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## A Double Take on Debt: Reparations Claims and Regimes of Visibility in a Politics of Refusal

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# A Double Take on Debt: Reparations Claims and Regimes of Visibility in a Politics of Refusal

## Abstract

*This article proposes that the concept of 'odious debt' provides an especially fruitful legal framework for the Haitian and CARICOM demands for reparations and debt severance. The concept renders visible different dimensions of the background economic order that have been constitutive of postcolonial sovereignty, and the histories of trade and aid that have engendered debt. In analysing the work of different regimes of visibility I have found it useful to think with Abderrahmane Sissako's 2006 film Bamako, and the world of Wakanda in Ryan Coogler's Black Panther - two films that works through the stakes of visibility, recognition and refusal in the society of nations. Visibility – both as a metaphor for what is explicit and an account of what is before our eyes – is central to the politics of reparations. In this context, the doctrine of odious debt and the cinematic considerations that frame, advance and interrupt the narrative worlds of Bamako and Wakanda provide an interpretive lens through which to make visible the background structural arrangements linking globalisation's winners and losers, and concomitantly, to contribute to situating reparations in a politics of refusal. The reparation claims of Haiti and CARICOM can be understood as stories entailing law and economics, visibility, and witnessing of the world; stories with a performative function where the telling itself seeks to interrupt how the world functions.*

## Keywords

Reparations, Debt, Odious Debt, Politics of Refusal, Slavery, Colonialism, Haiti, International Law and Development, International Economic Order

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## Cover Page Footnote

Many thanks to Ruth Buchanan for really helpful comments on this paper as it developed and to Sundhya Pahuja for convening a panel at TWAIL Singapore in 2018 that was the prompt for early work on this paper; a revised version of that panel presentation – an earlier, shorter version of this article - will be published in the Routledge Handbook on International Law and the Humanities edited by Sundhya Pahuja and Shane Chalmers (forthcoming).

**A Double Take on Debt:  
Reparations Claims and Regimes of Visibility in a Politics of Refusal**  
Vasuki Nesiah\*

**Abstract**

This article proposes that the concept of “odious debt” provides an especially fruitful legal framework for the Haitian and Caribbean Community (CARICOM) demands for reparations and debt severance. The concept renders visible different dimensions of the background economic order that have been constitutive of postcolonial sovereignty, and the histories of trade and aid that have engendered debt. In analysing the work of different regimes of visibility I have found it useful to think with Abderrahmane Sissako’s 2006 film *Bamako*, and the world of Wakanda in Ryan Coogler’s *Black Panther* (2018)—two films that works through the stakes of visibility, recognition, and refusal in the society of nations. Visibility—both as a metaphor for what is explicit and an account of what is before our eyes—is central to the politics of reparations. In this context, the doctrine of “odious debt” and the cinematic considerations that frame, advance, and interrupt the narrative worlds of *Bamako* and *Wakanda* provide an interpretive lens through which to make visible the background structural arrangements linking globalisation’s winners and losers, and concomitantly, to contribute to situating reparations in a politics of refusal. The reparation claims of Haiti and CARICOM can be understood as stories entailing law and economics, visibility, and witnessing of the world—stories with a performative function where the telling itself seeks to interrupt how the world functions.

We think that debt has to be seen from the standpoint of its origins. Debt’s origins come from colonialism’s origins. Those who lend us money are those who had colonized us before. They are those who used to manage our states and economies....Colonizers are those who indebted Africa through their brothers and cousins who were the lenders. We had no connections with this debt. Therefore we cannot pay for it. ... Under its current form, that is imperialism controlled, debt is a

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\* Many thanks to Ruth Buchanan and to Sundhya Pahuja for really helpful comments on this paper as it developed. Sundhya Pahuja also convened a panel at TWAIL Singapore in 2018 that was the prompt for early work on this paper; a revised version of that panel presentation—an earlier, shorter version of this article—will be published in Sundhya Pahuja & Shane Chalmers, eds, *Routledge Handbook on International Law and the Humanities* (forthcoming).

cleverly managed reconquest of Africa, aiming at subjugating its growth and development through foreign rules. Thus, each one of us becomes the financial slave, which is to say a true slave.<sup>1</sup>

If you were looking out to sea from the balmy beaches of Haiti in April 1825, a dozen French warships may have been visible on the horizon. Some twenty years after France was defeated in the Haitian revolution, France remained insistent on re-litigating that loss in the domains of international law, great power diplomacy, and naval power. Carried to the Caribbean sea by the winds of the inter-imperial alliances sealed at the Congress of Vienna, those warships were the backdrop to Baron Mackau's visit to Haiti to demand protection money from the Haitian president, Jean-Pierre Boyer.<sup>2</sup> As an emissary of King Charles X, Baron Mackau carried the message that France and her allies would not grant recognition to the Haitian revolution and recognize Haitian sovereignty unless Haiti agreed to pay France the princely sum of 150 million francs as indemnity for the financial loss incurred by France and French slaveholders as a result of Haitian emancipation. Thus in 1825, Haiti signed the indemnity agreement that exchanged recognition for debt; it was an exchange that marked the transformation of an insurgent, revolutionary Haiti into an indebted, postcolonial state.<sup>3</sup> If the French revolution was fought with the promise of liberty, equality, and fraternity, the racial caveats to those promissory notes were clarified in Santo Domingo.<sup>4</sup>

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<sup>1</sup> Thomas Sankara, "A United Front Against Debt" (Speech at the Organisation of African Unity, July 1987), (27 October 2011), online: *Committee for the Abolition of Illegitimate Debt* <[www.cadtm.org/spip.php?page=imprimer&id\\_article=13533](http://www.cadtm.org/spip.php?page=imprimer&id_article=13533)>.

<sup>2</sup> Preparatory plans for the Congress of Vienna were established in negotiations around the 1814-1815 Treaties of Paris that included a secret agreement that the other European countries would concede to France full freedom in seeking to re-conquer Haiti. See Friedemann Pestel, "The Impossible Ancien Régime colonial: Postcolonial Haiti and the Perils of the French Restoration" (2017) *J of Modern European History* 261 at 264; Paul Michael Kielstra, *The Politics of Slave Trade Suppression in Britain and France, 1814–48: Diplomacy, Morality and Economics* (Palgrave Macmillan, 2000) at 38, 280, n 103. For more on Baron Mackau's negotiations and its military and political context, see JN Leger, "Haiti, Her History and Her Detractors" (Neale Publishing Company, 1907), online: <[archive.org/stream/haitiherhistoryh00lguoft/haitiherhistoryh00lguoft\\_djvu.txt](http://archive.org/stream/haitiherhistoryh00lguoft/haitiherhistoryh00lguoft_djvu.txt)>.

<sup>3</sup> For more on the indemnity agreement, its background, and its consequences, see Westenley Alcenat, "The Case for Haitian Reparations" (14 January 2017), online: *Jacobin* <[www.jacobinmag.com/2017/01/haiti-reparations-france-slavery-colonialism-debt](http://www.jacobinmag.com/2017/01/haiti-reparations-france-slavery-colonialism-debt)>.

<sup>4</sup> There were parallel indemnity bargains struck by colonial powers in other contexts too. The Dutch relinquished claims on Indonesia and recognised its sovereignty when the latter agreed to an indemnity sum of 4.5 billion guilders; Indonesia paid approximately 4 billion guilders to the Netherlands in the first decade of its independence. See Lambert Giebels, "The Indonesian Injection," *De Groene Amsterdammer* (5 January 2000), online: *Histori Bersama* <[historibersama.com/528-2](http://historibersama.com/528-2)>. CLR James's observation seems apposite—"The cruelties of property and privilege are always more ferocious than the revenges of poverty and oppression. For the one aims at perpetuating resented injustice, the other is merely a momentary passion soon appeased"—that at least was the wager that these former colonial powers made and, at least partially, won. *The Black Jacobins* (Vintage Books, 1989) at 88-89.

To render itself visible to the world, earn recognition as a free and independent sovereign, and birth itself in the eyes of international law, Haiti was coerced into contorting itself into a debtor nation.<sup>5</sup> This required asserting Haitian sovereignty in the very act that corroded it—namely, accepting the terms of the extortion as “debt” undertaken by a free and independent nation. In this way, France’s demands for indemnity shifted from the hypervisibility of the warships to become the (ever-present but also ever-backgrounded) foundation of Haiti’s post-1925 future as a sovereign nation. Notwithstanding the 1804 revolution, for the Haitian nation to constitute itself as a sovereign in the eyes of the world, it grappled with the paradoxical demand of becoming visible while backgrounding the imposition of the debt burden that impaired and fettered Haitian sovereignty in the process of enabling that recognition. The act of assuming indebted status, something that is the act of a sovereign nation, is the very process that births Haiti’s “sovereignty” as a universal category that earns recognition in the society of nations. Thus, the indemnity that was imposed by the warships (and what they represented) translates into international law ledgers as a debt that sovereign Haiti owed to sovereign France through this paradoxical performative–constative structure. In fact, Haiti incurred further debt to keep up payments even after the total amount was renegotiated to ninety million francs. Haiti finally paid the principle indemnity six decades later, in 1893, and settled all accounts, including related interest payments, in 1947.<sup>6</sup> There was a world of difference that came between 1804 and 1825, between revolutionary Haiti and post-colonial Haiti.

### I. **Reparations in International Law: Ameliorative Closure or Insurgent Refusal?**

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<sup>5</sup> Thus, at the very moment of its birth as a sovereign nation, and as a condition of that recognition, Haiti becomes less than sovereign. This may be seen in a sense as the tragic reverse of the constative–performative structure that Jacques Derrida identifies as part of the originary hypocrisy that inheres in the “we the people” of the US Declaration of Independence—“We the People” declare themselves sovereign when their constitution as a people is really the outcome of the declaration, rather than prior to it. If the latter case is one of an originary hypocrisy that enlarges sovereignty, the Haitian origin story is an example of an originary hypocrisy that diminishes sovereignty. See Gayatri Spivak, “Constitutions and Culture Studies,” (1990) 2 *Yale JL & Humanities* 133 at 142, citing Jacques Derrida, *Otobiographies: l'enseignement de Nietzsche et la politique du nom propre* (Galilee, 1984), 21-5. Derrida and Spivak are building on Austin’s radical observation that declarative statements are not merely constative statements about the world, but also performative—bringing into being the world it describes. See also JL Austin, *How to Do Things with Words* (Harvard University Press, 1975). In this case, we are considering the 1825 contract declaring that “Sovereign Haiti is indebted to Sovereign France”—a declaration uttered here in the context of international law and European empire, represented for instance by the warships aligned with the power of recognition of sovereignty.

<sup>6</sup> Robert Marquand, “France dismisses petition for it to pay \$17 billion in Haiti reparations” (17 August 2010), online: *The Christian Science Monitor* <[www.csmonitor.com/World/Europe/2010/0817/France-dismisses-petition-for-it-to-pay-17-billion-in-Haiti-reparations](http://www.csmonitor.com/World/Europe/2010/0817/France-dismisses-petition-for-it-to-pay-17-billion-in-Haiti-reparations)>.

