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**“DELICATE AND EMBARRASSING”  
U.S. LOANS TO SUPPRESS HAITIAN INDEPENDENCE**

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## “DELICATE AND EMBARRASSING”

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#### Abstract\*

This paper describes George Washington's administration response to a plea for emergency war financing from French colonists who were trying to quash a slave rebellion in Haiti (then Saint Domingue). Washington bypassed Congress and authorized assistance to the French planters, hoping that France would recognize and repay the resulting debt to the United States. The exploration of this episode offers insights on how legal constraints can be overlooked in times of crisis due to political imperatives. On the international law front, it reveals that legal norms perceived as firmly established today were more malleable in the late 18th century. To place the story of U.S. loans and foreign interference in Haiti in historical context, we provide a brief overview of Haiti's independence debt to France and the U.S. loans that led to the American occupation of 1915-1934. Our exploration, primarily sourced from secondary materials, raises more questions than answers. Nonetheless, we hope that by outlining the bare bones of the story and posing pertinent questions, we can inspire further research that digs deeper into this fascinating historical record.

**JEL Codes:** N41, F34, K33, H56

**Keywords:** Sovereign Debt, Haiti; Emergency War Financing; U.S. Foreign Policy

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## 1 Introduction

In mid-2024, U.S. President Biden struggled to obtain Congressional authorization to provide funding and arms to help Ukraine fight off Russia's invasion. Those seeking to provide funding have looked for a way to bypass the requirement of fresh Congressional authorization. This is not the first time a U.S. administration has faced such questions. Until the United States joined the war in 1941, President Roosevelt struggled in the face of a recalcitrant Congress to find loopholes through which to provide Britain with financing and weapons during World War II. And so on and so forth. In this Essay, we go far back in time, to the founding era, to another case of a U.S. President – this time George Washington – facing a request for emergency war financing. The context was the rebellion in Haiti (then Saint Domingue), and a plea for financial assistance and supplies by the French colonists in Haiti who were facing an uprising by Haitians. Viewing the situation as urgent, Washington bypassed Congress and authorized assistance to the planters on the understanding (really, the hope) that the French government would acknowledge the resulting debt to the United States.

These debts should be of interest for those who work at the intersection of finance, history and law for multiple reasons. In the U.S. domestic context, we see how, in a crisis context, political imperatives result in legal constraints being ignored. In terms of international law, the story reveals that some legal constraints that many view as having long been binding were perhaps not so binding in the late 18<sup>th</sup> century. Finally, there is question of how these 1790s U.S. loans aimed at quashing the rebellion impacted the future trajectory of the development of the nation of Haiti.

There are also so many unanswered questions of historical fact. To start with, we have yet been able to discern the terms, legal and financial of the debts. Matters such as the interest rates, maturities, rights of set off and so on and so forth. The historical record that we've been able to unearth so far has only told us the bare minimum, that loans were made. And then there are the questions about what happened with the loans. Did France actually paid them debt, did they pay any interest, and, if they did pay, what portion was repaid and in what context? After all, the Louisiana purchase happens some years after, when a whole bunch of US-France obligations get bundled and resolved.<sup>1</sup> Last but not least, did France, because of the unorthodox circumstances of the loan, demand a discount on what it would pay? (It is not implausible that France might have taken the position that the loans really were a gift made out of US self interest). Finally, did France,

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<sup>1</sup> We are grateful to Larry Neal for a conversation about the Louisiana Purchase. *See* Weidemaier & Gulati (2022).

assuming it had to pay some portion of this debt, turn around and impose the debt on Haiti, as part of the 1825 Indemnity?

Having set forth the immense amount that we do not know, we turn to the little that we do know. To put the story of the 1791-93 U.S. lending and foreign interference in historical context, we start with a brief summary of the much better-known facts about Haiti's independence debt to France and the loans that led to the U.S. occupation of 1915-34.

Before proceeding, a caveat. The story, as we have been able to discern it primarily from secondary sources, raises more questions than it provides answers. In the context of this book chapter, we hope that the bare bones of the story and the questions we raise will inspire new research that digs deeper into the historical record.

## **2 Background on Debt and Haiti**

To the extent specialists in sovereign debt think about Haiti, they tend to focus on two episodes: the so-called Independence Debt of 1825 to France, and the 20<sup>th</sup> century financial imperialism that characterized the relationship between Haiti and the United States in the early 20<sup>th</sup> century (Dubois 2013; Gebrekidan et al., 2022). These episodes are not directly relevant to our story, but they provide background context that may be of interest to readers unfamiliar with Haiti's history.<sup>2</sup>

### *The Independence Debt to France*

Haiti's relationship to Western powers is at least in part a story of debt. From the very start, Haiti was mired in it, the product of French insistence that Haiti pay an indemnity of 150 million francs to compensate former colonists after Haiti's successful fight for independence (DuBois, 2013; Porter et al. 2022; Oosterlinck et al. 2022a & b; Logan, 1941). This so-called Independence Debt originated in France's efforts to retain economic control over its former colony.

