Social distinctions.

39. See SCHMIDT, *supra* note 29, at 23. See also, N. DAVID, FROM DESSALINES TO DUVALIER: RACE, COLOR AND NATIONAL INDEPENDENCE IN HAITI (1979); R. HIENL & N. HIENL, WRITTEN IN BLOOD: THE STORY OF THE HAITIAN PEOPLE 1492-1971 (1978).

people. By the late 1890s, German and American rivalry in this small nation reached its peak. The Americans obtained exclusive competitive advantages for its own products. In response, "[t]he Haitian government refused to lower its duties on American imports, and the United States, in 1892, imposed retaliatory tariffs on Haitian goods."⁴⁰

The McKinley administration took a different tactic of American product adaptation to the Haitian market and greater credit terms. By 1920,⁴¹ the United States had cornered sixty percent of the Haitian import market, thus replacing Germany as Haiti's significant trading partner. This signalled the beginning of America's intervention into Haiti, but more was to come. The Americans made significant financial investments, the first of which was the development of a railroad. The railroad concession, however, never materialized and was later taken over by the Germans after the Germans successfully extorted "half a million dollars from the Haitian government in 1901."⁴² The railroad concession debacles continued until the American occupation. The American banking and investment interests merely used the Haitian government to make good on failed contracts and poor quality work which did not result in a railroad for the country. Further, American banking interests were drawn into Haiti's internal fiscal affairs. Former president and scholar, Leslie F. Manigot, argued that America predominated in "Haitian affairs by defeating French and German interests in the 1910 struggle for control of the Banque Nationale."⁴³ This theory is supported by the following:

[I]n 1905, following the discovery of extensive frauds, the Haitian government had suspended the government treasury service operated by the French-owned Banque. In November, 1909, Speyer and Company and National City Bank sent a representative to Haiti in an attempt to secure control of the Banque, but the American firms were out-manuevered by German interest, represented by the German ambassador in Paris and the German minister in Port-au-Prince, which were trying to reorganize the Banque and negotiate a new loan to the Haitian government. The German interests cooperating with the French directors of the existing Banque, procured a contract for reorganization of the Banque and flotation of a 65 million franc loan. The bonds were taken by the Franco-German interests at

40. See SCHMIDT, *supra* note 29, at 36.

41. See SCHMIDT, *supra* note 29, at 36.

42. MONTAGUE, LUDWELL, & LEE, *HAITI AND THE UNITED STATES: 1714-1938* 199 (1940).

43. "La Substitution de la preponderance Americaine a la preponderance Francaise in Haiti debut du xxe siecle: la conjuncture de 1910-1911," *Revue d'histoire moderne et contemporaine* XIV 321-55 (Oct. - Dec. 1967).

72.3 percent, while National City Bank later claimed that it had offered 80 percent but had been turned down because of failure to include graft. The contract for the reorganized Banque Nationale provided that the Banque would have sole right of vote issues and would serve as the government treasury, charging 1 percent on money received and 0.5 percent on money disbursed. The Banque also retained 10 million francs of the loan as a reserve fund to redeem paper currency."⁴⁴

By and large the foreign stance regarding Latin and Central American financial exploitation culminated in foreign economic interests using the loan process at exorbitantly high interest rates to corrupt governments. Once a default on the loan payments occurred, the foreign investor would apply to its government for assistance in debt collection. Thus, the loans were repaid with high rates of returns on very little progress because of the intervention by the investor's government.⁴⁵ The United States assumed the burden of policing Latin and Central America, thus protecting it against European intervention. This new policy, espoused in the Roosevelt Corollary of 1904, served as a precedent for subsequent interventions.⁴⁶ The Americans were primarily concerned with the European financial control of the Caribbean. Thus, the Monroe Doctrine was extended to establish a new "Caribbean Policy," which was nationalistic in scope rather than Pan American.⁴⁷ World War I was in full swing at

44. See SCHMIDT, *supra* note 29, at 39. Also cited SD 838.51/81, Speyer & Co. to Huntington Wilson, Aug. 12, 1910. SD 83851/72, M.E. Ailes, representing National City Bank, to Knox, June 4, 1910. See also SD 838.51/74 H.M. Hoyt to Huntington Wilson, July 6, 1910.

See also Memorandum "Banque Nationale de la Republique d'Haiti," submitted to the Forbes Commission by National City Bank on Feb. 12, 1930; Forbes Commission Papers, Box 1 1910 Banque contract. See SD 838.00/1377.

"The State Department, objecting to plainly unconscionable exploitation of the Haitian government and to the absence of American participation, refused to sanction the contract. In response to state Department objections, the Franco-German interests agreed to 50 percent American participation and control of the New Banque. Schmidt, *supra* note 27, at 39.

45. The loan default syndrome also led to American intervention in Dominican Republic. See M. KNIGHT, *THE AMERICANS IN SANTO DOMINGO v-xi* (1928).