The impact of the indemnity payments on Haiti has been catastrophic. If the warships of 1825 manifestly threatened a violent massacre, the indemnity stealthily produced an equally brutal “slow violence” punishment for the temerity of Haiti’s revolutionary aspirations.<sup>7</sup> As Westenley Alcenat noted, “the French indemnity crippled the Haitian state and civil society. It intensified an already predatory state and accelerated the vulnerability of the economic infrastructure, easing the floodgates for foreign exploitation.”<sup>8</sup> There have been calls for reparations from France for that catastrophic impact; at the very minimum, the calls have been for restitution of the money paid in terms of their current monetary value. As I discuss further below, these stand alongside other calls for rewriting current sovereign debt as reparations. The focus of this paper is to look at alternative international legal frameworks for debt severance as reparations, and to analyze what such an alternative framing entails and what is at stake.

Dominant readings of international law celebrate its provision of victims’ rights to reparations. Situated within the international human rights framework, the recognition of a right to reparation in response to human rights violations is often framed in terms of international law’s promise for progress, including its capacity for generating and buttressing norms, laws, and institutions that provide ameliorative closure on these histories of atrocity.<sup>9</sup> Indeed, the traditional approach to the scope of the right to reparations is often apiece with a reading of atrocity itself as arising from a violation of the rule of law, rather than symptomatic of the rules of the game. Reparations framed in human rights terms can often focus on events disconnected from their enabling conditions and their structural work or distributive impact.<sup>10</sup> Often these processes

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<sup>7</sup> I take the term “slow violence” from Rob Nixon’s book of the same name. See *Slow Violence* (Harvard University Press, 2011). Nixon is especially focused on climate change and environmental precarity but the term captures the routinized, attritional catastrophes that threaten the poor on many fronts.

<sup>8</sup> Alcenat, *supra* note 3.

<sup>9</sup> Even when there is acknowledgement that the harm is irreparable, reparations are often conceived in terms of repair and building trust, rather than addressing the rationale for distrust in the institutional arrangements of the international economic order. For instance, Pablo de Greiff argues that one of the central goals of reparations is repairing trust. See “Justice and Reparations” in *The Handbook of Reparations* (Oxford University Press, 2006) 451, online: <[oxford.universitypressscholarship.com/view/10.1093/0199291926.001.0001/acprof-9780199291922-chapter-13](http://oxford.universitypressscholarship.com/view/10.1093/0199291926.001.0001/acprof-9780199291922-chapter-13)>. The concept of odious debt discussed in this paper foregrounds distrust in its diagnostic, as well as its prescription. Moreover, as with the toybox metaphor, it underscores its refusal of closure, situating odious debt as one iteration that maybe revisited yet again.

<sup>10</sup> For instance, reparations that followed the South African Truth and Reconciliation Commission (TRC) gave some money to those individuals the commission identified as eligible victims. Not only were these sums inadequate, but they were not part of a process holding accountable the beneficiaries of apartheid because the TRC’s definition of victim was predicated on acts such as torture not the system of apartheid. See Mahmood Mamdani, “A Diminished Truth” in Wilmont James & Linda Van de Vijver, eds, *After the TRC: Reflections on Truth and Reconciliation in South Africa* (David Phillips, 2000) 58-61.

interpolate potential reparations claimants' political subjectivity as one that fits within narrowly drawn human rights parameters.<sup>11</sup> In many cases, this framing of reparations claims might also contribute to an individualized and non-systemic understanding of the perpetrators and victims of human rights violations, their social relations, and the world systems within which they are embedded. In these and other ways, reparations policies could unfold as interventions that deter, distract from, or substitute for socio-economic transformation.

Against the backdrop of that dominant narrative, I read the archive of international law against itself to explore alternative ways in which to frame reparations claims in international law. In particular, this paper probes how the demand for the severance of sovereign debt can be an entry point that seeks to refuse and interrupt, rather than to ameliorate and close the books. If the human rights framing of reparations is in the key of repair and restoration of the status quo, I want to mine the archives of international law to consider interventions that might denaturalize that status quo, and advance an alternative analysis of the political economy of international law and the ongoing legacies of a world order forged in the crucible of colonialism, slavery, and capitalism. Focusing especially on Haiti, I want to suggest that the concept of "odious debt" is a generative lens through which to rewrite the contract between Haiti and France (or, we might say, between Haiti and the international community, because that contract was inextricably tethered to the histories of colonization, slavery, and a racial capitalist world order).

In public international law, the concept of "odious debt" speaks to how debt contracts might be legitimately breached because they were not negotiated by legitimate representatives.<sup>12</sup> The concept will be fleshed out further in the following pages; at this point, I first want to situate the mobilization of the concept in this paper in a process of legal argumentation that is provisional rather than propositional, contingent rather than conclusive. Fred Moten and Stefano Harney's toybox metaphor is resonant with the strategy of legal argumentation that I want to invoke.<sup>13</sup> In a

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<sup>11</sup> Thus "giving victims due recognition" entails recognition within the terms of individualized experience of harm that is acknowledged by the dominant human rights regime. See, for instance, how de Greiff discusses such recognition. See *supra*, note 9.

<sup>12</sup> See Robert Howse, "The Concept of Odious Debt in Public International Law" (July 2007) United Nations Conference on Trade and Development Discussion Paper No. 185, online (pdf): <[unctad.org/en/docs/osgdp20074\\_en.pdf](http://unctad.org/en/docs/osgdp20074_en.pdf)>.

<sup>13</sup> "You can either talk about it as having a kind of toolbox or also talk about it as having a kind of toybox....In the end, what's most important is that the thing is put in play. What's most important about play is the interaction." See Stefano Harney & Fred Moten, *The Undercommons: Fugitive Planning and Black Study* (Minor Compositions, 2013) at 105-106. Harney also writes, "I'm trying to show that I'm playing with something rather than that it's finished." See *ibid* at 107.

toolbox, hammers and screw drivers have instrumental ends and are appreciated for their effective use value, but in a toolbox, you may take a cricket bat and treat it like a sword, or you may take your chess pieces and play checkers with them. The ends remain open and contingent on the state of play. There is, in other words, an invitation to misuse, to push against closure, to subvert the ends for which a legal concept was developed. The impulse is mischievous—not in the sense of being frivolous but in the sense that it is disloyal to the rules of the game.

In that spirit, this article explores whether the concept of “odious debt” could provide a potentially fruitful strategy of legal argumentation in support of the Haitian and the Caribbean Community (CARICOM) demands for debt severance.<sup>14</sup> It is especially concerned with how the concept renders visible different dimensions of the background economic order that have been constitutive of postcolonial sovereignty, and the histories of trade and aid that have engendered debt. If debt was the price of formal recognition of Haitian sovereignty, can “odious debt” be the recognition that the international norms, laws, and institutions that sustain the debt regime are odiously illegitimate? This includes not only the recognition that postcolonial sovereignty is predicated on the mythos of self-inflicted wounds, but also that its mythic lie is something we all already know. I want to draw out the concept of “odious debt” in international law, and probe the interruptive potential of this play as an alternative framing of the work of reparations claims.<sup>15</sup>

### **A. Debt: The Price of Recognition**

Placing the coerced indemnity into the legal framework of debt—a debt agreed to, by, and for, sovereign Haiti—presents in international law and development ledgers as a self-inflicted wound. Debt functions like the angling of a camera to steer our attention in one direction rather than another by operating on two intertwined registers of presence and visibility: On the one hand, the coercion that engenders and sustains sovereign debt makes its economic, military, and geopolitical presence felt as an ever present background condition; on the other, debt works to focus

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<sup>14</sup> CARICOM is the institutional body constituted by fifteen Caribbean countries to address matters of shared concern, including reparations. See “Who We Are” (last visited 4 January 2022), online: *CARICOM* <caricom.org/our-community/who-we-are>. In July 2013, these states established the Caribbean Reparations Commission (CRC); the CRC was at least partly inspired by the work of CRC Chair, Professor Hilary Beckles, as captured by his book on reparations that was published that same year. See *Britain’s Black Debt: Reparations for Caribbean Slavery and Native Genocide* (University of West Indies Press, 2013). The CRC grew out of the mobilization for (and the disappointments with) efforts to address the ongoing legacies of colonialism and slavery at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa.

<sup>15</sup> As elaborated further in Part VI, below, I take the term recombinant legal narratives as a version of what Saidiya Hartman has referred to as recombinant narratives to capture an approach to reading the ellipses in the archive. See Saidiya Hartman, “Venus in Two Acts” (2008) 12 *Small Axe* 1.



our attention on the obligations of the indebted rather than on that coercive world order. This dynamic has provided the scaffolding for the political horizon of independent Haiti where the responsibilities attached to debt present as an indicator of Haiti's sovereign agency, even while that debt is the vehicle for greater and greater sovereign dependence. Alcenat recounts how dependence on loans from American financiers to pay the French debt also opened the door for US interventions in Haitian affairs that continue today.<sup>16</sup> Thus the Haitian sovereignty that was recognized in that 1825 deal was one that invited more warships to its shores—some that were visible and some that moved with the stealth of background rules.

Refusing those warships risked even that feeble, and enfeebling, sovereignty that was birthed in the 1825 agreement. For instance, in 2003, two centuries after the Haitian revolution, Jean Bertrand Aristide, then President of Haiti, asked for a return of the indemnity funds: twenty-one billion dollars in restitution when the sums were translated into their value in 2003.<sup>17</sup> The demand can be seen, and was seen, as a step towards another transition—a transition from neo-colonial oppression into a new kind of sovereign agency.<sup>18</sup> France was hostile to Aristide's demands for repayment; moreover, as in 1825, France was able to marshal its allies to backstop France's position. Thus the metaphorical warships sailed into visibility again, and the guns on board those warships were immediately raised, ready to fire. In 2004 there was a *coup d'état* against Aristide, and the US and France collaborated on forcibly removing him from Haiti. A post-Aristide Haiti was born and the ships once again discreetly sailed beyond the line of sight of Haiti's political horizon.<sup>19</sup> Haitian sovereignty was "restored."<sup>20</sup> Today, Haitian national debt is in the order of three and half billion dollars, which is about a third of its GDP.<sup>21</sup>

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<sup>16</sup> Alcenat, *supra* note 3. See in particular the section subtitled "French Indemnity to American Occupation."

<sup>17</sup> "Haiti: Free from slavery, not yet free from debt" (last accessed 22 May 2020), online: *Jubilee Debt Campaign* <jubileedebt.org.uk/countries-in-crisis/haiti-free-slavery-not-yet-free-debt>.

<sup>18</sup> Indeed it was echoed by demands from Senegal, Mali, and other former French colonies in Africa for indemnity charges that France had imposed in those countries for post-independence currencies structured on the CFA Franc. "Francophone Africa's CFA franc is under fire," *The Economist* (27 January 2018), online: <www.economist.com/middle-east-and-africa/2018/01/27/francophone-africas-cfa-franc-is-under-fire>.

<sup>19</sup> Any effort to keep the spotlight on them was resisted; CARICOM asked for a UN investigation of the *coup d'état* and this request was crushed by France and the US. See Anthony Fenton, "U.S., France Block UN Probe of Aristide Ouster" (13 April 2004), online: *Información, Derechos* <www.derechos.org/nizkor/haiti/doc/hti34.html>.

<sup>20</sup> See Mark Weisbrot, "Undermining Haiti," *The Nation* (23 November 2005), online: <www.thenation.com/article/archive/undermining-haiti>.

<sup>21</sup> "Haiti GDP" (last accessed 10 December 2021), online: *Trading Economics* <www.tradingeconomics.com/haiti/gdp>.