Despite having expelled the French in 1804, no nation recognized Haiti's independence until after Napoleon's defeat at Waterloo. At the Congress of Vienna in 1815, France asserted that Saint Domingue was still a French possession (Blancpain 2003), and in 1816, French negotiators tried to persuade Haitian leaders to accept protectorate status. After the island was reunited under Jean-

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<sup>2</sup> This section draws on Oosterlinck et al. (2022a & b).

Pierre Boyer in 1820 — Alexandre Pétion had until then governed the South and West and Henri Christophe the North — negotiations centered around Haiti providing compensation to France to secure autonomy. In September 1824, Charles X ascended to the French throne and, in a Royal Decree on April 17, 1825, formally recognized Haiti's independence, which had been a de facto reality for 21 years (Joachim, 1971). However, this recognition was conditional on Haiti agreeing to pay an indemnity of 150 million francs in five installments. The amount was arbitrarily set to represent about a tenth of the value of the properties pre-1789 (Brière, 2004; 2006), without considering Haiti's payment capacity.

To meet its obligations under the indemnity, the Haitian government had no choice but to seek substantial loans. An initial loan of 30 million francs (payable over 25 years at 6% annual coupon) secured funding for the early installments. However, the sum of 150 million francs far exceeded the Haitian government's capacity to repay, and the government ceased servicing the loan in 1829. Over the ensuing years, the French government agreed to reduce Haiti's financial obligation, including by reducing the remaining indemnity amount from 120 million to 60 million francs in 1838, and further adjusting the financial obligations in 1840.

Despite these reductions, the Independence Debt had massive and long-term implications for Haiti. Oosterlinck et al. (2022) estimate that the debt resulted in a Haitian debt-to-GDP ratio of roughly 280%. Even with the cancellation of 60 million gold francs of debt, Haiti's debt ratio was 160% of its GDP. Back of the envelope estimates suggest that without the debt Haiti's GDP per capita in 2018 would be close to that of the Dominican Republic. Haiti's actual GDP per capita is one-fifth that of the Dominican Republic. Not surprisingly, this massive Independence Debt has garnered most of the attention by those who study the (financial) aspects of Haiti's relationship to Western governments, including a recent five-part story in the *New York Times* (E.g., Porter et al., 2022)

#### *The U.S. Occupation 1915-34*

In the early 20th century, there was heightened interest from U.S. banks in Haiti. In 1910, the National City Bank of New York began acquiring shares in the National Bank of Haiti and eventually took over a significant portion of government-guaranteed railway debt, which exacerbated the Haitian government's fiscal pressures, with debt service costs consuming over 80% of its revenue. The U.S. occupation of Haiti from 1915 to 1934 was partly driven by American

banks' efforts to ensure the repayment of these loans and partly out of U.S. security concerns (Hudson 2013; Johnson 1920; Palsson 2023). In the early 1920s, Haiti issued \$23.7 million in bonds in the U.S. market to settle its debts with French creditors and the National City Bank (IMF, 1949). Despite running substantial primary surpluses and dedicating over 30% of its revenues to debt service between 1925 and 1936, a sharp decline in export prices in 1937 led the U.S. government to permit Haiti to reduce its amortization payments. However, debt service still claimed more than 15% of government revenue up until 1946. This focus on debt repayment hampered economic development, as fiscal policies prioritized immediate revenue generation over investment in economic and social development (IMF, 1949).

These episodes highlight the degree to which debt has long defined Haiti's relationship to Western powers. But the story of debt runs deeper and includes the lesser-known episode to which we now turn. Three decades prior to the Independence Debt, the United States lent money to suppress Haitian independence and, in doing so, encountered legal uncertainties that resonate to this day (Reinstein, 2013).

### **3 The Dodgy U.S. Loans**

Specialists in sovereign debt, until now have paid little attention to the United States in thinking about the connection between debt and Haitian independence. Debt specialists naturally focus on the Independence Debt to France and, when thinking about the Haiti-U.S. relationship, focus on the 20<sup>th</sup> century. Here, the key event was the 1915 invasion, removal of Haiti's gold reserves to New York, and imposition of new loans and a fiscal receivership in an ostensible effort to put Haitian finances on firmer footing (Hudson 2013; Plummer 1992). But the sovereign debt connection in Haiti-U.S. relations began more than a century before the 1915 invasion. It predates even the infamous Independence Debt of 1825 by a quarter century.

At the onset of the rebellion in Haiti in the 1790s, the colonists, desperate for assistance, turned to neighboring colonies such as Martinique, Jamaica, and also the state of South Carolina. Bypassing the official representative of the French government in the United States, the representative of French colonists in Haiti turned directly to the governor of South Carolina (Bosscher 2008, p.16-17). Their plea for help, excerpted from proceedings of the General Assembly of Saint Domingue (sitting in Cape Francois), read in part:

The French of St. Domingo find themselves in the most imminent danger, . . . The slaves have risen, the houses are on fire. The whites who had the government of them are murdered. Those who have escaped the sword of the assassins are obliged to retreat into their towns and abandon their properties. . . . The scourge which is now laying waste the most valuable French possessions in America . . . threatens all the neighboring Colonies if they do not invite to destroy the source of it.<sup>3</sup>

The entreaty, however, failed. South Carolina governor, Charles Pinckney, while expressing solidarity with, and concern for, the French colonists, offered no concrete assistance (*Id.* at 18).<sup>4</sup> Pinckney, however, wrote to George Washington urging for the federal government to provide assistance.<sup>5</sup>