46. SCHMIDT, *supra* note 29, at 44.

The new policy manifested itself in American concern for order and stability in the internal affairs of Caribbean countries, since stable governments were capable of the efficiency and responsibility necessary for the paying off of debts, while unstable transient governments tended to be irresponsible in paying debts, unresponsive to America diplomatic pressures and corrupt enough to contract new, exorbitant loans with foreign investors.

47.

The opposition to European control over American territory is not primarily to preserve the integrity of any American state . . . The essential idea is to prevent a condition which would menace the national interests of the United States . . . I make no argument on the ground of the benefit which would result to the peoples of these republics by the adoption of this policy.

Lansing Memorandum, "Present Nature and Extent of the Monroe Doctrine and Its Need Of Restatement," June 11 and Nov. 24, 1915; From *THE LANSING PAPERS, 1914-1920*, II, 460-470, quoted in SCHMIDT, *supra* note 29, at 59.

this point, and the Americans were fearful that the German submarines might come over to the Caribbean or the Gulf of Mexico and sink American tankers on their way to Europe. Had the Germans been successful in establishing a base in Haiti and won the war, the United States position in the Caribbean would have been seriously threatened.

The best approach for America was to obtain a customs receivership. In essence, in a receivership status, the financially-troubled nation relinquishes its sovereignty to another country. In addition, the United States wanted the Haitians to agree to cession of Mole-Saint-Nicholas, a strategic position for naval operations in the Caribbean.⁴⁸ The Haitian government agreed to the receivership, but demanded economic concessions for their guarantees not to alienate the Mole to any foreign power. The U.S. State Department, however, was not satisfied.

These were insufficient to placate the State Department, which, by November, 1914, was demanding: (1) a customs convention; (2) settlement of claims made against the Haitian government by the American railroad; (3) settlement of claims made by the Banque Nationale; (4) full protection of foreign interests; and (5) the guarantee not to alienate the Mole.⁴⁹

Negotiations continued during the early part of 1915, but to no avail. The only alternative was direct American intervention. The United States decided that a "resident adviser," similar to the same type of governance that had been employed by the Netherlands in Java and the British in India, would be the best method of control.⁵⁰

The overthrow of Haitian President Vilburn Guillaume Sam, in July 1915, presented the United States with the opportunity it had been waiting for since July 1914. Under the guise of humanitarian-

48. The Mole was viewed as a potential coaling station and naval base.

At the outset the Wilson Administration wanted the Mole as an American base, as had several previous administrations. In 1913 Bryan suggested and Wilson approved a plan by which the United States would procure the Mole and a strip of land 20 miles long and 10 miles wide extending into the interior . . . By this time, however, the Navy Department, which already had an excellent base across the Windward Passage as Guantanamo Bay, Cuba, had come to regard the Mole as obsolete and superfluous for its own purposes, but insisted that no other nation be permitted to acquire it.

Bryan to Wilson, Apr. 3, 1915; Na, Bryan-Wilson Correspondence. Bryan June 23, 1913; Na Bryan Wilson Correspondence. See also Bryan to Wilson, June 14, 1913; quoted in R. BAKER & W. WILSON, LIFE AND LETTERS: 1915-1917, VI 87 (1937). See also SD 838.00/1668, Stabler memorandum, May 14, 1914, quoted in SCHMIDT, *supra* note 29, at 56.

49. See SCHMIDT, *supra* note 29, at 61.

50. See SCHMIDT, *supra* note 29, at 62. See also Bryan to Wilson, Apr. 3, 1915, NA, Bryan-Wilson Correspondence, *Id.* at 248. Further, little consideration was given to the rights of the Haitian people regarding self determination. SCHMIDT, *supra* at 62-63.

"Department officials, confident of American superiority and reflecting the racial prejudices of the period, tended to disparage Haitian achievements and capabilities, as had most foreign observers throughout Haitian history." *Id.*

ism, the prevention of anarchy and bloodshed, the United States had a basis for intervention.⁵¹ Yet, the hypocrisy of the United States position to maintain decency and morality was readily apparent in its treatment of a Black man in a southern town who was dragged from a jail and burned alive in the town square.⁵²

Once the American military was in control, it developed the machinery of political control. At first, the United States decided to elect a client-president who could be controlled by the Americans and thus lead to effective control of the Haitian Congress and administrative officers. It initially decided that Rosalvo Bobo would be the next President.⁵³ Bobo had misgivings about the American intervention, however, and was thus ruled out as a likely candidate. The United States approached several other prominent Haitian politicians, but all declined the offer. The president of the Haitian Senate, Phillipe Sudre Dartiquenave, however, eagerly offered his services if the Americans would guarantee his protection.⁵⁴ In the final analysis, Washington wanted Dartiquenave and the Haitian legislature elected him on August 12, 1915. Within a month after the elections, the United States declared martial law in Haiti. In addition, freedom of the press was suspended; any publication against the United States or Haiti would not be tolerated.⁵⁵ Martial law continued until the riots and strikes of 1929. Thus, the Americans had effected the military occupation, now controlled all custom houses and governmental revenues (through the receivership), had a puppet for a President, and finally had a unilateral treaty that justified the occupation and gave the United States far more than it had initially bargained for. "The addition included the appointment of an all powerful financial adviser by the President of the United States, establishment of a

51. See SCHMIDT, *supra* note 29, at 248. See also Office of Naval Intelligence Register No. 4801A, "Haiti and Santo Domingo - Plan of Occupation," Oct. - Dec. 1914, NA, RG 45, WA - 7, box 633, and SD 838.00/1426, Stabler to Lansing, Aug. 5, 1915.