## **B. Odious Debt: The Politics of Transition**

The Haitian call for the restitution of the indemnity funds is an important adjunct to the demands advanced by Haiti as part of the fifteen-country CARICOM plan for reparatory justice.<sup>22</sup> CARICOM situates the debt cycle as an inheritance of “slavery and colonialism” arguing that “[t]his debt cycle properly belongs to the imperial governments who have made no sustained attempt to deal with debilitating colonial legacies. Support for the payment of domestic debt and cancellation of international debt are necessary reparatory actions.”<sup>23</sup> The call for rewriting sovereign debt is one point in CARICOM’s ten-point plan for reparatory justice. The plan is directed at Europe, with particular attention to the historical responsibilities of Britain, France, and the Netherlands for colonialism and slavery in the region.<sup>24</sup> Calls for reparatory justice take on the politics of temporality in ways that seek to interrupt routine international relations.<sup>25</sup> Implicit in this vision is a recognition of how histories of colonialism and slavery are windows to the past but also constitutive of the present. They mark the political economies that figure European privilege and prosperity, and, concomitantly, the vulnerabilities of the Caribbean present, as dimensions of the contemporary lives of colonial and slave histories. If, in this analysis, colonial interests function like a silent virus crippling post-colonial futures, debt can be seen as both the virus and its symptom: shaping the post-colonial world order while also being its product. The Haiti indemnity story is a synecdoche of that larger regime of world economic order built by colonialism and slavery. Imperial warships may not be as ostentatiously visible indicators of the conditions of recognition of every postcolonial state, but the rules for recognition are ever present. This regime of world order produced sovereign debt as the silent virus of decolonisation, birthed and nurtured

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<sup>22</sup> CARICOM includes Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St Kitts and Nevis, St. Lucia, Saint Vincent and the Grandines, Surinam, and Trinidad and Tobago. See “Member States and Associate Members” (last accessed 10 December 2021), online: *CARICOM Caribbean Community* < [www.caricom.org/member-states-and-associate-members](http://www.caricom.org/member-states-and-associate-members)>.

<sup>23</sup> Caribbean Community, “CARICOM Ten Point Plan for Reparatory Justice” (last accessed 22 May 2020), online: <[www.caricom.org/caricom-ten-point-plan-for-reparatory-justice](http://www.caricom.org/caricom-ten-point-plan-for-reparatory-justice)>, citing “CARICOM nations unanimously approve 10 point plan for slavery reparations” (11 March 2014), online: *Leigh Day* <[www.leighday.co.uk/latest-updates/news/2014-news/caricom-nations-unanimously-approve-10-point-plan-for-slavery-reparations](http://www.leighday.co.uk/latest-updates/news/2014-news/caricom-nations-unanimously-approve-10-point-plan-for-slavery-reparations)>.

<sup>24</sup> *Ibid.*

<sup>25</sup> As a project of nation-states, the role and status of CARICOM is complex; in the post-colonial period, the nation-state has been both the vehicle for, and the derailment of, anti-colonial movements. The concept of odious debt is predicated on the notion that parties contracting sovereign debt as sovereigns should be legitimate representatives, governing to advance the people’s interests. Against that backdrop, this paper is focusing on the legitimacy of the 1825 agreement, not on state legitimacy more generally—however, these are interrelated issues and draw attention to the paradox of postcolonial sovereigns speaking for the people about how their own ability to represent their people has been impaired by background economic arrangements in the international order.

by that regime in ways that have mutilated and fettered processes of political transition from colonialism and slavery through debt and dependence.

The concept of “odious debt” is a transitional justice mechanism for precisely such situations. The idea of “odious debt” operates such that, upon political transition, debt obligations imposed by an odious regime are terminated. Robert Howes summarises its basic principles:

[t]he odious debt concept seeks to provide a moral and legal foundation for severing, in whole or in part, the continuity of legal obligations where the debt in question was contracted by a prior ‘odious’ regime and was used in ways that were not beneficial or were harmful to the interests of the population.<sup>26</sup>

The core insight of the notion of “odious debt” is that a contract is not necessarily valid simply because a party submitted to its terms; rather the validity of contract should depend on basic principles of fair, equitable, and non-coercive conditions.<sup>27</sup> The doctrine originated to repudiate debt incurred by a colonial government; in particular, it was an argument invoked by the US in the aftermath of the Spanish–American war to argue that Cuba and the US should not be held responsible for debts incurred by the colonial Spanish government.<sup>28</sup> The Haitian restitution claims and the CARICOM demands foreground the transition away from colonialism and slavery, yet that transition is itself unfinished; the world economic order built by colonialism and slavery is the co-sovereign of the post-colonial nation-state as exemplified by Haitian sovereignty, which emerged in 1825 into the society of nations already indebted. It is this odiously-twinning regime that led to debts inimical to the interests of the local population. The coercive circumstances of national debt in the post-colony include coercion that is visible, and coercion that is part of the background laws and institutions that cast their shadow on terms of debt negotiations. It includes the spectre of warships on the horizon, as well as the laws and institutions of economic order that sustain and reproduce systems of economic exploitation and vulnerability. Foregrounding these dimensions of post-colonial world order calls for reframing the notion of the “odious regime” to include both

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<sup>26</sup> Howse, *supra* note 12.

<sup>27</sup> See Michael Kremer & Seema Jayachandran, “Odious Debt: When Dictators Borrow, Who Repays the Loan?” (1 March 2003), online: *Brookings Institution* <[www.brookings.edu/articles/odious-debt-when-dictators-borrow-who-repays-the-loan](http://www.brookings.edu/articles/odious-debt-when-dictators-borrow-who-repays-the-loan)>:

As early as the 1898 peace negotiations after the Spanish-American War, the U.S. government contended that neither the United States nor Cuba should be held responsible for debt incurred by Cuba’s colonial rulers without the consent of its people and without regard for their benefit. Although Spain never accepted the validity of this argument, the United States prevailed, and Spain took responsibility for the Cuban debt under the Paris peace treaty. The Soviet state repudiated tsarist debt in 1921 using a similar rationale. Legal scholars subsequently elaborated a doctrine of “odious debt,” arguing that sovereign debt should not be transferable to a successor government if it was incurred without the consent of, and without benefiting, the people. Some scholars added the requirement that creditors must have been aware of these conditions when they issued the loans to repressive or looting governments (*ibid*).

<sup>28</sup> See Seema Jayachandran & Michael Kremer, “Odious Debt” (2006) 96 *Am Econ Rev* 82 at 83.

visible and less-visible dimensions of global governance that structure how sovereigns acquire debt and negotiate its terms. How these dimensions are taken into account in defining what counts as an “odious regime” emerges as a central dimension of how the doctrine is given force in assessing conditions for terminating debt obligations.<sup>29</sup>

In foregrounding the intertwining of the visible and that which is rendered less visible, the concept of “odious debt” makes debt severance “thinkable” because it locates the indemnity contract that generated debt as the product of that odiously-twinning regime. In analyzing the work of different regimes of visibility, I have found it useful to think with Abderrahmane Sissako’s 2006 film *Bamako* and, in particular, the way Sissako illuminates the stakes of what is foregrounded and what is backgrounded in the world order. *Bamako* unsettles the focus of the filmic gaze, shifting and reversing the camera’s work of viewing and being viewed so that the lens documenting the adjudication of the legal and economic framework of international debt, the act of seeing, becomes what we see. Part II, below, explores *Bamako* and its cinematic engagement with law and global economic governance, to cast a light on the trade and aid regime in ways that resonate with heterodox interpretations of the legal framework for debt.<sup>30</sup> Part III returns to the question of “odious debt” and the way it could make resistance to the debt regime legible in international law, before moving to an engagement with the world of Wakanda in *The Black Panther*, another film that works through the stakes of visibility and recognition in the society of nations. Visibility—both as a metaphor for what is explicit and an account of what is before our eyes—is central to the politics of reparations. In this context, the doctrine of odious debt and the cinematic considerations that frame, advance, and interrupt the narrative worlds of *Bamako* and Wakanda provide an interpretive lens through which to make visible the background structural arrangements linking

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<sup>29</sup> The doctrine of “odious debt” as described by Howse, Jayachandran & Kremer, and extended in this paper’s interpretation of “odious regime” as a reference to the domain of global governance (not just national territory), resonates with principles of equity in international law. Equity, present in both common law and civil law jurisdictions, has been invoked in international law through natural law principles, as well as in reference to particular doctrinal provisions built into the mandate of adjudicatory bodies such as the international court of justice and the international criminal court. See Howse, *supra* note 12; Jayachandran & Kremer, *supra* note 28.

<sup>30</sup> While it does not engage with it directly, this paper is also inspired by another filmic register—namely the documentary *Life and Debt*, set in Jamaica and with narration from the text of Jamaica Kincaid’s book-essay, *A Small Place*. *Life and Debt* enacts invisibility with two parallel story lines—one of American tourists enjoying a vacation on the beaches of Jamaica and the other of a Jamaica devastated first by slavery and colonialism, and then, after independence, financially haemorrhaged by debt, loan conditionalities, trade, and aid. The invisibility of the latter is central to oiling the wheels of the former, even as the economic devastation of Jamaica is central to the favourable currencies and tourism dependence that makes the former so enjoyable for the American visitor. The blood spilt to make the margarita on the beach has to be rendered so invisible that it is unthinkable. See *Life and Debt* (New Yorker Films, 2001); Jamaica Kincaid, *A Small Place* (Farrar, Straus & Giroux, 2000).

globalisation's winners and losers, and concomitantly, make evident different histories and futures for post-colonial nationhood. The reparation claims of Haiti and CARICOM can be understood as stories entailing law and economics, visibility, and witnessing of the world; stories with a performative function where the telling itself seeks to interrupt how the world functions.

## II. **Hiding in Plain Sight: Rendering the Visibility of Debt Visible**

“If we can see the present clearly enough, we shall ask the right questions of the past.”<sup>31</sup>

As Sissako's film *Bamako* begins, viewers find themselves across the Atlantic in another former French colony. They are in a dusty multi-family courtyard in Bamako, Mali, where a hearing is unfolding in a formal court-like setting with lawyers and witnesses making arguments and testifying before robed and bewigged judges. The hearing has been convened to hear accusations against the International Monetary Fund (IMF) and the World Bank for crimes against the people of Mali. Lawyers make formal arguments about a world fuelled by the continued political, economic, and military devastation of the impoverished. They speak of debt, debt payments, and structural adjustment conditionalities demanded by the International Financial Institutions (IFIs), pitting the people of Bamako against the world economic order. Ordinary citizens of Mali come in as witnesses; formally sworn in, they then speak of the devastation they have experienced because of the trickledown impact of the global economic order and IFI prescriptions regarding privatisation and the abandonment of public expenditure on social infrastructure. They speak of malnutrition, loss of jobs, illiteracy, lack of public transport, and much more. “Debt has brought Africa to its knees,” one lawyer argues in outlining the many vectors of dispossession.<sup>32</sup> The courtyard is surrounded by shacks where people are going about their everyday chores, occasionally stopping to watch the events unfolding in the hearing. The trial unfolds against the backdrop of the day-to-day drama of people living in the courtyard; offering another kind of witness, the subplots involving these neighbours intersect with, but are also much more than, the shadows cast by the global economy. The lives of the people in the courtyard fade in and out of view as the viewer gets pulled into different characters' lives and gets invested in their individual stories of work and family. Accentuating the surrealist cast of the proceedings, this view of the trial is briefly interrupted by *Death in Timbuktu*, a side movie within the movie bringing military intervention and a new take on law, outlaws, and lawlessness. *Death in Timbuktu* is a spaghetti

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<sup>31</sup> John Berger, *Ways of Seeing* (Penguin Modern Classics, 2009) at 16.