Meanwhile, the official French representative in the United States, Jean Ternant, concerned that the colonists might be taking a step away from France (and maybe towards independence), made a direct request for aid to the U.S. federal government.<sup>6</sup>

France was an ally whose assistance had helped the United States achieve independence from the British crown, and the United States was unsettled by the insurrection in a nearby slave colony. Without seeking Congressional authorization, Washington provided both arms and money on the grounds that the United States was eager “to render every aid . . . to quell” what he termed “the unfortunate insurrection of the negroes in Hispaniola.”<sup>7</sup>

At the time, the United States, a fledgling nation, was struggling financially. Nevertheless, between 1791 and 1793, the United States lent substantial sums to support efforts to suppress Haitian independence. The loans enabled white colonists on St. Domingue to procure supplies and arms for use against Haitian revolutionaries. From the perspective of the Washington administration, these loans could be viewed as advances against the debt owed by the United States to France and could be repaid simply by having the French government apply a credit to that debt.

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<sup>3</sup> Extract from the register of the General Assembly of St. Domingo, August 24th 1791, in Messages received: Enclosures, Governor’s messages, transmitted to House 5th December 1791, transmitted to Senate 6th December 1791, South Carolina Archives, Columbia.

<sup>4</sup> Governor Charles Pinckney’s answer to the Colonial Assembly of St. Domingo, September 1791 in Messages received: Enclosures, South Carolina Archives, Columbia

<sup>5</sup> Pinckney to Washington, Charleston, 20th September 1791.

<sup>6</sup> Ternant to Montmorin, 28th September 1791 (Turner, 1904, p.50).

<sup>7</sup> Washington to Ternant (Sept. 24, 1791); Washington to Ternant (Oct. 2, 1791).

The loans to the French colony of Saint Domingue were irregular in every way. U.S. law did not explicitly authorize Washington’s actions, yet administration officials contrived a legal justification, and exposed the country to significant legal risks, to justify their support for the colonists. These risks stemmed in part from the fact that Jean Ternant, French minister to the United States, did not have authority to borrow, or to commit France to this arrangement, and the Washington administration was well aware of this fact.

But the problems ran deeper than Ternant’s lack of authority. By 1791, the Bastille had been stormed, the Declaration of the Rights of Man and of the Citizen proclaimed, and the royal family’s attempted escape from house arrest foiled. By August 1792, the monarchy had fallen. At times, U.S. administration officials questioned the very existence of a French government capable of making the commitment they viewed as necessary to justify the loans under U.S. law (Reinstein, 2013). In the words of Alexander Hamilton, U.S. support for the colonists raised “extremely delicate and embarrassing” questions of both politics and law.<sup>8</sup> Not surprisingly — the United States of course opposed Haitian independence — the “delicate and embarrassing” bits had to do with whether the French would repay the loans, not with any embarrassment associated with lending to suppress a rebellion of enslaved people.

Historians have noted this episode (*e.g.*, Stinchcombe, 1994; Hickey, 1982 ; Matthewson, 2003; Logan, 1941). By contrast, legal scholars, even in the field of U.S. foreign relations law, have paid it little attention (An exception is Reinstein, 2013).<sup>9</sup> And, best we know, most economists are unaware of it and the sovereign debt literature does not mention these loans.

As of this writing, the upcoming bicentennial has prompted a larger debate about the moral and legal responsibility that should attach to the Haitian Independence Debt of 1825 (Porter et al., 2022). We draw on this work, as well as our own research in the French archives, to introduce this story to specialists in sovereign debt. We also highlight the episode’s contemporary relevance for the field of sovereign debt. The U.S. loans are early examples of problems that recur in sovereign debt markets. They were of dubious legality, and this might have compromised the ability of the U.S. to demand repayment had that ever been disputed.<sup>10</sup> Moreover, the tumult associated with

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<sup>8</sup> Letter from Alexander Hamilton to George Washington, 19 Nov. 1792.

<sup>9</sup> The leading casebook on U.S. Foreign Relations Law, for example, has no mention either of these early loans or a discussion of their relevance to this early U.S. intervention in Haitian (then French) internal matters. (Bradley, Deeks & Goldsmith 2024).

<sup>10</sup> In fact, any claims related to the loans were settled in the treaty that ceded Louisiana to the United States.



the French Revolution prompted members of the Washington administration to reflect on the likelihood of repayment in the event of a change in government, discussions that echo more modern debates about the effect of revolutionary wars on state responsibility for debts.

#### **4 The (Unenforceable?) U.S. Loans to Suppress Haitian Independence**

The rebellion in Haiti prompted multiple and at times competing requests for assistance from planters on Saint Domingue and from putative representatives of the French government. From the outset, these requests presented unusual complications. For our purposes, three are especially noteworthy.

First, as Reinstein (2013) notes, the provision of financial assistance to French colonists on Saint Domingue may not have been lawful under U.S. law. To be even plausibly lawful, any such assistance had to be structured as an advance on the U.S. government's payments of Revolutionary War debts to France (which Congress had authorized), and France would have to agree to credit these advances against the debt. Second, Jean Ternant, French minister to the United States, lacked authority to bind the French government to this arrangement. Indeed, given doubts about the colonists' loyalty to France, it was not certain that the French government would ever approve it. Finally, even if Ternant had clear authority to bind the French government, the political upheaval of the French Revolution meant that a subsequent government might renege on the deal.

