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# After property? The Haitian Revolution, racial capitalism, and the foundation for a universal right to freedom from enslavement

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## ABSTRACT

The articulation of a universal right to freedom from enslavement in the 1801 Constitution of Saint-Domingue [which would become Haiti] points both to the potential of the law to depict ambitious imaginations of rights as well as the limits of articulating a legal-judicial freedom under racial capitalism. After abolishing slavery, the same document outlines the conditions of forced labour through cultivatorship, characterised by the continuity of the plantation system. This paper argues that Haitian Revolutionary emancipation offers a site from which to critique and imagine beyond the proprietorial subject of rights. Racialised property relations are foundational to capitalism, allowing for the production of both surplus value and profit, as well as a subject legible to the state. If proprietorial selfhood only constitutes partial emancipation, then the foundation for a universal right to freedom from enslavement must be found outside the capitalist social and legal forms – after property. Each instance of insistence on abolition challenges the failure of the Enlightenment to substantiate universal rights. Ameliorating group-differentiated vulnerabilities to premature death is a radical political and philosophical stance: access to the means of life is the minimal condition of freedom.

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## Introduction

This paper theorises the possibility of a universal right to freedom from enslavement, the function of rights under capitalism, and the opportunity to forge new social relations after property. The search for an encompassing basis for universal rights which would animate a general freedom destabilises received and reified theoretical categories and forces a reckoning with their practical inadequacy. Critical legal thought has generated a wave of scholarship challenging the perfunctory acceptance of human rights in their liberal form. Following this moment of critique, McNeilly argues that we can re-engage human rights otherwise, pushing toward a productive potentiality by situating

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them in the context of radical politics.<sup>1</sup> Subaltern, indigenous, and anticolonial struggles present incisive vantage points for theorising ‘after rights’, as well as mounting a challenge to uninspired estimations of the social change that rights can effect.<sup>2</sup> These revolutionary junctures, as moments of radical political poesis, force us to re-evaluate the lines within which we think the boundaries of possibility lie.<sup>3</sup> In this the Haitian Revolution is exemplary:

The Haitian Revolution continues to be [...] of vital importance in thinking about the urgent problems of social justice, human rights, imperialism, torture, and above all what Hannah Arendt identified as the eternal and preeminent problem of political thought: human freedom and its relation to the sociopolitical structures we choose to give our communities.<sup>4</sup>

The most illustrative example of legal-juridical freedom through rights is emancipation. At this point a new subjectivity is produced through the discursivity of the law, one recognised by the state as autonomous and capable of bearing rights.<sup>5</sup> The articulation of a universal right to freedom from enslavement in the 1801 Constitution of Saint-Domingue points both to the potential of the law to depict ambitious imaginations of rights, as well as the limits of articulating freedom through the state under capitalist social and legal forms. Following the articles abolishing slavery, it describes a system of cultivatorship in which the newly-emancipated are forced to labour: legal freedom coexists with practical unfreedom.<sup>6</sup>

This paper offers a critique of freedom as articulated through proprietorial legal-juridical constraints, and property relations under racial capitalism more generally, proposing an abolitionist foundation of a universal right through new forms of relating to the means of life. It argues that racialized property relations underpin the capitalist social form, as well as the legal form under capitalist social relations, in three main ways. First, proprietorship facilitates the exploitation of the means of production, encouraging the extraction of profit and social power to command labour. The private ownership of the plantations that continued post-Revolution, for example, facilitated an analogous continuity in the exploitation of labour. Second, ownership of one’s labour allows it to be ‘voluntarily’ alienated and sold, thus making the generation of surplus value possible. The newly emancipated are denied access to the means of life, forced to sell their labour for a wage below the value of what they produce. Third, the proprietorial subject is rendered legible under, and burdened by, the capitalist state. In return for nominal freedom, cultivators’ labour was controlled and policed. This goes beyond a critique of the content of rights and the reification of property within them, expanding to consider the general function of rights as they structure the legal form under capitalist social relations. For Pashukanis, the law is not an autonomous, self-referential system.<sup>7</sup> Law is neither transcendent nor ideological, but immanent to social relations: ‘It is in some sense as real as the social relations of production themselves.’<sup>8</sup> Commodity exchange requires juridical mediation, and, in Marx, the value form and the legal form are complementary.<sup>9</sup>