<sup>32</sup> (Art France Cinema, 2006) [*Bamako*].

western where bands of international cowboys shoot the women and children they deem surplus. The camera returns to the courtyard to witness more lives rendered superfluous by the global economy and witnesses describing the World Bank as stone chains around their neck akin to “the slave’s sign of allegiance to his master.”<sup>33</sup>

If the story of postcolonial sovereignty forged in Haiti offers one story of the future of enslavement and colonisation, *Bamako* offers a cinematic calling-to-account of the institutions that haemorrhaged the futures of the formerly enslaved and colonised. The one person who repeatedly enters the frame but then disappears is a videographer who is in the courtyard filming the trial, and by default the lives of the families whose homes border the courtyard. He darts in and out of proceedings, adjusting his lenses, shifting his camera, moving from this perspective to that one. He is witness to it all—but he is not alone. Everyone who is going about the courtyard, living their life in a Mali shaped by the history of French colonialism and the global economy, is a witness. There is no shield of invisibility over the impact of debt on people’s lives and their life opportunities; as the videographer darts around, filming proceedings, their lives testify to the dystopic signature of the international economic order. If the front-stage action is the adjudication of the IFIs, the back-stage action is the witnessing. Indeed, gradually the back-stage plot line steals the show by putting visibility itself on trial. Those who shape the rules engendering the debt, those who benefit from the rules enforcing debt, those who lose from the rules required to make repayment—they can all see what is going on. The videographer is not making the courtyard visible; rather, he is reminding the viewer that this is all already visible; that what is normalised as background is a scandal when foregrounded. Moreover, in sometimes foregrounding the videographer’s camera lens and sometimes allowing it to fade from view, *Bamako* suggests that these shifts in how the viewer registers what they witnesses is part of how the international economic order is sustained and legitimized, or challenged and disrupted. Those who witness atrocity and do not revolt against it, become, through that passive viewing, complicit in its normalization, and invested in the veneer of invisibility.

Indeed, for countries negotiating debt repayment conditionalities, the visibility of harsh consequences for defaulting is part of the goal. Spectacular violence (such as the warships in Haiti’s sights) is intended not only as a punishment of particular countries, but also as a public

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<sup>33</sup> *Ibid.*

warning to others.<sup>34</sup> For instance, in 2010, Greece was in a financial crisis and found it difficult to service its loans; in response, the European Union (EU) fashioned Greece as an irresponsible borrower and imposed punishing “bailout” conditions as an exemplary lesson for Portugal, Italy, Ireland, and any other potential defaulter.<sup>35</sup> Moreover, in effect, the EU’s influx of cash was not to Greece but to its lenders, ensuring that the lenders did not suffer loss from the risk of default. Nevertheless, the draconian terms for servicing this additional loan also went to Greece. As a result, as Yanis Vroufakis has noted, Greece was “locked into an EU debtor’s prison” with the so called “bailout,” entailing terms of debt bondage that further enriched powerful countries and big banks while imposing harsh financial burdens on the Greece that placed it in a “permanent depression.”<sup>36</sup> Exposing what is labelled as a “bailout” as a “preposterous lie” is important.<sup>37</sup> However, as Eve Sedgwick has reminded us, there are limits to a hermeneutics of exposure and suspicion in a regime where exposing atrocity is itself incorporated into a technology of atrocity.<sup>38</sup> In such a regime, visibility does not itself interrupt the operation of this regime of debt and aid, or advance alternative policy directions. As *Bamako* indicates, ordinary citizens are eloquent and knowledgeable about the political and economic arrangements that shape the world order and have such devastating consequences on their lives. For them, this is not a revelation. On the one hand, the trial in *Bamako* is seeking to document an aspect of how the world works, to provide a little

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<sup>34</sup> Sybille Fischer, *Modernity Disavowed: Haiti and the Cultures of Slavery in the Age of Revolution* (Duke University Press, 2004).

<sup>35</sup> Institutions European Central Bank spoke of debt as if it was a virus that could spread from Greece to other debt vulnerable countries and the need to take conservative financial steps so that the EU could inoculate itself from the threat of contagion. See e.g. Vítor Constâncio, “Contagion and the European Debt Crisis” (lecture to the European Central Bank, October 2011), online: <[www.ecb.europa.eu/press/key/date/2011/html/sp111010.en.html](http://www.ecb.europa.eu/press/key/date/2011/html/sp111010.en.html)>; Roberto A. De Santis, “The Euro Area Sovereign Debt Crisis: Safe Haven Credit Rating Agencies and the Spread of the Fever from Greece, Ireland and Portugal” (2012) European Central Bank Working Paper No 1419.

Similarly, when Mali is required (as one of the witnesses in the Bamako trial testifies) to privatise as a condition of capital transfer, it is a signal to Ghana and Nigeria that privatisation is part of the package—that this is what needs to be internalised for good governance.

<sup>36</sup> Yanis Varoufakis, “Greece was never bailed out—it remains locked in an EU debtor’s prison,” *The Guardian* (26 August 2018), online: <[www.theguardian.com/commentisfree/2018/aug/26/greece-was-never-bailed-out---it-remains-a-debtors-prison-and-the-eu-still-holds-the-keys](http://www.theguardian.com/commentisfree/2018/aug/26/greece-was-never-bailed-out---it-remains-a-debtors-prison-and-the-eu-still-holds-the-keys)>.

<sup>37</sup> *Ibid.*

<sup>38</sup> See Eve Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (Duke University Press, 2003) at 123-51. Sedgwick herself builds on Paul Ricour’s critique of critical habits (referring especially to Marx, Nietzsche, and Freud, and the traditions of critical thought associated with them) reliant on what he first described as a “hermeneutics of suspicion” (*ibid* at 124-25). Sedgwick argues that such a hermeneutics can have unintended side-effects that may inadvertently deter reparative readings that attend to “the many ways selves and communities succeed in extracting sustenance from the object of a culture—even of a culture whose avowed desire has often been not to sustain them” (*ibid* at 150-51). Part of the agenda of the chapter “Paranoid Reading and Reparative Reading, or, You’re So Paranoid, You Probably Think This Essay Is About You” is an exploration of whether the doctrine of odious debt can be situated in such a reparative reading. See *ibid*, 123.

window into historical legacies and present conditions, to expose, to lift the veil, to reveal facts, and enhance knowledge. On the other hand, the work of the videographer is different—he is making us attend to the act of seeing. His most unsettling intervention does not lie in making the colonial legacies and neocolonial present of Mali visible to us, but rather in the reminder that they are already visible. The contours of this unsettling intervention carry a parallel shape to the work of reparation claims today. Reparation claims have unsettled routine politics not because they are reciting the horrors of colonialism and slavery or the grotesque inequalities of the present. Rather, they are reminding us that we already know this, that this is what we witness every day, that this is what surrounds us; it is a reminder that “seeing” these different markers of postcolonial sovereignty are what, in John Berger’s words, “establishes our place in the surrounding world.”<sup>39</sup> This is the power of noticing seeing and unseeing.<sup>40</sup>

Viewing the Haitian and CARICOM claims through the aperture of *Bamako*, we might see the demands for reparations as akin to the videographer—making visible the visibility. What is striking is not that these reparation claims make visible the connections between atrocities from yesterday and today, from the era of slavery to the era of neoliberalism, but that they call attention to the scandal of that visibility. The structural arrangements linking globalisation’s winners and losers are hiding in plain sight, and reparations claims are ensuring that we trip over what is in front of us when we would rather walk around it. The muscles and tissues that connect “odious debt” and debtor nations are functioning symbiotically in the same organism, and the reparations claims interrupt that symbiosis, they interrupt story tellers narrating theories of freedom that are also histories of enslavement. The videographer angling for a better shot in *Bamako* is producing a documentary—a realist genre, with film as witness to what is really going on; and he is doing it in a surrealist world where international posses of cowboys can bring the wild west to your doorstep.

### III. **Postcolonial Sovereignty and Odious Debt: The Aperture of Legal Legibility**

The role of philosophy is not to discover what is hidden, but to make visible precisely what is visible, that is to say, to show that which is so close, which is so immediate, which is so intimately linked to us, that because of that we do not perceive it. While the role of science is to communicate that which we do not see, the role of philosophy is to make us see what we see.<sup>41</sup>

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<sup>39</sup> Berger, *supra* note 31 at 7.

<sup>40</sup> *Ibid.*

<sup>41</sup> Anne Orford, “In Praise of Description” (2012) 25 *Leiden J Intl L* 609 at 617, citing Michel Foucault “La philosophie analytique de la politique” in Daniel Defert, François Ewald & Jacques Lagrange, eds, *Dits et écrits, 1954–1988*, vol 3 (Gallimard, 1994).



If 1804 marked the “freedom dreams” of Haitian men and women leading to the first successful anti-slavery cum anti-colonial revolution, the 1825 recognition of Haiti as an already-indebted sovereign nation is in many ways the origin story of postcolonial sovereignty.<sup>42</sup> Midwifed into the world by the twin forces of “freedom dreams” and “odious debt,” the key foundation of postcolonial sovereignty is that shackling of freedom and duress. The call for reparation for the sovereign debt burden of postcolonial states seeks to render visible the pathologies that have been normalized in the shackling of freedom and duress. The doctrine of odious debt makes this call for reparation legible to international law; like the *Bamako* videographer, it points to the already-visible shackling of “freedom dreams” and “odious debt” to help render debt jubilee “thinkable” within international law.<sup>43</sup>

The Haitian and CARICOM call for rewriting debt as reparations is not a book-keeping intervention, but a political one. There is a fundamental difference between framing it through the lens of debt forgiveness,<sup>44</sup> and reframing it through the lens of “odious debt.” As Howse has written: The concept of “odious debt” is itself a reframing; it “regroups a particular set of equitable considerations that have often been raised to adjust or sever debt obligations in the context of political transitions, based on the purported odiousness of the previous regime and the notion that the debt it incurred did not benefit, or was used to repress, the people.”<sup>45</sup>

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<sup>42</sup> “Freedom Dreams” is Robin Kelley’s term for Black radical visions. See Robin DG Kelley, *Freedom Dreams: The Black Radical Imagination* (Beacon, 2002). The Haitian revolutions lays bare the limits of rights talk, the rule of law, and their racial caveats—or in Toussaint Louverture’s famous words: “We are black, it is true, but tell us, gentlemen, you who are so judicious, what is the law that says that the black man must belong to and be the property of the white man?” Toussaint Louverture, “To Live Free or Die” (1791), online: *Verso Books* <[www.versobooks.com/blogs/2650-to-live-free-or-die-on-the-anniversary-of-the-haitian-revolution](http://www.versobooks.com/blogs/2650-to-live-free-or-die-on-the-anniversary-of-the-haitian-revolution)>.

<sup>43</sup> Jubilee 2000, a global coalition spread across forty plus countries, was formed to advocate for debt relief for the global south. There are now a network of national jubilee committees that founded the Jubilee 2000 coalition that continue the campaign at a local level. For instance, the UK organization, Jubilee Debt Campaign, describes their work as “part of a global movement working to break the chains of debt and build a finance system that works for everyone.” “Who we are” (last accessed 10 December 2021), online: *Jubilee Debt Campaign* <[www.jubileedebt.org.uk](http://www.jubileedebt.org.uk)>.