As earlier noted, the planters on Saint Domingue began requesting assistance almost immediately after the rebellion began in August 1791. The colonial assembly dispatched agents to appeal for aid in South Carolina, Philadelphia, and elsewhere (Matthewson, 2003, p. 22-24). President Washington was acutely aware of the potential implications of the rebellion for slaveholding states (Horne, 2015 at 26). Governor Charles Pinckney of South Carolina wrote to Washington in September 1791 that "if not checked in time it is a flame which will extend to all the neighbouring islands, & may eventually prove not a very pleasing or agreeable example to the Southern States."<sup>11</sup> A later reply left no doubt of Washington's sympathies: "I feel sincerely those sentiments of sympathy which you so properly express for the distresses of our suffering brethren in that quarter, and deplore their causes."<sup>12</sup>

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<sup>11</sup> Pinckney to Washington (Sept. 20, 1791).

<sup>12</sup> Washington to Pinckney (Nov. 8, 1791).

Yet Pinckney had also noted a difficulty that would recur throughout the U.S. government's support of the colonists. It was unclear how the French government (then and as it might be constituted in the future) might react:

[T]here is a difficulty arises in my mind which I will take the liberty of stating & which even if we had the means & authority in this State would make me very cautious how I acted—it is this, that there is at present not an Union of Sentiment in the french Empire ... it is impossible to say at present what may be the consequence, or whether they may be obliged before it is settled to proceed to hostilities—In any event, it must be the policy of this country to appear to favour no particular party or opinion—Our connection is with France, under whatever Government they may establish nor would we wish to risque offending them unnecessarily...<sup>13</sup>

Whether for reasons of international relations or international law, Pinckney is worried about the United States being seen to be interfering in another nation's internal conflict. As events would unfold, likely because of fears of the rebellion in Haiti spreading to the American South, the Washington administration would repeatedly overlook such concerns.

On Sept. 21, 1791, French minister Jean Ternant formally requested assistance from the United States in separate letters to Secretary of War Henry Knox and Secretary of the Treasury Alexander Hamilton. Ternant's request was motivated, at least in part, by the desire to ensure that no direct negotiations took place between the colonists—whose loyalty to France was in doubt—and the U.S. government (Matthewson, 2003, p. 24). Knox readily acceded to Ternant's request for arms supplied from the U.S. government's arsenal in West Point, noting in a subsequent letter to Washington that the assistance was “for the exigent service of a nation, with which the United States are in close alliance,” and opining that, “being for the purpose of quelling an internal rebellion, no foreign nation can take umbrage at the measure.”<sup>14</sup> From Hamilton, Ternant requested \$40,000 to fund purchases of supplies, proposing that the French government would credit the advance against the U.S. debt to France and noting that the cause “is so urgent, and I am so convinced of your sincere attachment to the interests of my country, that I have no doubt of your readiness to accept my request.”<sup>15</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Knox to Washington (Sept. 22, 1791).

<sup>15</sup> Ternant to Hamilton (Sept. 21, 1791).

Hamilton responded immediately that “that the sum you desire is at your command to operate as a payment, on account of the debt due to France,” proposing only that the funds be delivered in installments.<sup>16</sup> Hamilton also wrote Washington, notifying him of the arrangement and alluding to the legal basis for agreeing to it. Congress had already appropriated funds for the purpose of repaying the debt to France; these funds could be used to support the colonists (on the assumption that France would apply them against the U.S. debt):

Having full authority from you in relation to payments to France, & there being funds out of which that which will constitute the succour requested may with propriety be made; and being fully persuaded that in so urgent & calamitous a case, you will be pleased with a ready acquiescence in what is desired, I have not hesitated to answer the Minister that the sum he asks is at his command.<sup>17</sup>

Washington promptly and unequivocally endorsed Hamilton’s judgment.<sup>18</sup> But even if Ternant correctly gauged the administration’s “readiness to accept” his request, he had no authority to make it. Ternant was a royalist minister in a time of upheaval in France; his own sense of the scope of his authority was unclear (Matthewson 2003, p. 28). It was clear, however, that he lacked explicit authority to make a deal on behalf of the French government (Reinstein, 2013, p. 147-148). The Washington administration knew this full well and simply chose to take for granted that the French government would retroactively endorse the arrangement.<sup>19</sup>

The knowledge that Ternant lacked authority to bind the French government made the transaction of dubious legality under U.S. law. Congress had previously authorized the President to borrow up to \$12 million to pay the United States’ foreign debt. That statute also authorized advance payment, but only “upon terms advantageous to the United States.”<sup>20</sup> With regard to the \$40,000,

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<sup>16</sup> Letter from Alexander Hamilton to Jean Baptiste de Ternant, 21 September 1791.

<sup>17</sup> Letter from Alexander Hamilton to George Washington, 22 September, 1791.

<sup>18</sup> Letter from George Washington to Alexander Hamilton, 24 September, 1791 (noting that Hamilton’s actions “meet my entire approbation”).