52. DANTE, BELGARDE, *L'OCCUPATION AMERICANE D'HAÏTI: SES CONSEQUENCES MORALES ECONOMIQUE* (Port-au-Prince: Imp. Cheraquit, 5 (1929). Bellearde compares the atrocities visited upon American Blacks by their own countrymen and the barbarity of the United States.

In Congress the debate regarding intervention described the similarity of presidential assassinations in each country. American assassinations of Presidents since 1862 to 1915 had been identical to Haitian Presidential assassinations. Furthermore the French had 11 governments in Haiti between the years of 1909-1914.

53. Bobo had been in charge of the caco army that successfully overthrew President Sam. Thus, it was seen as a natural evolution to reward Bobo with the presidency. However, in spite of the fact that he held degrees in law and medicine from the Universities of Paris and London, his stance in opposing the American encroachment in Haiti was seen as a negative to United States interests.

54. Dartiquenave sold out his country by agreeing to offer the United States financial control and customs receivership and offered to cede Mole-Saint-Nicholas outright . . . Dartiquenave also made specific commitments to settle outstanding difficulties between the Haitian government and the Banque nationale and to pay the various claims made against the government by the American owned national railway. See SCHMIDT, *supra* note 29, at 72.

55. Censorship Promulgation of Sept. 3, 1915; Senate Hearings, 1922, at 70.

constabulary organized and officered by Americans, settlement of foreign claims, and American control of public works."⁵⁶

An American-sponsored Constitution was drafted and enacted in 1918 and the Haitian legislature granted the extension of the Haitian-American treaty for 20 years. An important feature of the new Constitution was a provision that permitted alien landownership, which provided a mechanism for American investment. Ultimately, the Haitian occupation became a campaign issue during the 1920 U.S. Presidential campaign. While President Wilson touted the self-determination line regarding Latin American, the United States continued to occupy Haiti. This campaign issue reached its peak when the *New York Times* reported that American Marines had committed atrocities against the Haitian population.⁵⁷

In 1922, the election of a new client-president, Louis Borno, brought the appointment of a High Commissioner, General Russell. The High Commissioner was the American President's personal representative in Haiti. In essence, he was likened to the British High Commissioner during the English occupation in Egypt from 1882-1914. Borno, another "selected" President agreed with the analogy often made between American control in Haiti and British control in Egypt.⁵⁸

56. See SCHMIDT, *supra* note 29, at 75.

The treaty provided that the United States would aid Haiti in economic development and establish Haitian finances on a firm basis. An American-appointed financial adviser and general receiver of customs would have extensive control over Haitian government finances, and Haiti was forbidden to modify its customs duties or increase its public debt without United States approval. The United States would organize and officer a Haitian army and the Haitian government agreed to execute an arbitration protocol with the United States for settlement of foreign claims. The treaty was to remain in force for ten years from the date of exchange of ratification, which was May 3, 1916. Efforts by the Dartiquenave government to participate effectively in the drafting of the treaty were thwarted. A later State Department memorandum noted that 'The Haitian Government attempted to make it appear that this treaty had been negotiated rather than dictated and suggested several changes in phraseology,' but the department had insisted on its own phraseology.

Id. at 77.

See also SD 838.00/2484 "Intervention in Haiti," Division of Latin American Affairs memorandum, unsigned, Feb. 11, 1927.

57. *N.Y. Times*, Oct. 15, 1920, at 17.

How American Marines largely made up of and officered by Southerners, opened fire with machine guns from airplanes upon defenseless Haitian villages, killing men, women and children in the open market place, how natives were slain for 'sport' by a hoodlum element among these same Southerners; and how the ancient covery system of enforced labor was revised and ruthlessly executed, increasing, through retaliation, the banditry in Haiti and Santo Domingo, was told yesterday by Henry A. Franch, the noted traveller and authority on the West Indies.

Id.

58. See SCHMIDT, *supra* note 29, at 126. "United States control over Haiti was essential to the security of the Panama Canal just as British control in Egypt was necessary to protect the Suez Canal." *Id.*

The occupation continued without much interest on the part of the American government in Washington until the strikes and riots of 1929. As commonly occurred in colonial or occupied countries, Haitians were not promoted to positions of power or responsibility. The political base of the puppet President was never put into place, and the racial attitudes of the Americans fostered only hostility and criticism from the Haitian population. The upcoming scheduled withdrawal of American troops in 1936 did not hasten the need for Haitians to participate in preparation for self-government. If the people were allowed to vote, Americans feared that the Haitians would vote against those who supported the American occupation. Thus the battle cry of the occupiers was that Haitians were too ignorant to vote and elections would provide a forum for the expression of anti-American sentiments. As indicated by the chief of the Division of Latin American affairs:

It is very doubtful, furthermore, whether an election held at present would have any appreciable value in training the Haitian people for self-government. The masses of voters are still too ignorant and too much out of touch with the world. A continuance for a relatively short time of the development work now in progress, including the opening of roads and trails and the education of the peasants in the new rural schools, will work great change in this respect.⁵⁹

The fall of 1929 brought an end to the Haitian complacency that had existed for 14 years. The coffee market collapsed, the government attempted to raise taxes, the client-President Borno indicated a willingness to serve another four year term, and American condescension was rampant. Students at Service Technique, the agricultural college, organized a strike because of the reduction in incentive scholarships. They were soon joined by students from the medical and law schools as well as students from private and public schools. The High Commissioner, Russell, dismissed the strikes as "petty student's affairs."⁶⁰ The strikes quickly spread to customs workers in Port-au-Prince. The High Commissioner reacted by invoking martial law and curfews, and the uprising attracted worldwide attention. The only alternative was to act quickly to remove American troops from Haitian soil and to transfer control back to the Haitians.⁶¹ President Hoover assembled the Forbes Commission

59. See SCHMIDT, *supra* note 29, at 193. It is interesting to note that although the Americans continued to assess the Haitian as ignorant, it made no effort to reduce illiteracy or to educate voters on democratic principles and ideas.

60. *Id.*

61. See SCHMIDT, *supra* note 29, at 207. "The major barrier to early American withdrawal was not concern over having adequate time to transfer treaty services . . . to competent Haitians but rather the problem of satisfying commitments to American bondholders who

which conducted investigations into the uprisings and subsequent treatment of the Haitian people by the Marines. The Commission found that "the preparation for the political and administrative training of Haitians in the responsibilities of government had been inadequate."⁶²

Public disorders continued after the departure of the Forbes Commission. In April 1930, Stenio Vincent was selected as provisional president and remained in office until the following November. Although the Americans were anxious to leave Haiti, the question of the U.S. remaining in control of Haiti's finances was still unresolved. President Vincent, in an effort to get rid of the Americans, signed an agreement allowing American supervision of Haiti's fiscal operations until 1952. On August 21, 1934 the American flag was lowered all over Haiti. Aside from the humiliation that often accompanied an occupation by another country, such an experience had afforded the residents important technological improvements such as, roads, automated telephone exchanges in Port-au-Prince and Cap Haitien, medical facilities, and a stable monetary supply. Like most occupiers, the Americans failed to change the infrastructure and thus, most of the improvements did not survive. The institution that did survive the occupation was a highly trained and efficient army. The army would control and topple Haitian presidents for decades until Duvalier found a method to outsmart and dominate the army. Politically, the occupation united the country through the development of the concept called noirisme, a black-based political thought that formed an entire intellectual generation with self pride in the wake of oppressive caucasian racism.

V. Haiti After the Occupation

A. *The Rule of Francois Duvalier*

Dr. Francois Duvalier's first political position, under secretary for labor, came from his noiriste mentor, President Estime. Duvalier was profoundly influenced by Estime because of Duvalier's concern for the masses. In his first political treatise, *Problem of Classes*, "Duvalier turned to the past not to laud its treasures but to buttress his strident foregone conclusions about Haiti's racial relations."⁶³ Duvalier claimed that the ruling class refused to leave the country because of their arrogance and money. He felt that they were totally derelict in their responsibility to the country and even fought against

insisted on continued American financial control." *Id.*

62. U.S. Department of State, *Report of the President's Commission for Study and Review of Condition in the Republic of Haiti, 1930*. Reprinted in Fr, 1930, III, 217-37, cited in SCHMIDT, *supra* note 29, at 212.

63. See ABBOTT, *supra* note 18, at 57.

social justice. In 1956, Duvalier emerged as a presidential candidate. Duvalier's strategy was to campaign under the noiriste slogan, to encourage the female vote and to present himself as a person of integrity and sincerity. Furthermore, his prior work with the masses years before brought thousands more votes.

Duvalier, commonly referred to as Papa Doc, won the election handily after ballot boxes had been stuffed, hospitalized people coerced and children counted as viable votes. From the onset of his Presidency, Duvalier attempted to insure his power by eliminating his opponents. Duvalier spent the rest of his life obsessed with power and subduing his countrymen. Duvalier's first heart attack "transformed him into a man who lacked mental balance, a dictator who, Hitler-like, would suddenly rant and rave and foam at the mouth like a true lunatic astonishing and horrifying onlookers."⁶⁴ Duvalier surrounded himself with his uneducated and loyal military police—the TonTon Macontes who carried out his atrocities to the letter.⁶⁵ Duvalier also embraced the voodoo religion and its priests and raised the religion to heights of legitimacy it had never before enjoyed.⁶⁶

The Cuban revolution in 1957-58 provided the perfect backdrop that solidified Duvalier's relationship with America. As insane as his regime may have been, "Americans were prepared to overlook torture, murder, and disappearances and listen with eager ears to reassuring speeches about democracy, human rights, and unmitigated anticommunism."⁶⁷ Additionally, the exodus of the educated class drove out thousands of productive Haitians who opposed the regime. Thus, the greatest brain drain in Haitian history occurred during the Duvalier years. What remained was a frightened, illiterate population, controlled by the fear of voodoo and the TonTon Macontes. This regime of terror continued until Duvalier's death on April 21, 1971.