<sup>44</sup> For instance instance, in the World Bank’s Heavily Indebted Poor Countries (HIPC) initiative. HIPC was initiated in 1996 and predicates debt relief on what it refers to as “strict criteria” such as Gross National Product (GNP) rather than conditions of debt acquisition. See The World Bank, “Relieving The World’s Poorest Countries Of Unmanageable Debt Burden” (11 January 2018), online: <[www.worldbank.org/en/topic/debt/brief/hipc](http://www.worldbank.org/en/topic/debt/brief/hipc)>.

<sup>45</sup> Howse, *supra* note 12 at 1.

In short, it is a concept that, in the Haitian case, enables a revisiting of 1825 in the spirit of 1804.<sup>46</sup> 1825 cemented a compact whereby Haiti severed the radical aspirations of 1804, undertaking a debt that not only impoverished Haiti and led to untold repression and hardship for its people, but also legitimised French colonialism and slave holdings. In exchange, Haiti received global recognition as a sovereign nation and integration into the society of nations. The doctrine of odious debt provides a platform to revisit that compact and revive the revolutionary spirit of 1804, a spirit that was willing to take on the French empire, confident, as C.L.R. James notes, that the imperial society of nations that it was a part of was morally odious:

He [Toussaint] knew French, British, and Spanish imperialists for the insatiable gangsters that they were, that there is no oath too sacred for them to break, no crime, deception, treachery, cruelty, destruction of human life and property which they would not commit against those who could not defend themselves.<sup>47</sup>

When France formally renounced its claims to Haiti, what it recognized was the post-colonial sovereign state, not the revolution of 1804. Indeed, James argued that the ideas of liberty associated with the French (and American) revolutions had a different life in Haiti, in which even the ideals of the French revolution “meant far more to [Haitians] than to any Frenchman.”<sup>48</sup> These “freedom dreams,” beyond the political horizon of the American and French revolution, can be understood as a critique of the odious structure of the postcolonial social contract, negotiated as it is in the world constructed by slavery and colonialism. It is perhaps in this sense that David Scott has argued that, for James, the Haitian revolution was not about rights but the act of revolution itself; it was not about inclusion in a notion of universal history understood through the regime of universal rights, but about a refusal of *that* notion of history, and concomitantly, that (some might say determinedly Eurocentric) vision of the universal.<sup>49</sup> Moreover, it is perhaps in this sense that

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<sup>46</sup> It is a proposal for a delinking from a world order of an odious regime of debt and dispossession. A refusal, a la Samir Amin, “to submit national-development strategy to the imperatives of ‘globalization’”—we may take here, globalization as a short hand for that odious regime of debt and dispossession. See Samir Amin, “A Note on the Concept of Delinking” (1987) 10 *Review* 435 at 435 [Amin, “Note”]. For his seminal work, see also Samir Amin, *Delinking* (Zed Books, 1990) [Amin, *Delinking*], arguing for a refusal. See Mike Davis, *Late Victorian Famines: El Nino Famines and the Making of the Third World* (Verso, 2001).

<sup>47</sup> James, *supra* note 4 at 271.

<sup>48</sup> *Ibid* at 198.

<sup>49</sup> Scott sees James as narrating an alternative universal history where Toussaint emerges as a “world-historical hero” with James attending to how “race, colonialism, revolution and self-determination” are emplotted in different approaches to universal history; the stakes of these narrative alternatives involved appreciating the work of the Haitian revolution in an altogether different key: “The problem about eighteenth-century France for James was less as a context for thinking about universal rights than as one for thinking about the universality of *revolution*.” See David Scott, “The Theory of Haiti: The Black Jacobins and the Poetics of Universal History” (2014) 18 *Small Axe* 35 at 50, 40 [emphasis in original].

the more radically interruptive force of CARICOM's reparations call should be read as a successor to the revolutionary spirit of 1804 rather than the claim to sovereignty recognized by the society of nations in 1825.

A modest case for the doctrine of odious debt relies, as Seema Jayachandran and Michael Kremer argue, on two basic observations.<sup>50</sup> First, debt exacerbates dispossession and misery in countries that are already impoverished.<sup>51</sup> And moreover, even before we assess consequences, we may conclude that the loans were illegitimate because the parties that contracted the debt were illegitimate, or the condition in which those contracts were undertaken were illegitimate.<sup>52</sup> In an article titled "Odious Rulers, Odious Debts," Joseph Stiglitz makes a compelling case for the illegitimacy of such a debt contract:

Why should the Congolese be forced to repay Cold War loans made by Western countries to buy Mobutu's favor—especially since the lenders knew full well that the money was going not to the people of the country but to Mobutu's Swiss bank accounts? Why should Ethiopians have to repay the loans made to the Mengistu "Red Terror" regime—loans that made it possible to buy the arms used to kill the very people whose friends and relatives must now repay the loans? Chileans today are still paying off debts incurred during the Pinochet years, and South Africans are still paying off those incurred under apartheid. Argentines are still repaying the money that financed the "dirty war" in their country, from 1976 to 1983.<sup>53</sup>

Yet, in many cases where invocation of the doctrine of odious debt has been seriously considered (post-apartheid South Africa, for instance), countries have been urged against it on the theory that reneging on debts will cast aspersions on the bona fides of the debtor nation, that it will deter foreign investors looking to make an honest deal, and that it will inhibit integration into the international economic system.<sup>54</sup> Rather, the policy edicts of multilateral institutions encourage continued debt servicing. Thus, even a historically "third world friendly" institution such as the UN Conference on Trade and Development (UNCTAD) endorses a geopolitical version of

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<sup>50</sup> Jayachandran & Kremer, *supra* note 28.

<sup>51</sup> *Ibid* at 91.

<sup>52</sup> *Ibid* at 90.

<sup>53</sup> Joseph Stiglitz, "Odious Rulers, Odious Debts," *The Atlantic* (November 2003), online: <[www.theatlantic.com/magazine/archive/2003/11/odious-rulers-odious-debts/302831](http://www.theatlantic.com/magazine/archive/2003/11/odious-rulers-odious-debts/302831)> [Stiglitz, "Odious Rulers, Odious Debts"].

<sup>54</sup> "In the case of South Africa, a poignant example was the case of apartheid debt, which the new ANC government agreed to pay in order to win the trust of global financial markets. Much of that debt bought guns for the apartheid state rather than butter for the wider populace." Ed Stoddard & Tim Cohen, "South Africa's odious debt tale," *Daily Maverick* (31 August 2020), online: <[www.dailymaverick.co.za/article/2020-08-31-south-africas-odious-debt-tale](http://www.dailymaverick.co.za/article/2020-08-31-south-africas-odious-debt-tale)>. The Mandela government took on responsibility for these debts with a sense perhaps of the metaphorical warships of global capital hovering on its economic shores: "It seems to fear that defaulting would hurt its chances of attracting foreign investment and wants to be seen as playing by the rules of capitalism." Michael Kremer & Seema Jayachandran, "Odious Debt," *Finance and Development: A Quarterly Magazine of the IMF* 39 (June 2002), online: <[www.imf.org/external/pubs/ft/fandd/2002/06/kremer.htm](http://www.imf.org/external/pubs/ft/fandd/2002/06/kremer.htm)>.

“respectability politics” in its implicit default assumption that the international framework for sovereign debt is free and fair. According to UNCTAD’s guidelines on “promoting responsible sovereign lending and borrowing,” in some contexts of economic hardship, debt servicing may need to be restructured. However, these guidelines still encourage model debtor discipline as the default option, with language strikingly resonant with notions of financial responsibility and capitalist discipline, which are routine dimensions of quotidian tutelage regarding compliant neoliberal citizenship. The UNCTAD guidelines teem with nuggets such as: “Debtors should design and implement a debt sustainability and management strategy”;<sup>55</sup> or, debtor sovereigns are urged to “move in a timely fashion to communicate with its creditors.”<sup>56</sup> The rewards of debt servicing undertaken by postcolonial sovereigns performing good financial citizenship is inclusion in this society of nations. Yet, does inclusion in the society of nations on these terms indicate the attaining of national freedom or does it indicate a further shackling into neo-colonial debt bondage? As *Bamako* witnesses, and as Mike Davis reminds us (in discussing genocidal famines across the globe): “Millions died, not outside the ‘modern world system’, but in the process of being forcibly integrated into its economic and political structures.”<sup>57</sup> In a certain sense, *Bamako*’s stories within the story are also an argument for refusing integration on the terms laid out by the IFIs and delinking from those structures<sup>58</sup> – the IFIs are at the centre of the hearing in the courtyard, but there are other stories, other plot lines that continue without being mere subplots to the drama of the IFIs. There is the story of the singer Mele and her disintegrating marriage to Chaka. There is the spaghetti western starring Danny Glover. These “other” stories are not romanticised—they carry all the beauty, tragedy, and absurdity of life—but they continue irrespective of the outcome of the trial. What would it mean for Mele and her community to delink from the world that the trial is prosecuting? In grappling with this question, the following part of this article lingers with the stories that are told in another film, *Black Panther*, that is set in a world, Wakanda, delinked from the dominant world order. We move then to look at what is revealed in that refusal of

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<sup>55</sup> United Nations Conference on Trade and Development, “Principles on Promoting Responsible Sovereign Lending and Borrowing,” (amended and restated 10 January 2012) at 11, online (pdf): <[unctad.org/en/PublicationsLibrary/gdsddf2012misc1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/gdsddf2012misc1_en.pdf)>.

<sup>56</sup> *Ibid* at 13.

<sup>57</sup> For a discussion of the human rights to food, see Susan Marks & Andrew Clapham, *International Human Rights Lexicon* (Oxford University Press, 2005) at 165, citing Mike Davis, *Late Victorian Famines: El Nino Famines and the Making of the Third World* (Verso, 2001). Eric Williams also offers pioneering historical analysis of these mutually reinforcing chains of profit and exploitation. See also Eric Williams, *Capitalism and Slavery* (University of North Carolina Press, 1944).

<sup>58</sup> Amin, *Delinking*, *supra* note 46.

membership in a world order that requires the shackling of anti-colonial “freedom dreams” to neo-colonial debt bondage.

#### IV. **Making Visible the Rewards of Refusal: The Legacies of 1804**

“There was something that seemed to reveal itself at the point of refusal—a stance, a principle, a historical narrative, and an *enjoyment in the reveal*.”<sup>59</sup>

In another world of stories and storytelling, a boy looked up to an older man and said, “Baba? ... Tell me a story.”<sup>60</sup> “Baba,” says the boy, “tell me a story, a story of home.”<sup>61</sup> And so the man begins with a story revealing the hitherto hidden world of Wakanda to tens of thousands in movie theatres the world over. This opening sequence sets the stage for the story of *Black Panther* that follows: “Millions of years ago...a meteorite made of vibranium...the strongest substance in the universe...struck the continent of Africa...And when the time of man came...five tribes settled on it and called it Wakanda.”<sup>62</sup> We heard Baba tell the story about “the first Black Panther...the protector of Wakanda.”<sup>63</sup> We learned about how “[t]he Wakandans used vibranium to develop technology... more advanced than any other nation. But as Wakanda thrived...the world around it descended further into chaos. To keep vibranium safe...the Wakandans vowed to hide in plain sight...keeping the truth of their power from the outside world.”<sup>64</sup> “And we still hide Baba... Why?” the boy asks—and that’s the question that frames the revelations that follow.<sup>65</sup>

If the story of Bamako is helpful in foregrounding what is in plain sight, the story of Wakanda is helpful to think about the project of hiding—about what it would mean to not open yourself up to the outside world. In the context of our discussion, this refusal of visibility would mean rejecting the terms of the debt, choosing severance over recognition, perhaps choosing the legacy of 1804 over the legacy of 1825.