<sup>19</sup> As Thomas Jefferson would later write Ternant:

When the distresses of that Colony first broke forth, we thought we could not better evidence our friendship to that, and to the Mother Country also, than to step in to it’s relief, on your application, without waiting a formal authorization from the national Assembly. As the Case was unforeseen, so it was unprovided for on their part, and we did what we doubted not they would have desired us to do, had there been time to make the application, and what we presumed they would sanction as soon as known to them.

Letter from Thomas Jefferson to Jean Baptiste de Ternant, 20 November, 1792.

<sup>20</sup> Act of August 4, 1790, 1 Stat. 138, at § 2.

Treasury had the funds available and, if the French would indeed credit the advance against the U.S. debt, there was a plausible argument that the advance comported with U.S. law. That said, Ternant's lack of authority meant that the French had made no such commitment. Nevertheless, the Washington administration was willing to assume that authorization would be forthcoming. As Reinstein notes (2013, p. 152). the "amount at risk was modest and was not expected to escalate because there was a strong belief in both countries that the insurgency would be quickly suppressed." Events would prove otherwise.

It bears mention that there were potentially three distinct legal questions swirling around the first loan. First, the legality of the U.S. Executive giving funds and property to a foreign nation with but dubious Congressional authorization. Congress, under the U.S. Constitution, has the "power of the purse," and Washington did not obtain explicit permission. This required him to justify the loan under some pre-existing permission that Congress had given. Second, there was a question of legality, under the law of nations (the international law of the time), of interfering in an internal matter of another nation.<sup>21</sup> And third, in terms of the validity of the loan to the French colonists, was the question of whether France itself would be obliged to recognize a debt to the United States.

When Ternant next requested financial assistance, in March 1792, it was for a much larger amount: \$400,000. But in the interim, his authority to bind the French government had become even less certain (Matthewson, 2003, p. 38).<sup>22</sup> Continued efforts by colonial agents to negotiate directly with the United States also pointed to a deeper uncertainty: Did the colonists really enjoy the backing of the French government, or should these agents be viewed as making requests on behalf of a future, planter-controlled Saint Domingue independent of France? The latter possibility implied that it might be imprudent simply to assume that the French government would give its blessing to the plan to credit U.S. advances against its debt to France. Thus, when agents of the colonial assembly appeared in the United States in November 1791, Ternant agreed to set up a meeting with Jefferson only after being assured that Jefferson would treat the colonists as private citizens rather than as representatives of a government (Matthewson, 2003, p. 28). As Jefferson later reported to William Short, the U.S. chargé d'affaires in France, he emphasized to the colonists that any arrangement involving an advance against the U.S. debt to France required both Ternant's

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<sup>21</sup> The international law on what kinds of interventions were permitted at the time was, to put it mildly, unclear. Pitts (2013).

<sup>22</sup> See also Letter from Jean Baptiste de Ternant to Armand Marc de Montmorin, 24 November, 1791, in 2 TURNER at 76-79.

approval and explicit authorization from the French National Assembly.<sup>23</sup> But despite Ternant's current lack of authority and the uncertain French support for the colonists' requests, Jefferson remained committed to supporting the colonists and optimistic that the French government would soon endorse the deal (Reinstein, 2013, p. 150).<sup>24</sup>

And here, again, the justification for the failure to follow process is that there is a crisis that calls for immediate action. In his letter to Short, Jefferson wrote:

The line of conduct I pursue is to persuade these gentlemen to be contented with such moderate supplies from time to time as will keep them from real distress, and to wait with patience for what would be a surplus till M. de Ternant can receive instructions from France which he has reason to expect within a few weeks: and I encourage the latter gentleman even to go beyond their absolute wants of the moment, so far as to keep them in good humour. He is accordingly proposing to lay out 10,000 dollars for them for the present. It would be ridiculous in the present case to talk about forms. There are situations when form must be dispensed with. A man attacked by assassins will call for help to those nearest him, and will not think himself bound to silence till a magistrate may come to his aid. It would be unwise in the highest degree that the colonists should be disgusted with either France or us: for it might then be made to depend on the moderation of another power whether what appears a chimaera might not become a reality.

Yet, back in France, providing support for the colonists was not seen with the same degree of urgency. Internal deliberations in France about financing the needs of the colonists dragged on. A proposal before the National Assembly to credit U.S. advances against the debt to France failed to meet immediate approval. Instead, it was referred to committee. William Short reported that he expected the committee's report to be delayed but that the minister who had introduced the proposal expected that it would eventually be adopted.<sup>25</sup> But months passed without action.<sup>26</sup>

It was in this context that Ternant, still without instructions from France, requested the \$400,000 advance (Matthewson, 2003, p. 28; Reinstein, 2013, p. 153). Jefferson's prompt reply indicated that Washington had approved the arrangement and directed Ternant to deal directly with Hamilton

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<sup>23</sup> Letter from Thomas Jefferson to William Short, 24 November, 1791.

<sup>24</sup> Letter from Thomas Jefferson to William Short, 24 November, 1791.

<sup>25</sup> Letter from William Short to Alexander Hamilton, 28 Dec., 1791.