B. The Rule of Jean-Claude Duvalier

Jean-Claude Duvalier, the President's only son had led a charmed life insulated from the heinousness of his father's activities. Although he appeared to be the heir apparent, he was not anxious to assume his father's mantle of power. It was far more logical for his more politically astute sister Marie-Denise to become the new president. But since she was a woman, she could not carry on the family name. Consequently, Jean-Claude Duvalier had little choice but to

64. See ABBOTT, *supra* note 18, at 97-98.

65. See ABBOTT, *supra* note 18, at 86-87.

66. See ABBOTT, *supra*, note 18, at 81-82.

67. See ABBOTT, *supra* note 18, at 100.

assume power upon his father's death.

Jean-Claude was in shock and so mentally distraught by his father's death that he had to be sedated and missed his father's funeral. Jean-Claude's reluctance to his accession as President resulted from his inability to cope with the responsibilities of the office for which he had never been prepared. The mantle of the presidency meant that he would be deprived of all the pleasures he loved—sports, partying, and womanizing. Additionally, Jean-Claude was not known for mental acuity. Thus, the entire experience was one he preferred to do without. There was no one else, however, and although the country had lost Duvalier it had not lost Duvalerism. He managed to leave the administration of his office to his domineering mother, Simone.

Jean-Claude's nonchalant and nonthreatening demeanor resulted in better relations with the Americans who increased aid, increased tourism, and the return of exiled Haitians who felt more secure in their homeland than in the past 24 years of Papa Doc's rule. Although on the outside things seemed to take a turn for the better, inside the Duvalier legacy of corruption was in total control of the nation's treasury, and the family continued to divert money from the national coffers to their Swiss bank accounts.⁶⁸

Haiti's darling, commonly referred to as Baby Doc, continued to charm the outside world, but in 1980 the domestic situation peaked when the Bahamian government notified Haitian authorities about the boat people who had illegally emigrated to their country. Some 900-1500 Haitians were in Nassau's Fox Hill prison, and the Haitian government did nothing. People continued to leave Haiti, and one night a tragedy occurred that rocked the nation. On September 22, 1980, 116 Haitian men, women, and children who could no longer take the poverty set sail on a derelict boat for Miami. The captain deposited his passengers on Cayo Lobos, a deserted island off the Bahamas. They remained on the island without food, water or supplies until a man swam out to sea, was rescued by a fisherman and led authorities to rescue the others. On October 23, 1980, the Bahamian authorities returned him to Haiti where he gave a horrifying account of the incident on a television show and on several radio stations.⁶⁹

This tragedy was a breaking point. Haitian Journalist Gregoire Eugene launched a direct and bitter assault on Jean-Claude's government and was eventually exiled. This was the beginning of the Baby Doc crackdown. He stripped the country of all of its most outspoken critics. Duvalier, however, made his most fatal mistakes by

68. See ABBOTT, *supra* note 18, at 170.

69. See ABBOTT, *supra* note 18, at 234.

marrying mulatto Michele Bennett which violated the canons of the noiriste philosophy. He further fueled dissension by alienating the army, an act he would live to regret. Older supporters of his father were appalled by the scandalous activities in the palace. It was the military that plotted to overthrow Duvalier not the people as was the popular myth of the day.⁷⁰

C. *Chaos Rules in the 1980s*

On April 7, 1986, Jean-Claude Duvalier left Haiti on an American cargo plane headed for France. One of the conspirators, General Henri Namphy, was appointed President of the provisional government. The Haitian sentiment was that they were finally rid of their dictator and would now rebuild the country through democracy. This, however, would remain a dream deferred.⁷¹ Haiti has had several interim presidents both from the military and civilian sector and yet, the country has not settled its problem of governance. In early 1990, after several others rejected the presidency, a woman, Ertha Pascal Trouillot was selected to head the interim government until elections were held that fall.⁷² The winner in the elections was President Aristide, who was ousted in September 1991. Aristide was replaced by Joseph Nerette, who has served as Haiti's provisional president.

In addition, various efforts to reinstate Aristide have been unsuccessful. Shortly after Aristide was ousted, the Organization of American States (OAS) instituted an international trade embargo that was to invoke economic hardship on those initiating the coup. The embargo, however, has not affected those intended and has had the most profound impact on the poor, costing Haiti an estimated 140,000 jobs.⁷³ Further, in February 1992, the OAS brokered an

70. See ABBOTT, *supra* note 18, at 284-85.

Alix Cineas returned to the cabinet, but his personal reflections during his seventeen months in disgrace had transformed him from a loyal Duvalierist to a secret dissident committed to ousting Jean-Claude. . . . He had discussed with a few close friends the scandalous goings-on in the palace, where the President-for-Life and the First Lady took drugs and cheated on each other. He had watched with growing incredulity as the Bennett family and their cronies tore the country apart

[H]e was convinced that Haiti could be saved only if it could be rid of Jean-Claude Duvalier and the Bennetts Unlike his colleagues who had staked their political existences on Jean-Claude's continuing in power, Cineas had cast his lot with a growing circle of civilian and military dissidents actively working to force Jean-Claude out.