Even as the camera fades out of the boy’s conversation with Baba, a protective shield rises over Wakanda as war and slavery unfold around it—perhaps in another part of the world, those warships sailed into Haitian waters in this very moment. As Baba explains, even as Wakanda

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<sup>59</sup> Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke University Press, 2014) at 107 [emphasis in original].

<sup>60</sup> Ryan Coogler & Joe Robert Cole, *Black Panther* (Marvel Studios Inc, 2016) at 1, online (pdf): <[www.static1.squarespace.com/static/5a1c2452268b96d901cd3471/t/5c2687b74d7a9c2ebbdb95e9/1546028997301/Black+Panther.pdf](http://www.static1.squarespace.com/static/5a1c2452268b96d901cd3471/t/5c2687b74d7a9c2ebbdb95e9/1546028997301/Black+Panther.pdf)>.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid* at 2.

<sup>65</sup> *Ibid.*

thrived, securely hidden with its secret barriers, “the world around it descended further into chaos.”<sup>66</sup> What if the Haitian President, Jean-Pierre Boyer, was less desperate for political recognition from the metropole? What if he had determined that Haiti was not going to pay for recognition by the society of nations but that the Haitian revolution—all it stood for and all it achieved—would be its own kind of invisible shield? Built from the alchemy of refusal and self-reliance, such shields were erected by maroon communities whose strategic sensibility and political vision were pivotal to the Haitian revolution. The story of Wakanda hiding in plain sight is akin to the histories of maroon communities in the Haitian mountains; it is an experiment with the refusal of membership in the society of nations, a “critical fabulation” that refuses the price of recognition.<sup>67</sup>

#### **A. Delinking: The Rewards of Refusal**

To the world outside, Wakanda is an inaccessible and impoverished African country of herdsman, nestled in mountains and forests that make it difficult to get to and difficult to leave. Yet as Baba’s story of home soon reveals, that depiction is a carefully constructed mirage, and the film lifts the holographic curtain to render Wakanda visible to us, including the benefits and costs of life behind the invisibility shield of mountain ranges and rainforests. The radical critique that the prosperity of Wakanda offers to the Haiti–CARICOM reparations story is that this is the road not taken—an exit from the dominant economic order; this is the delinking that Samir Amin and others recommended.<sup>68</sup> Wakanda is the counterfactual that is the reference point for reparation claims; Wakanda represents the wealth deprived those who were forcibly integrated over centuries into the global capitalist economy of Euro-American empire. Walter Rodney narrated the shadow script against which Wakanda rises—the script that showed how Europe underdeveloped Africa,<sup>69</sup> where integration into the global economy was effected and constituted by the double genocide of the transatlantic slave trade and colonialism, with enduring legacies of political and cultural domination, fetters of sovereign debt bondage, and dependence on brutal regimes of trade and

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<sup>66</sup> *Ibid.*

<sup>67</sup> The term “critical fabulation” was coined by Saidya Hartman to tell a story that is not an alternative history so much as one that offers a reading, both close and imaginative, of the gaps in the archive. See Hartman, *supra* note 15 at 11.

<sup>68</sup> See Amin, “Note” *supra* note 46; Amin, *Delinking*, *supra* note 46.

<sup>69</sup> Walter Rodney, *How Europe Underdeveloped Africa* (Bogle-L’Ouverture Publications, 1973), online (pdf): <[www.abahlali.org/files/3295358-walter-rodney.pdf](http://www.abahlali.org/files/3295358-walter-rodney.pdf)>.

aid.<sup>70</sup> If, as Mike Davis argued, it was “integration into the modern world system” that brought on the tragedies of underdevelopment as we know them, then Wakanda offered an image of what the promised land looks like outside of that modern world system. Here, Wakanda, a country that prospered by hiding from the world, serves as the control case proving Rodney’s argument. The Wakandans control their natural resources, develop their industries, and view the world and history outside colonial filters—as development economist Samir Amin may have advised, they effectively “delinked” from the world system and have much to show for it.<sup>71</sup>

The notion of delinking is helpful in presenting an alternative political and economic imaginary of the future, opening the door to the possibility (in Amin’s words) of “alternative societal projects.”<sup>72</sup> In thinking about how the notion of delinking would translate into the ongoing negotiation of the international debt regime, I find potential in interpreting the notion of delinking as a form of “refusal”—a concept developed in the work of Audra Simpson in relation to how Indigenous sovereignty gets exercised, contested, and sustained in relation to and despite settler colonialism.<sup>73</sup> These kindred concepts (“delinking,” “refusal,” and “hiding in plain sight”) also have a productive resonance with James Scott’s analysis of Zomia, the term for that inaccessible, ruggedly mountainous region of Asia that has adopted a political and economic ways of life that invites misrecognition (“self-barbarization” says Scott) as an adaptive delinking measure that renders these communities ungovernable by larger economic and political forces.<sup>74</sup> Like the imaginary Wakanda, Zomia operates in partnership with the sanctuary provided by impenetrable mountains—what he refers to as “the friction of terrain”—to enable this refusal of the law of “civilization” as we know it.<sup>75</sup> Scott’s story has resonance with histories of the maroon

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<sup>70</sup> In the context of the CARICOM reparations proposal, see Ahmed Reid, “How Europe Underdeveloped the Caribbean” (16 July 2018), online (blog): *Caricom Reparations Commission* <[www.caricomreparations.org/ahmed-reid-how-europe-underdeveloped-the-caribbean](http://www.caricomreparations.org/ahmed-reid-how-europe-underdeveloped-the-caribbean)>. See also Alcenat, *supra* note 3. Huey Newton and the Black Panther party argued further that this landscape’s economic and political violence was echoed in the global north, including parallels with police brutality on black and brown bodies in the innercity streets and border zones of the global north, mirroring military intervention and occupation in Afghanistan, Palestine, Libya and elsewhere. As Zuri describes what N’Jobu saw: “Their leaders have been assassinated. Communities flooded with drugs and weapons. They are overly policed and incarcerated. All over the planet... our people suffer because they don’t have the tools to fight back.”

<sup>71</sup> Amin, *Delinking*, *supra* note 46.

<sup>72</sup> Samir Amin, *The Liberal Virus: Permanent War and the Americanization of the World* (Monthly Reviews Press, 2004) at 21. Amin’s notion of delinking works with a reference point of autonomous development—a Wakanda-like comprehensive delinking with, he suggests, a target of at least a 70 per cent delinking (*ibid*). The epistemic markers of this reductive numeric vision of delinking seem to undermine the radical potential of the notion of delinking.

<sup>73</sup> Simpson, *supra* note 59.

<sup>74</sup> James C Scott, *The Art of Not Being Governed* (Yale University Press, 2009) at 126.

<sup>75</sup> *Ibid* at 43.

communities in the mountains of Santo Domingo whose fiercely independent spirit and keen sense of political strategy shaped the Haitian revolution of 1804.<sup>76</sup>

This partnership with the “terrain” also plays a role in shaping political subjectivity in settler colonial terrain where dispossession is both impetus and threat in the politics of refusal. Simpson explores the politics of refusal in the context of the Mohawk Nation where Mohawk sovereignty permits the exercise of agency in ongoing, complex, and profound ways (“contorting oneself into a fundamental space of misrecognition”),<sup>77</sup> even while circumscribed by the settler-colonial American and Canadian nation-states. While not reconciled to the established division of powers that may be visible from a constitutional analysis of native sovereignty, the expressions of sovereign agency that Simpson highlights have a “fundamentally interrupted and interruptive capacity” that upstage, defer, and complicate the jurisdiction of the Canadian and American state.<sup>78</sup> The articulations of sovereign agency that Simpson describes (for instance, in defining membership in ways that are discontinuous with how rights and territories are defined by the Canadian and American state, or the constitutions that represent “belonging” in those states) are constitutive of the ongoing negotiation of what Simpson describes as “nested sovereignty.”<sup>79</sup> Simultaneously riven and constituted by tensions and internal contradictions, the “nested sovereignty” of settler colonialism is a form of sovereignty that shackles freedom and duress, anti-colonial “freedom dreams,” and neo-colonial debt bondage. Indeed, the international debt regime within which Haitian “sovereignty” has been embedded has a family resemblance to the contours of settler colonialism and the ongoing negotiation for space within such regimes. The spaces of refusal exercised by Mohawk sovereignty may or may not be read as legible to Washington or Ottawa, or be recognized by international law’s indicators of sovereignty (exclusive control over a defined territory, for instance), but illegibility might be part of its power as a refusal of a contract that predicated recognition on compliance.

International lawyers interrogating international law’s imbrication with colonialism have been preoccupied with how the rules for membership in the society of nations have embedded in them the very hierarchies and exclusions that make the quest for recognition a tragically self-

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<sup>76</sup> In Scott’s words, “hill people are best understood as runaway, fugitive, maroon communities who have, over the course of two millennia, been fleeing the oppression of state-making projects in the valleys—slavery, conscription, taxes, corvée labor, epidemics, and warfare” (*ibid* at ix).

<sup>77</sup> Simpson, *supra* note 59 at 22.

<sup>78</sup> *Ibid* at 33 [emphasis omitted].

<sup>79</sup> *Ibid* at 11-12.



defeating enterprise. As Antony Anghie has argued, the international law doctrine of sovereignty “presented non-European societies with the fundamental contradiction of having to comply with authoritative European standards in order to win recognition and assert themselves.”<sup>80</sup> Thus, as discussed in relation to the Haitian case, the very norms, rules, and procedures for inclusion in the name of universality fetter the aspirations for self-determination.<sup>81</sup> If, in a colonial era, integration into the world system (and concomitant exploitation) was coerced, in the post-colonial era, neutral rules of recognition do their own work through a racial–capitalist world system that invites inclusion as the inevitable articulation of self-determination. These “derivative” terms of membership that have marked the political horizon of anti-colonial projects, indebted as they are to imperial constructions of modernity, are a mark of the strength of imperial hegemony amongst political elites who agree to the terms of the international debt regime.<sup>82</sup> It is in this sense that a politics of refusal stands in contradistinction to a politics of recognition—it is a strategic “hiding” from recognition. As with Wakanda, camouflaged as a nation of impoverished herdsman, encouraging misrecognition may be part of the story of survival. In Simpson’s story, Mohawk sovereignty refuses the hegemony of Canada and the U.S. in ways that push against constitutional recognition as a minority or membership in a form of federalism; eluding recognition by Washington and Ottawa is, here, a mark of sovereignty rather than its defeat.

### **B. The Interruptive Capacity of Debt Refusal**

Debt has catalyzed its own history of refusal, and in that “point of refusal,” in each iteration, “there was something that seemed to reveal itself”—a political ethics of interrupting an unjust international order, a historical narrative about the legacies of colonialism, an economic argument about the conditions for the development of a vision of an alternative political future.<sup>83</sup> There is a long tradition of refusal of the dominant moral economy regarding debt, from personal debt to sovereign debt. The New International Economic Order (NIEO) declaration and program of action catalyzed a large call for debt restructuring that inspired social movements and shaped multilateral

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<sup>80</sup> *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2012) at 107.