<sup>26</sup> Letter from William Short to Alexander Hamilton, 24 March, 1792.

for the funds.<sup>27</sup> But the request introduced a new legal complication under U.S. law. The United States had already made all payments due on the debt to France for the year 1791.<sup>28</sup> This meant that a new advance would have to be credited against debt payments that came due in the future. And the statute authorizing the President to borrow for use in repaying the national debt allowed pre-payment only “upon terms advantageous to the United States.” Hamilton interpreted this condition as requiring that the transaction cause no loss to the United States, which borrowed in Amsterdam and paid interest on the borrowed funds while in transit to the United States. Any agreement to credit the advance against the French debt would have to include an adjustment to indemnify the United States against this interest charge.<sup>29</sup> Nevertheless, despite this complication, and the fact that it looked like the United States might take a loss on this loan of dubious legality, Hamilton nevertheless readily agreed to advance the funds in quarterly installments of \$100,000.

Though frustrated by his lack of instructions from France — in fact he offered to resign — Ternant “provisionally agree[d]” to Hamilton’s terms, though he emphasized that the details of the indemnity would have to be worked out in Paris.<sup>30</sup> Of course, his “provisional” agreement only highlighted the obvious fact that he lacked authority to bind France to this deal. As Reinstein (2013) notes:

The [Washington] administration was now gambling that France would both credit the payments against the debt and agree to a discounted rate. If either of these gambles was not successful, the United States could lose substantial sums of money, and the administration would then have to defend an apparent violation of the debt repayment statute.

It seemed that the result of that gamble would soon become clear. On March 24, Short wrote to Hamilton that the delay in the National Assembly “still continues, but a decision must inevitably take place ere long.”<sup>31</sup> Indeed, a decision was imminent, but it was not the decision that had been expected. On March 28, the National Assembly failed to approve the proposal to credit U.S. advances against the debt to France, instead voting to devote 6 million livres to supporting the

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<sup>27</sup> Letter from Thomas Jefferson to Jean Baptiste de Ternant, 7 March 1792.

<sup>28</sup> Letter from Alexander Hamilton to Jean Baptiste de Ternant, 8 March 1792.

<sup>29</sup> *Id.*

<sup>30</sup> Letter from Jean Baptiste de Ternant to Alexander Hamilton, 10 March 1792.

<sup>31</sup> Letter from William Short to Alexander Hamilton, 24 March 1792.

colonists.<sup>32</sup> It was not until the middle of June 1792 that the National Assembly provisionally authorized having two-thirds of the relief provided to the colonists come from U.S. advances against the French debt. However, the authorization seemingly applied only to *future* advances, not to the ones already made, and required additional negotiations — never completed — before it could be implemented (Reinstein, 2013, p. 154). In other words, the gamble made by the Washington administration seemed to have failed.<sup>33</sup>

Meanwhile, France was undergoing a period of extraordinary upheaval, culminating in the overthrow of the monarchy and the proclamation of the French Republic (Matthewson, 2003, p. 41-42). There was soon “no French government with which the United States could deal.” (Reinstein, 2003, p. 155). Not only could there be no agreement on crediting U.S. advances against its debt to France, there could be no assurance that future French governments would even recognize payments on the debt itself.<sup>34</sup> The uncertainty led the U.S. to suspend debt payments to France.

It was against this backdrop that Ternant requested a third round of funding, this time for \$326,000. He had never been authorized to bind France to the deals he had struck with the Washington administration, and it was now uncertain that any French government existed capable of retroactively giving these deals its blessing. And if a French government did exist, it was not likely to view Ternant, a royalist, as its agent (Reinstein, 2013 at 156). Yet the United States found a way to justify continued support of the colonists, if not in the full amount Ternant had requested.

The uncertainty that had plagued the U.S. advances from the beginning was now at its peak. It raised, in Alexander Hamilton’s words, “a subject extremely delicate and embarrassing.”<sup>35</sup> If the United States were to commit to providing the full \$326,000, there were many reasons why a subsequent French government might not credit these advances against the U.S. debt. Though he referred to these as “political considerations” — and they were — they also would have been

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<sup>32</sup> Letter from William Short to Alexander Hamilton, 22 April 1792; Letter from William Short to Alexander Hamilton, 24 April 1792.

<sup>33</sup> In theory an argument could perhaps have been made that the loan bringing significant non pecuniary benefits to the United States and this more than justified the risk of non-recognition of the loan by the French. But we have seen no evidence of such arguments being made at the time.

<sup>34</sup> “Notes on the Legitimacy of the French Government, with Addendum, [18–19] November 1792,” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Jefferson/01-24-02-0612>. [Original source: *The Papers of Thomas Jefferson*, vol. 24, 1 June–31 December 1792, ed. John Catanzariti. Princeton: Princeton University Press, 1990, pp. 632–634.]