71. The people turned from celebration to destruction. The hated TonTon Macoutes now became the focus of Dechoukaj. In Creole it means to uproot a tree. The populace was determined not only to rid the country of Duvalier's notorious guard but also Duvalierism. For a detailed description see WILENTZ, *supra* note 24, at 53-62.

72. Rupert, *Haiti's Leader Has Hopes For Elections*, WASH. POST, May 26, 1990, at A26.

73. Hockstader, *Opponents of Aristide Put Resolution of Haitian Crisis in Doubt*,

agreement between Aristide and legislative leaders that would have recognized Aristide's authority and installed a prime minister of his choice in return for an end to the OAS-initiated embargo.⁷⁴ The National Assembly, however, failed to approve the agreement, and on March 27, 1992, Haiti's Supreme Court unanimously ruled that the agreement was unconstitutional and could not be ratified by the Haitian parliament.⁷⁵

While Nerette, a former Supreme Court justice, was installed after the coup, the Nerette government has not been recognized by the international community.⁷⁶ As a result, the Haitian government is still operating in a chaotic state and does not have in place a strong rule of law.

VI. The Significance of Rules

An autonomous individual is one who is rational and free with respect to his own conduct. Rationality and freedom when taken together confer moral responsibility for one's behavior. Thus, as described by Kant, people are self-legislating beings who act in accordance to laws that are derived from their own reason. The newly freed Haitian slave in 1804 lacked this requisite freedom. This was further exacerbated by a lack of a government model. Slavery was replaced with self promotion. In analyzing the political climate of the time, those governed were governed by force and fear. Thus, the slave mentality persisted, and the individual continued to be one who was not self-legislated.⁷⁷ Further, the body politic had no mutual consent between men to maintain a government. From 1804 to the present, Haiti has been a country governed by men who enacted and enforced their own laws as they saw fit. Government in its purest sense is in fact the coercion through threat and force of the many by a few.⁷⁸ The revolt of the slaves could be characterized as a "nega-

WASH. POST, Mar. 20, 1992, at A21.

74. *Id.*

75. Slavin, *Court Rejects Pact for Aristide's Return*, WASH. POST, Mar. 28, 1992, at A1.

76. *Id.*

77. R. TAYLOR, *FREEDOM, ANARCHY, AND THE LAW* 48 (1973).

78. It is interesting to note that the emergence of the continental European police systems came to be so highly centralized and came to be associated with the repressive violence of autocratic monarchical regimes. Their legitimacy was derived from the traditional legitimacy of the sovereign . . . for economic success, that is to pay prosperity, has been a legitimizing ground for centuries and in many kinds of societies.

Cited in C.J. FRIEDRICH, *THE PATHOLOGY OF POLITICS* 22 (1972).

The continental police can be analogized to the Tonton Macontes of the Duvalier era who existed for the good of the leader not the people. The situation continues with the Macontes existing in a state of anarchy because they no longer have a leader to legitimize their actions, they are in conflict with the army and they have the guns to enforce their own version of the law.

tive revolution” because of the rejection of the old order (as repressive as it was) and the failure to provide an adequate replacement for a new order. The continuation of revolutions and coup d'états in Haitian history merely served as the foundation for the eventuality of the military dictatorship of Duvalier.⁷⁹ Although the overthrow of the dictatorship provided a perfect opportunity for change, it has merely fostered fractionalization among the various political groups. Additionally, the lack of a strong central figure (such as Castro in Cuba) has left the country politically adrift. The effective political order did not come simply because the dictator was forced out. Again, Haiti is in the same predicament in 1992 as it was in 1804: it has removed the master but has failed to decide internally what will be the replacement.⁸⁰

If a government is to be successful, there must be a moral basis for legal order. Whenever this moral basis is lacking, and consequently justification is lacking, the government is merely a group of people who rule by sheer force. In order for there to be a viable government, “the governed” will assume that the legal order is justified because the laws and the judicial apparatus that manages them contain certain general principles of morality, such as respect for human life, the rights of the individual, and the sanctity of property and fairness. The quality of the legal order turns on the governmental protection which promotes and upholds justice and morality.⁸¹ The political power comes from the people and legitimizes the government. Based on Rousseau's theory of social contract, popular consent is given by the people to the government. Rousseau believed that at one time people did live without government and were governed by natural law in the natural state.⁸² The question then is

79. S. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES*, 1968, cited in FRIEDRICH, *supra* note 73.

80. FRIEDRICH, *supra* note 73, at 5. Every political order is subject to change, and unless means are provided for adaptation of the institutions and processes to such changes as occur in the social substructure, such change will lead to violence, either sporadic, as in much resistance, or all-engulfing, as in political revolution.