<sup>81</sup> See *ibid* at 238.

<sup>82</sup> I borrow here from Partha Chatterjee’s use of the term derivative to speak to the contradictions of integration and recognition. Chatterjee is especially focused on these dynamics in relation to nationalist thought, where he draws attention to the “inherent con-contradictoriness in nationalist thinking, because it reasons within a framework of knowledge whose representation structure corresponds to the very structure of power nationalist thought seeks to repudiate.” Partha Chatterjee, “Transferring a Political Theory Early Nationalist Thought in India” (1986) 21 *Econ & Pol Weekly* 120 at 121. For a more extended treatment of this issues, see also Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse* (University of Minnesota Press, 1993).

<sup>83</sup> Simpson, *supra* note 59 at 107.

institutions such as UNCTAD. This includes the 1985 call for a third world debt strike.<sup>84</sup> A quarter century later, the Jubilee Campaign called to cancel debt rather than entrench long term economic precarity or deny basic needs by prioritizing debt “over life itself.”<sup>85</sup> In the current moment, there has been a call in the midst of COVID-19 for a debt moratorium:

In 2019, stunningly, sixty-four countries around the world (half of them on the African continent) spent more money to service their external debt than on health care; the governments in 121 low and middle-income countries spent 10.7% of their revenue on public health, while they drained 12.2% on external debt payments.<sup>86</sup>

The international think tank, the Committee for the Abolition of Illegitimate Debt (CADTM) has called for citizen audits of sovereign debt to trace who benefits and who loses in this way,<sup>87</sup> CADTM’s advocacy is a form of refusal in the name of democracy and good governance. Invoking an allied argument for good economics, Joseph Stiglitz has argued that the IFIs’, donor agencies’, and banks’ default oppositions to debt restricting and debt defaults are tailored to advance the interests of financial adventurers who prey on precarity and need, while being fundamentally inimical to the long-term economic interests of borrowers and non-speculative creditors.<sup>88</sup> Drawing from the history of unpayable debts in many Latin American countries that exacerbated poverty and further defeated even the possibility of debt repayment, Stiglitz has argued that “debt forgiveness and debt restructuring” is a sensible economic strategy for all governments, “benefiting debtors and creditors alike.”<sup>89</sup> Some economists have argued that, rather than bringing

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<sup>84</sup> Vijay Prashad describes

the proposal from the UN Conference on Trade and Development (UNCTAD) to establish an International Developing Country Debt Authority. This body would have a dual mandate: first, to oversee any temporary standstills in debt repayments in order to stave off such events as a coronavirus recession; second, to look carefully at the necessity of fundamental debt relief (including debt cancellation). UNCTAD has made similar proposals in 1986, 1998, 2001, and 2015; each time the powerful creditors and the wealthy nations have rejected this approach. In 1985, the Cuban government hosted the Havana Debt Conference, where Fidel Castro made a plea for a Third World Debt Strike to put pressure on the creditors to come to the table; immense pressure on the less confident states derailed that approach.

Neither UNCTAD nor the Havana Debt Conference were able to move this agenda.

See “It Takes a Revolution to Make a Solution: The Nineteenth Newsletter” (7 May 2020), online (blog): *Tricontinental Newsletter* <[www.thetricontinental.org/newsletterissue/19-2020-debt](http://www.thetricontinental.org/newsletterissue/19-2020-debt)>.

<sup>85</sup> The UK Jubilee Campaign argues that “if there has to be a choice between repaying debt to a rich lender and meeting basic needs such as food, water, shelter, or basic services such as healthcare, it can only be right for the money to be spent on protecting human rights and providing for basic needs. Otherwise, debt is being prioritised over life itself.” See “Countries in crisis” (last visited 10 January 2022), online: *Jubilee Debt Campaign* <[jubileedebt.org.uk/countries-in-crisis](http://jubileedebt.org.uk/countries-in-crisis)>.

<sup>86</sup> Prashad, *supra* note 84.

<sup>87</sup> Jawad Moustakbal, “What is the Citizen Debt Audit?” (28 February 2020), online: *Committee for the Abolition of Illegitimate Debt* <[www.cadtm.org/What-is-the-Citizen-Debt-Audit](http://www.cadtm.org/What-is-the-Citizen-Debt-Audit)>.

<sup>88</sup> Eric Toussaint, “Joseph Stiglitz shows that a suspension of debt repayments can be beneficial for a country and its people” (20 January 2015), online: *Committee for the Abolition of Illegitimate Debt* <[www.cadtm.org/Joseph-Stiglitz-shows-that-a-](http://www.cadtm.org/Joseph-Stiglitz-shows-that-a-)>.

<sup>89</sup> Stiglitz, “Odious Rulers, Odious Debts,” *supra* note 53.

catastrophe, in many countries “[d]efault episodes mark the beginning of the economic recovery.”<sup>90</sup> This is the story often told about Argentina, for example. The call for debt severance as a form of reparations gets political momentum from these critiques of the debt regime as bad economics. The potential political work of such a call is its “fundamentally interrupted and interruptive capacity” in relation to international economic governance. Debt severance is a form of “refusal” to be hailed as an international economic subject by international law; that non-compliance with dutiful citizenship is a hiding from that recognition that renders the debtor subject ungovernable by the international economic order. In this way, debt severance as a reparations claim is not only a measure of economic desperation but it is also claiming “a hidden realm of political conflict” by “delinking” from the routines of international citizenship and good governance.<sup>91</sup>

I borrow the phrase “a hidden realm of political conflict” from James Scott’s earlier book, *Weapons of the Weak*, in which he says that ambiguous everyday interruptions are a form of voice—they may be refusals, but are not clearly so. The CARICOM reparations claims or the doctrine of odious debt are both examples of efforts that invoke and deploy international law, but may also fundamentally refuse its legitimacy. Scott argues that such ambiguous resistance may well be the prequel to more revolutionary action—as

the perceived relationship of power shifts in favor of subordinate groups, everyday resistance may well become a direct and open political challenge and surreptitious or disguised symbolic dissent may become a public renunciation of domination. Aesopian language may give way to direct vituperation and everyday forms of resistance to overt, collective defiance.<sup>92</sup>

The possibility of a third world debt strike, which Fidel Castro invoked in 1985 at the Continental Dialogue on the Foreign Debt, may be one expression of such overt, collective defiance.<sup>93</sup> At the

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<sup>90</sup> Toussaint, *supra* note 88, citing Eduardo Levy Yeyati & Ugo Panizza, “The Elusive Costs of Sovereign Defaults,” (2011) 94 J Dev Econ 95 at 95.

<sup>91</sup> James C Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale University Press, 1985) at 33. In our case then, the CARICOM reparations claims could be the prequel to a larger challenge to the international economic regime along the lines of the third world debt strike proposed by Cuba in 1985. See Prashad, *supra* note 84.

<sup>92</sup> Scott, *supra* note 91 at 58.

<sup>93</sup> For the text of Castro’s speech, see Fidel Castro “The Debt is Unpayable” (delivered at Havana’s Palace of Conventions, 3 August 1985), online: *Committee for the Abolition of Illegitimate Debt* <[www.cadtm.org/Fidel-Castro-The-debt-is-unpayable](http://www.cadtm.org/Fidel-Castro-The-debt-is-unpayable)>. Castro invokes a notion akin to “odious debt” in noting that these were debts contracted by oppressors and should have no legitimate hold on the oppressed: “Do the debts and the commitments of the peoples’ oppressors have to be paid by the oppressed? This is the moral and philosophical basis of this idea” (*ibid*). Equally, he also invokes a notion akin to reparations as a rationale for voiding debt: “We have indirectly contributed to financing Europe. We have done this. We, the countries of the Third World, have historically financed the developed capitalist world. Then why cannot the debt be voided right now?...I believe that we must conquer our freedom and not pay any indemnity to any of our oppressors” (*ibid*).

same time, these other histories of interruptive refusal and the staccato rhythm through which they are expressed (from Aristide to CARICOM, NIEO to the doctrine of odious debt) were also important spaces of refusal that revealed the limits of recognition.

Anti-climactically for the thread we have been pursuing here, *Black Panther* climaxes with Wakanda eschewing delinking to turn its gaze on the world and to allow itself to be visible to the world. Like Haiti's President Jean-Pierre Boyer, Wakanda's King T'Challa also sought recognition from the metropole and membership in the ranks of cosmopolitan humanitarianism. After defeating his cousin Killmonger who wanted to cycle the wealth of Wakanda to finance a fight against the dominant world order, T'Challa envisions an alternative future of *Black Panther* as the poster child for Black capitalism and humanitarian initiatives. T'Challa's inaugural address to the United Nations radiates cosmopolitan optimism for the world "living as one single tribe" rather than a plurality of maroon communities ungoverned by the dominant international institutions.<sup>94</sup> Emphatically rejecting Amin's call for delinking, "more connects us than separates us," T'Challa says, when emphasizing his commitment to building bridges and deepening links.<sup>95</sup> Wakanda will no longer "watch from the shadows."<sup>96</sup> Instead, it will be watched by others as he makes Wakanda hypervisible as "an example" to the world.<sup>97</sup> With T'Challa's new found belief in the world of trade and aid, Wakanda returns to the world of free trade—or *Mare Liberum*, as Hugo Grotius might have said. Today, with the histories of the slave trade and colonization behind us, "the free seas" cannot but sound ominous; however, the T'Challa administration evinces few worries about warships hovering on the horizon of Wakanda's political future.<sup>98</sup> T'Challa ends his UN address with a redemptive nod to neoliberal globalization and the promise of multilateral agencies shaping trade and aid, from the ghettos of Oakland to impoverished places of the planet the world over.

If T'Challa seems blind to the structural arrangements that undergird the international political and economic order, his romance with recognition by the global elite is not without historical precedent. As Alcenat notes, "Jean Price-Mars, considered the intellectual godfather of

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<sup>94</sup> Coogler & Robert Cole, *supra* note 60 at 121.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> In December 2019, in a farcical turn of events that may be a Trump era bureaucrat's vision of that future, the US Department of Agriculture temporarily listed Wakanda as a trading partner not for vibranium fueled technological innovation, but for goods that "included ducks, donkeys and dairy cows." See "US government lists fictional nation Wakanda as trade partner," *BBC* (19 December 2019), online: <[www.bbc.com/news/world-us-canada-50849559](http://www.bbc.com/news/world-us-canada-50849559)>.

the *Négritude* movement, accused the Haitian elite of practicing collective *Bovarysme*, or a form of mass, escapist daydreaming, at the expense of the largely traditional African-heritage population.”<sup>99</sup> With identities and affiliations that were or aimed to be Francophone rather than Afro-Caribbean, and with their own futures tied to the romance of the global rather than the realities of the local, “historically, the country’s political and moneyed elites have preferred an export-oriented economy over the internal development of the people’s economic and political autonomy.”<sup>100</sup> Paradoxically, then, in coming out of hiding and making Wakanda visible to the world, the plot entails obscuring the structural arrangements of the dominant world order that were the original rationale for the invisibility shield. These arrangements are rendered innocent, partnership not threat, and a road to redemption not oppression. Indeed, even the CIA operative in the film worries about the reckless optimism of open ended globalization, but King T’Challa bets on a world where earning international recognition for Wakanda parlays into what he registers as benevolent and beneficent humanitarianism. As this promise of recognition moves Wakanda from nationalist delinking to capitalist cosmopolitanism, we are left with the possibility that humanitarian internationalist initiatives are the warships of today. The conditions that made Wakanda’s historic prosperity possible have already been relegated to history. Indeed, it is Killmonger who renounces this brave new world and the truths that it renders invisible. Even against the promise of humanitarian rescue he argues for a politics of refusal: “Just bury me in the ocean...with my ancestors that jumped from the ships. ‘Cause they knew death was better than bondage.”<sup>101</sup>

## V. **The Thinkability of Refusal to the Debt Regime**

“There is another world but it is in this one.”<sup>102</sup>

The “interrupted and interruptive capacity” of the “freedom dreams” of CARICOM’s reparations claims go beyond a plea for debt forgiveness, making the case that debt obligations should be severed on account of an illegitimate regime of economic and political governance that was used to repress rather than benefit the people.<sup>103</sup> Debt forgiveness implicitly legitimises the underlying

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<sup>99</sup> Alcenat, *supra* note 3 [emphasis in original].