<sup>35</sup> Letter from Alexander Hamilton to George Washington, 19 Nov. 1792.

familiar to lawyers.<sup>36</sup> A restored monarchy might refuse to credit advances made during the revolutionary government's time in power. True, if the advances were characterized as necessary to prevent famine and "total ruin" in part of the French empire, even a restored monarchy would have to acknowledge their utility. But because this was not how the U.S. had promised to repay its debt to France, "the claim for such credit would not be of a nature to be regularly and of course valid; consequently would be liable to be disputed." Moreover, Ternant's lack of authority could no longer be assumed away. It was not just that Ternant lacked actual authority to strike a deal. The overthrow of the monarchy meant that he now "lacked even apparent authority to represent France" (Reinstein, 2013, p. 156). And finally, the only explicit (if inadequate) authorization for a deal between France and the United States — the National Assembly's June authorization of support for the colonists, some of which could include advances on the U.S. debt — had required an agreement on implementation, and this had never happened. "The business," Hamilton noted, "wants organization in every sense."

Nevertheless, Hamilton argued for continued support to the colonists. To mitigate the risks he had so carefully outlined, he proposed a clever workaround: The U.S. should carefully avoid giving the impression that it believed *anyone* had authority to strike a deal on behalf of France. In this way, it could avoid any argument that it had dealt with an agent not capable of binding the French government. Put differently, U.S. support should be limited in ways that would create a claim in equity rather than under the law of contract:

From these premisses I deduce, that nothing can be done without risk to the United States—that therefore *as little as possible* ought to be done—that whatever may be done should be cautiously restricted to the single idea *of preserving the colony from* destruction by *Famine*—that in all communications on the subject care should be taken to put it on this footing & even to avoid the explicit recognition of any regular authority in any person.<sup>37</sup>

Following this logic, the United States provided an additional \$40,000, accompanied by an implied promise of additional support and an admonition: Ternant had better find a way to secure explicit authorization from France, or the funds might dry up.<sup>38</sup> As Reinstein (2013, p. 156-157) notes, the

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Jefferson wrote to Ternant:

When the distress of that Colony first broke forth, we thought we could not better evidence our friendship to that, and to the mother country also, than to step in to it's relief, on your application, without waiting a



approach taken by the United States had some legal and political merit but was also self contradictory. The United States had suspended its regular debt payments because it did not recognize any current government in France, while it continued its irregular support for the colonists “even though Ternant had never obtained authority to credit them against the debt and now lacked diplomatic status as well.”

The colonists eventually got the full \$326,000. After the French defeat of the Austrian and Prussian armies, and Washington’s recognition of the National Convention as the government of France, the United States resumed payments on its national debt and again sought formal French authorization for crediting advances to the colonists against the U.S. debt (Matthewson, 2003 at 44-45).<sup>39</sup> Once again, Ternant could not get the French government to bless his arrangement with the United States.

It was not until May 1793 that Edmund Genet, the new French minister, finally gave word that the French government had officially agreed to credit past and future support for the colonists against the U.S. debt.<sup>40</sup> In doing so, he had a larger ambition: to request an enormous, additional advance equal to the entire remaining balance of the debt, to help fund the French war against the English (Matthewson, 2003, p. 47-48). This was a bridge too far — it would place the United States squarely on the French side in the Anglo-French war — and Washington declined. This brought to an end the U.S. government’s direct financial support for the colonists seeking to suppress the Haitian revolution.

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formal authorization from the national Assembly. As the case was unforeseen, so it was unprovided for on their part, and we did what we doubted not they would have desired us to do, had there been time to make the application, and what we presumed they would sanction as soon as known to them. We have now been going on more than a twelve-month, in making advances for the relief of the Colony, without having as yet received any such sanction ... We feel every disposition to continue our efforts for administering to those wants; but that cautious attention to forms, which would have been unfriendly in the first moment, becomes a duty to ourselves... I am authorized to inform you that the sum of 40,000 Dollars shall be paid to your orders at the Treasury of the united States, and to assure you that we feel no abatement in our dispositions to contribute these aids from time to time, as they shall be wanting for the necessary subsistence of the Colony: but the want of express approbation from the national legislature must ere long produce a presumption that they contemplate perhaps other modes of relieving the Colony, and dictate to us the propriety of doing only what they shall have regularly and previously sanctioned....

Letter from Thomas Jefferson to Jean Baptiste de Ternant, 20 Nov. 1792

<sup>39</sup> Letter from Thomas Jefferson to Gouverneur Morris, 30 Dec. 1792 (“We could wish however to receive a more formal sanction from the government of France than has yet been given... We wish therefore for a full sanction of the past and a complete expression of the desires of their government as to future supplies to their colonies.”); Letter from Thomas Jefferson to Jean Baptiste de Ternant, 14 Jan. 1793 (“[H]aving, in a [former letter](#) expressed to you our desire that an authentic and direct sanction may be obtained from the Government of France for what we have done, and what we may hereafter be desired to do, I proceed to inform you that motives of friendship prevailing over those of rigorous caution, the President of the United States, has acceded to your present desire.”).

<sup>40</sup> Letter from Edmond Charles Genet to Thomas Jefferson, 22 May 1793.

The ugly story of U.S. involvement (and non-involvement) in Haiti, of course, continues and has been well documented. We stop our narrative here to see what tentative clues we can draw from the foregoing about the law, politics, and practice of sovereign lending and borrowing of the time.

## 5. Implications, Questions and Conclusions

At least three strands in the foregoing story are somewhat at odds with what scholars who work on sovereign debt tend to take to be well-established principles.