81. The notion of justice and morality have been the subject of philosophers throughout the ages. Plato thought that the right to rule coincides with the degree of philosophical acumen necessary for the understanding of justice. Locke and others of his era posited that men have certain natural rights which government must respect and protect. See also A.C. PEGR'SED, *SUMMA THEOLOGIC. THE BASIC WRITINGS OF SAINT THOMAS AQUINAS* (1945); R.C. MACRIDIS, *CONTEMPORARY POLITICAL IDEOLOGIES* (1986).

82. BARADAT, *POLITICAL IDEOLOGIES—THEIR ORIGINS AND IMPACT* 47 (1988).

Hobbs, Locke and Rousseau agreed on many points and differed in others. They agreed that the individual should be free, but they disagreed on the definition of freedom. The conservative Hobbs made a significant contribution to the development of democracy by supporting the notion that political power comes from the people and by insisting on the separation of church and state. Even so, he believed that the evil nature of people made them prisoners of their own greed The liberal Locke, on the other hand, thought that because people were basically good, freedom was greatest when the individual was left alone. The radical Rousseau believed that people were timid and peaceful in the state of

what has stymied the Haitian republic from developing into a modern nation?

The problem is two fold: first, the mistrust of the people in the government since there is in fact no strong central government that can provide safety and a finite safeguard of the rule of law; second, the attempts to establish a democracy in a country that is ninety percent illiterate is an impossible feat. The time has come to reevaluate the governmental and ideological concept called democracy vis a' vis a third world country such as Haiti, an underdeveloped newly free country which views traditional democracy with unrealistic expectations. The people, through the media, know how other people live and expect that democracy will be the magic wand that will provide them typical standards of living enjoyed by other democratically ruled countries right away! It is a revolution of the raising expectations syndrome. The expectations escalate at a faster rate than the institution can handle; consequently, loss of confidence in the institution results. If Haiti is to wipe away decades of inactivity, corruption, illiteracy, health care problems, and housing shortages, it must parcel out democracy in stages. New services are required and new institutions must be somehow overhauled and recreated to achieve this goal. Simply holding elections is not enough. To achieve long lasting peace and prosperity, Haiti must first reestablish the rule of law, and the governed must legitimize the government. Then, and only then, will there be an atmosphere whereby the first step towards the establishment of a democracy can occur.

It is also at this point that a call should go out to those Haitians that have fled the country to return to provide expertise in order to get the country moving again. This can only be achieved if the government assures the safety of these people. It is also at this point that the government should proclaim Haiti a neutral state and ban weapons of any kind in the country for a period of years.

VII. Haitian Political Policy

Haiti presents a special case in the historical evolution of the Caribbean because it was the first country to successfully revolt against the white plantocracy. The newly-emancipated slaves had only two models for governance: the plantation and the tribe. The new leadership imposed no new social order. The people rebelled

nature. They became greedy only after they entered a society that had become perverted by private property. Freedom from the captivity of their own passion could be achieved only through the creation of a new society where equality was the dominant principle While Hobbs held that the monarch was this authority, Rousseau asked individuals to surrender themselves to the community, or general will.

Id.

against slavery and replaced it with nothing. Moreover, external help was not forthcoming from the other European countries and the emerging American republic which maintained slavery within its borders. Thus, Haiti bobbed and weaved through history with only corrupt leadership and a serious internal color-caste problem which plagues it to this day.

As previously mentioned, the Americans took an interest in the late nineteenth century due to paranoia of European expansion into the Caribbean and South America. America's chauvinism reached its peak with the occupation of Haiti, and later the fear of communism brought with it support to any dictator who cried "communist insurgency" regardless of what cost may be borne by the citizenry. Francois Duvalier was a master at crying the "communist wolf" to the United States whenever it was practical and when his coffers were running low. Duvalier's experience during the American occupation shaped the noiriste philosophy that had it been presented in a positive fashion would have brought the country to a new philosophically developed level. Instead, it exiled the educated class and consumed the country in an atmosphere of fear and chaos. Duvalier's policies, and America's support of them, further catapulted the country into economic, political, educational, and social decline. His death in 1971 was not a reprieve to corruption but a continuation of it in the form of his heir to the presidential chair—Jean-Claude. Although the violence was somewhat subdued, the wholesale and blatant theft of the government's coffers by the family continued.

The exile of Jean-Claude Duvalier and his family in 1986 was to be the final chapter in dictatorial politics and a new beginning for the ravaged country. However, Haitian blood continues to be shed, and political unrest is the only constant. Since the exit of Jean Claude, Haiti has had six presidents: General Namphy, President Manigat, General Avirl', President Ertha Pascal Trouillot (who accepted the position after three other men turned it down), President Aristide, and Joseph Nerette. Further, before Aristide was elected in 1991, such efforts always ended in violence and turmoil.