<sup>100</sup> *Ibid.*

<sup>101</sup> Coogler & Robert Cole, *supra* note 60 at 117.

<sup>102</sup> McKenzie Wark, “There is another world, and it is this one” (14 January 2014), online: *Public Seminar* <[www.publicseminar.org/2014/01/there-is-another-world-and-it-is-this-one](http://www.publicseminar.org/2014/01/there-is-another-world-and-it-is-this-one)> (quoting the worlds of French Surrealist and Communist poet, Paul Éluard).

<sup>103</sup> Simpson, *supra* note 59 at 33.

contract; in contrast, the doctrine of odious debt draws attention to the fundamental illegitimacy of international economic transactions built on enslavement and colonization, directly or indirectly, with sovereign debt acquired under the coercive conditions of the postcolonial economic order of Bretton Woods. If debt forgiveness invests in a certain actuarial visibility, the doctrine of odious debt invests in a political visibility. Political visibility contributes to making resistance to that default postcolonial economic order “thinkable.”

“Thinkability” is a kind of *amicus curiae* in the case for the doctrine of odious debt as the framework for the CARICOM reparations claims. Michel-Rolph Trouillot has argued that the cumulative impact of the history of Western thought over the last two centuries was to make the Haitian revolution unthinkable.<sup>104</sup> Trouillot says that Europeans reading news of the Haitian revolution “could read the news only with their readymade categories, and these categories were incompatible with the idea of slave revolution.”<sup>105</sup> The disappearance of the Haitian revolution from the canon of Atlantic revolutionary struggles of that era may speak all the more to its vexed centrality as both inspiration and challenge to liberal conceptions of freedom. Liberalism entailed a complex double take—keeping your eyes on Santo Domingo while also looking away.

“The Eyes of the World are now on St. Domingo”—so opens an article on the Haitian revolution in the eighteenth century German journal *Minerva*.<sup>106</sup> In *Hegel and Haiti*, Susan Buck-Morss links *Minerva*’s coverage of the Haitian revolution to the development of Hegel’s philosophy—the revolution of Santo Domingo was in his line of sight even if it remains invisible in his references.<sup>107</sup> Slavery and colonization were central to the conceptual grammar through which modernity has come to have meaning and political subjectivity is understood, but “invisiblising” that intellectual debt has been equally pivotal. The institution of slavery that emerged from the Atlantic slave trade was visible in Europe in the age of liberal modernity—from the macro scale of the ledgers of empire, to the micro scale of family paintings depicting domestic life. Buck-Morss tracks the visibility of the quotidian life of slavery in Europe. She shows how the life of slavery as a historical institution sat alongside the increasing cultural traction of slavery as a concept that represented all that was antithetical to liberal freedom.<sup>108</sup> However, these two lives

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<sup>104</sup> Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Beacon Press, 1995). My thanks to Chris Gevers for introducing me to Michel-Rolph Trouillot’s extraordinary oeuvre some years back.

<sup>105</sup> *Ibid* at 73.

<sup>106</sup> See Susan Buck-Morss, “Hegel and Haiti” (2000) 26 *Critical Inquiry* 821 at 837-38.

<sup>107</sup> *Ibid*.

<sup>108</sup> *Ibid* at 821.

of slavery were often zoned into different spheres such that one was not visible to the other. As Buck-Morss notes, slavery was a central metaphor for the theorizing of freedom in European liberalism, but it was slavery as an abstraction—or as a biblical parable regarding Moses and the Egyptians—rather than the actual contemporary institutions of slavery that were the products of these same societies. Hegel was not alone. Consider John Locke, doyen of philosophers of liberty, who, even at a time when slavery was ostentatiously visible in Europe, in the seventeenth and eighteenth centuries, appears blind to how the actual history of slavery and slave resistance challenged his theorization of the social contract and labour theory of value.<sup>109</sup> Indeed, as a shareholder and investor in the slave-trading Royal Africa Company, which traded slaves from West Africa in the Caribbean, and then as a drafter of the constitution of the Carolinas sanctifying the legality of slavery in that state, Locke appears to have been ostentatiously blind to any tension between the institution of slavery and liberal freedom. Analogously, the political subjectivity of the revolutionary Haitian—the radical antislavery–anticolonial position that took on a French state that heralded the “rights of man”—somehow becomes unthinkable in the political thought of Western modernity.<sup>110</sup> Thinkability is a kind of seeability—or “sayability,” as Rancière notes.<sup>111</sup> Thus the ambitious task implicit in the call for rewriting debt as reparatory justice is not just rendering visible Haiti for Hegel (or any of the other European philosophers), but rendering visible the process of invisibilisation, to better understand how that process inflects and inhabits history.

The rewriting of debt is also about attending to the debts piling up on the other side. There is the debt to slavery and colonialism that fuelled European economic prosperity; the circuits of European profit were intimately intertwined with the economies of imperial extraction that indebted Haiti. There is also the unacknowledged debt to the resistance to slavery and colonialism that fuelled European political thought; resistance to slavery emerges as constitutive of the very self-conception of the liberal political subject that has been so central to the identity of the West. That dialectical ground, between slave resistance and liberal freedom, is denied and rendered

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<sup>109</sup> William Uzgalis, “John Locke, Racism, Slavery, and Indian Lands” in Naomi Zack, ed, *The Oxford Handbook of Philosophy and Race* (Oxford University Press, 2017).

<sup>110</sup> Indeed, that is certainly how we might see the political fortunes of Aristide and his campaign for reparations—he was unthinkable for the Haiti that is visible to us as ruin.

<sup>111</sup> My thanks to Ruth Buchanan for suggesting the resonance with Rancière’s discussion of what is seeable and sayable here. Jacques Rancière, *Dissensus: On Politics and Aesthetics* (Continuum, 2010) at 37 (“Politics, before all else, is an intervention in the visible and sayable”).

invisible in the work of Europe's master theoretician of the master–slave dialectic. Slavery hid in plain sight.

## VI. Conclusion

At the core of a reparative claim is the status of the visible, and at the core of the legal claim about “odious debt” is the status of “the fabula”—what Hartman refers to (following Mieke Bal) as “the building block of the narrative.”<sup>112</sup> Insurgent legal claims stitch together doctrine and precedent, authorized interpretations, and persuasive re-interpretations. With the hum of social movements and socio-economic transformation as impetus and inspiration, amendment and re-annotation are the building blocks of legal change. Legal concepts that were once errant and marginal may move to centre stage while settled interpretations may be rendered doctrinaire and out-of-date. This process can yield legal arguments that are innovative composites of the settled and the unsettling in ways that have resonance with what has been termed “recombinant narrative.”<sup>113</sup> Hartman speaks to historical narrative that calls for a reconsideration of received interpretations by drawing attention to the essentially contested nature of the fabula, and the narratives that provide their scaffolding. Her method of “critical fabulation” describes how we might “engulf authorized speech in the clash of voices,” and the ways in which she has tried to work with the archive “to make visible the production of disposable lives.”<sup>114</sup> It is a project that requires listening generously for the fabula, imagining it differently, and then narrating it by “rearranging the basic elements of the story.”<sup>115</sup> This mode of bearing witness is part of what dissident lawyering entails in formulating and advancing the doctrine of “odious debt.” Just as Hartman's history works “with and against the archive,” the legal argument for rewriting sovereign debt as reparations is working with and

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<sup>112</sup> See Hartman, *supra* note 15 at 77.

<sup>113</sup> *Ibid* at 78, n 37. Hartman takes the term from NourbeSe Phillip and Stan Douglas.

<sup>114</sup> See Hartman, *supra* note 15 at 11, 12.

<sup>115</sup> See Hartman, *supra* note 15 at 12. In thinking with Hartman about the politics of reading the archive, there is again a resonance with Rancière, whose “politics revolves around what is seen and what can be said about it, around who has the ability to see and the talent to speak, around the properties of spaces and the possibilities of time.” Jacques Rancière, *The Politics of Aesthetics: Distribution of the Sensible* (Continuum, 2004) at 13. (While the play of “fabula” maybe more evident when we make the archive speak against received, authorized interpretations, fabula is always at work. “Politics and art, like forms of knowledge, construct ‘fictions’, that is to say *material* rearrangements of signs and images, relationships between what is seen and what is said, between what is done and what can be done” (*ibid* at 39). While Buck-Morss grounds her claims in a more methodologically familiar register of archival reading practices in developing an empirical account about what sources might sources were available to Hegel in the early nineteenth century, one might situate her investment in her reading of that archive for what was obscured, or rendered a “disposable life,” as sympatico with the methodological turn to critical fabulation. See Buck-Morss, *supra* note 106.



against law.<sup>116</sup> A heretical imagination and the invocation and rearrangement of basic legal concepts such as contract and equity emerge as equally central to thinking about how recombinant legal narratives can contribute to a politics of refusal.<sup>117</sup>

From Santo Domingo to Bamako, Zomia to Wakanda, the life of slavery and revolution, of legal claims about “odious debt,” and political briefs for delinking, are all, at the same time, both a recording and a speculation about what happened and “what might have been or could have been,” in ways that open up what the future could be.<sup>118</sup> If the current world order continues to hurtle Haiti and the CARICOM world further into a long night of atrocity, the reparations claim and the story it narrates about how that world functions is like a modern Scheherazade tale; both true in its wisdom and fanciful in its ambitions, magical in its idealism, and realist in its account of the lives and futures at stake. In drawing attention to the fact that we are all witnesses to atrocity, it seeks to forestall the futures that have condemned the formerly enslaved and colonized, and to redirect our vision to an alternative dawn. This reparatory vision interrupts the necropolitical abyss that is built into the logic of the international system through yet another story and, in doing so, makes such alternatives “seeable.”<sup>119</sup> In this it follows previous story-telling interventions in nights past, by Toussant Louverture, Jean Paul Aristide, the *Bamako* videographer, and anticipates others yet to follow in the coming nights.

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<sup>116</sup> Hartman, *supra* note 15 at 12.

<sup>117</sup> This requires shifting what it means to think like a lawyer from a toolbox sensibility to a toybox sensibility where even the most canonical legal terms and the most settled interpretation of these terms are put into play. For more on a toybox sensibility, see Harney & Moten, *supra* note 13.

<sup>118</sup> *Ibid.*

<sup>119</sup> Rancière, *supra* note 111.