### *Exigent Circumstances*

A distinctive aspect of the story is that U.S. officials repeatedly invoked exigent circumstances to justify the loans. By reason of some combination of international law and politics, senior administration officials were concerned about justifying their involvement in an internal conflict in another nation. Their justification, we see across multiple communications, is that this was a situation of crisis (a potential famine, Hamilton wrote). Given the crisis circumstance, they reasoned, surely any future French government would acknowledge that the United States had acted as required to address a crisis and would ratify the loans, even if no proper French government had approved them in the first place. Likewise, other nations surely would not take umbrage at the United States' support for France and French colonists under such circumstances. But what the historical record, as we have uncovered it, does not tell us is whether the concerns expressed by U.S. officials were grounded in the law of nations (the international law of the time) or in international politics. We suspect it was some of both. But further digging will be required.

If perceptions of what the law of the time allowed were at play, it suggests that there was something akin to what is now referred to as the doctrine of necessity (Weidemaier & Gulati, 2020; Draft Articles on State Responsibility art. 25). This doctrine excuses what would otherwise be violations of international law when the alternative would be a grave and imminent peril (potential famine, in Hamilton's telling) and does not seriously impair an essential interest of the state toward which the legal obligation exists (here, France).<sup>41</sup> Interesting here is the perception on the U.S. side that a future French government, regardless of who won the revolutionary conflict ongoing in France at the time, would feel be obliged to recognize the loans as valid despite their dubious origins.

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<sup>41</sup> Another contemporary international law doctrine, whose origins we may be seeing here – albeit, one that is less familiar to scholars of sovereign debt than necessity – is the right of “collective self defense”. See Walker (1998) (finding, indications of this right as early as 1815).

*Lending Into Another Nation's Internal Conflict:*

As a rule, a state's debts persist notwithstanding changes in the officials who lead its government or even changes in the form of its government. This is the rule of governmental succession. Moreover, international law generally deems it impermissible to interfere in another nation's internal conflicts without that nation's consent.<sup>42</sup> As just one example, if a lender chooses to fund one side in an internal conflict, and that side loses, the winner does not have to repay loans that financed the fight against it (Buchheit, Gulati & Thompson 2007).

The U.S. loans to Haiti were made within the context of a great deal of internal conflict in France. Among other complications, it was not at all clear that French colonists were and would remain loyal to France. If the colonists claimed independence from France, or even allied with another nation, would a future French government repay the loans or assert that the loans had to be repaid by the colonists? Even leaving this complication aside, would a future French government view loans made to its predecessor as legitimate? Again, the historical record suggests that the Washington administration viewed the exigency of the situation as sufficient to ensure French repayment.

*The Not-So Strict Rule of Governmental Succession*

The rule of governmental succession is strict. Governments of different shapes, sizes, and political philosophies may come and go, but the debts they incur remain those of the sovereign (and, therefore, its populace). And the literature tells us that this is how it has been for time immemorial (Buchheit, Gulati & Thompson 2007). But some aspects of our story suggest otherwise. Recall that the United States stopped repaying its revolutionary war debt to the French because it was not sure a successor French government would acknowledge those payments. Though not specifically about French *debt*, these doubts imply that U.S. officials were unsure that future French governments would view themselves as bound by the actions of their predecessors. And of course, to the extent one French government ratified the loans made *by* the United States, there was a similar risk that a future French government would disavow this act. That U.S. officials took these risks seriously — and contrived an exigent circumstances justification to mitigate them — implies

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<sup>42</sup> And it is possible that such interference, if engaged in, can result in a penalty for the interfering state, as in the case of the UK and the settling of Russia's imperial debts. *See* Denza & Paulsen (2023).

that they were not confident that the rule of government succession would be observed.

### *Odious Debts*

Last but not least is the issue of odious debts. The term odious debts is usually used to describe debts that a despotic government incurs, with the knowledge of its lenders, for purposes contrary to the interests of the people. Under such conditions, many have argued there should be an exception to the strict rule of government succession. That is, if the people overthrow the despot, the new government should not have to repay creditors whose loans aided the despot's efforts to retain power. As yet, though, this exception to the rule of government succession has not achieved explicit recognition (Oosterlinck et al., 2024).

The loans by the United States to support French colonists don't fit exactly the standard conception of odious debts. The question is not whether the Haitian people can disavow the obligation to repay the loans; they had no obligation to repay in the first place. But the loans certainly were odious vis-à-vis the people of Haiti who were trying to get free of the yoke of slavery. And that raises the question of whether the category of odious debts, as it currently sits in the sovereign debt literature, is unduly narrow. Conceivably a case can be made that the U.S. loans were contrary to international law at the time. Certainly the loans were dubious under U.S. domestic law, and they surely caused harm to enslaved Haitians. Those harms, in theory, should translate into some obligation to pay compensation. Put differently, why should the category of odious debts be limited to scenarios in which a freed people seek to avoid repaying a debt incurred by their former (despotic) government? Perhaps the doctrine should mean more than that lenders put funds at risk by lending to a despot. Perhaps it should also encompass basic questions of whether lenders should bear liability for harms they knowingly facilitate. This is not to say that there is a realistic possibility of Haiti recovering for the harm that was caused 200 plus years ago. But maybe these loans should go down in the ledger of odious debts.

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