Perhaps by expecting a country to go from a dictatorship to a democracy in one step is asking too much. Furthermore, Haiti is at a crossroads in its development; if the next step is not taken to do something constructive to move it into the twentieth century, it may never happen. America must realize that it cannot continue to dictate what should be done.⁸³ The "American Plan"—the buzzword in

83. See WILENTZ, *supra* note 24, at 271-2.

In 1941, the United States and Haiti began a cooperative venture called the Societe' Haitiano-Americaine de Developpement Agricole (SHADA) the Haitian-American Company for Agriculture Development, a prototypical aid project

Haiti—now has two strategies for development: the displacement of the rural population to work in United States industries in the urban areas, and a restructured agriculture that is owned by United States nationals.⁸⁴ However noble the intent to provide more low paying jobs for the masses, this approach misses the mark. While it is true that Haitians need jobs, they also need education, better health care, and decent shelter. A 1985 World Bank Report entitled "Haiti: Policy Proposals for Growth" advised:

[T]he Haitian government—and, by extension, foreign-aid donors—to cut back on social and health programs and use the monies thus saved to build up infrastructure. In a chapter called "The Way Forward" the World Bank suggests that "capital expenditure not essential to increasing output . . . should be reduced and should be stabilized in the case of health and the social components within rural development projects"⁸⁵

There are clear cultural and political traditions that stand in the way of progress and stabilization in Haiti. Further, the association of democracy with capitalism is not generally accepted in Haiti as the solution to its problems.⁸⁶ The deprivation and humiliation of slavery

run by Americans who ignored the protests of responsible Haitian experts. Financed by an Export-Import Bank loan of \$5 million and later the recipient of another \$7 million in U.S. credit, SHADA proposed to raise sisal and rubber SHADA was a bold project, and the Haitian government, also ignoring the indigenous experts, did everything it could to help implement the plans of the American agronomist who had developed the idea In the end, according to the summary in *Written in Blood* and in other reports of the SHADA debacle, some forty thousand families were kicked off their property, although the project never cultivated even half of that land. For four years, SHADA had managed more than 5 percent of Haiti's finest agricultural lands, yet when the project was over, only five tons of rubber—a scandalously low return—had been harvested.

Id.

84. See WILENZ, *supra* note 24, at 282.

DeWind and Kinley point out in its 1982 Country Development Strategy Statement, USAID anticipates that such a drastic reorientation of agriculture will cause a decline in income and nutritional status, especially for small farmers and peasants Even if transition to export agriculture is successful, AID anticipates a 'massive' displacement of peasant farmers and migration to urban centers.

Id.

85. See WILENZ, *supra* note 24, at 274. The report goes on to state, "temporarily, less emphasis should be placed on social objectives which increase consumption, since the urgent need is to free a major share of GDP (gross domestic product) growth for export." On the subject of education, it states, "Education . . . is essential to long-term development. In the short-term, however, it is a cost. This cost is necessary but should be minimized Thus, social objectives should be more strictly related to economic growth . . . and private sector participation in the achievement of social objectives should be pursued where possible." This represents the classic trickle-down theory that simply does not work in the United States and certainly not in Haiti.

86. See WILENZ, *supra* note 24, at 275-76. A conversation with ousted President Aristide, an anti-Duvalierist Catholic Priest revealed the following:

You want to make sure it [an investment] gives you the best rate of return: stability and profit, in the case of the U.S. in Haiti. This is normal, capitalist

imposed by the French, occupation by the Americans, the dictatorship of the Duvaliers, and the continuation of the Tonton Macoutes, have left Haiti in continuous chaos and turmoil.⁸⁷

A fresh approach is sorely needed. This can be accomplished by 1) the return of duly-elected President Aristide to the country, 2) the building of viable coalitions from all power groups to govern with the President for a specified time, say five years, 3) the removal of guns from the country, for a period of five years, the arrest and conviction of the Tonton Macoutes and the further dismantling of this powerful group, 5) a massive educational project to educate the majority of the citizenry, and 6) a peace-keeping group to oversee and insure an orderly movement to a new governmental order. Without a concerted effort to stabilize this country, the desperation of the people will only continue to escalate and desperate measures will continue to be employed as they flee to American shores. We do have a vested interest to curtail the misery.

behavior, and I don't care if the U.S. wants to do it at home. You can do whatever you want in your own home, right? But it is monstrous to come down here and impose your will on another people. Why should we advance the way you want us to advance? I understand the reality of the geographical situation, and the geopolitical situation, but I cannot accept that Haiti should be whatever the United States wants it to be . . . but one thing Haitians have made clear from Dessalines to Duvalier, good and bad alike, is that we do not bow to the will of other nations. We may pretend to, but we don't. We've never been a client state.

Id.

87. *What Can the U.S. really do About Haiti?*, N.Y. TIMES, Dec. 6, 1987, Sec. 4, Page 2.

What the United States said it wanted for the impoverished and largely literate population of that country was the first free election in 30 years. When the balloting was canceled by attacks on polling places. . . there was a rush to debate what went wrong and whether the American ability to influence events in that region had been reduced. But a larger question that was underlined in Haiti is how long the United States can go in manipulating the affairs of other countries.

Id.