The 1801 Constitution is a world-historical articulation of universal emancipation: illustrative of a contradiction that presents a political economy of freedom itself, it is central to understanding the function and capacity of rights. A legal form under capitalist social relations assigns rights to the individual, especially property (in both the means of production and labour), and creates the subject of exploitation by the wage system; the

proletariat, and its structural alienation, is brought into being as a legal category. The Haitian Revolution is instructive here, particularly the 1801 Constitution, as the birth of the rights-bearing subject who now, nominally, owns their own labour (a requirement for its ‘voluntary’ alienation). This universal right to freedom from enslavement under capitalism coexists with an important continuity in the structure of proprietorship: control over the means of production by the same plantation owners.

The Haitian Revolution is illustrative for another foundational reason. Obviously, slavery in the context of colonial Saint-Domingue, and thus the transition toward waged labour, was racialised. The legal-juridical construction of the waged labourer intensified a particular process of racialisation salient in that context. A detailed empirical description of these specific processes of racialisation is outside the scope of this discussion. Rather, this paper aims to theorise some of the mechanisms underpinning the co-constitution of rights and property that the 1801 Constitution illustrates, particularly, how the genesis of the ‘free’ labourer constitutes and is constituted by racialised property relations, and what the continuities and discontinuities of these racialised property relations through the Revolutionary juncture might expose about the capitalist social and legal forms.

The paper begins by introducing the Haitian Revolution, specifically the 1801 Constitution of Saint-Domingue. It argues that the mode of the articulation – legal emancipation through the state apparatus under capitalism – necessarily carries intrinsic limitations to the actualisation of a meaningful universal right to freedom from enslavement. This section explores the limits of internal mechanisms of emancipation, that is, legal-juridical rights, by reframing the ‘contradiction’ of cultivatorship coexisting with a universal right to freedom from enslavement. The second section characterises the attribution of rights as the condition of possibility of wage labour through a Marxian reading informed by Nick Nesbitt, and reads the function of rights within Pashukanis’ theorisation of the legal form. The third section addresses racialised property relations as foundational to the capitalist social form, and reflects on the implications of this conclusion for revolutionary thought and praxis. If proprietorship under racial capitalism precludes a universal right to be free from enslavement and access the means of life, one way of enacting an ‘after rights’ may entail thinking ‘after property’ and understanding the ways in which ‘property sits at the nexus of our freedom.’<sup>10</sup>

This paper makes two main contributions to the project of this special issue. First, it offers a Marxian critique of rights under capitalist social and legal forms by exploring the ways that they function through emancipation to attribute capacities for proprietorship to the legal-juridical subject. Second, working with Ruth Wilson Gilmore’s definition of racism, it clarifies a political project against racial capitalism that begins with the amelioration of group-differentiated vulnerabilities to premature death.<sup>11</sup> Before moving to posit its own interpretation of the Haitian Revolution’s instructive capacity relative to the nature of universal rights, this paper will survey some of the ways in which its historical narration has been mobilised and attributed causal significance.

## **The Haitian revolution and the history of rights**

Between 1791 and 1804, enslaved and formerly enslaved people orchestrated a successful revolution against French colonial rule on the island of Hispaniola. Saint-Domingue

played a central role in global affairs: it was the most lucrative colonial settlement in the New World, and as such, its exploitation was central to the prosperity of France.<sup>12</sup> By 1789, the colony was producing 60% of all coffee sold in the West, and was the largest producer of sugar in the world.<sup>13</sup> The scale was staggering: according to the records of slave-trade journeys, between 1785 and 1790, of the 362,289 enslaved Africans who survived the harrowing trans-Atlantic journey, 196,610 would disembark in Saint-Domingue.<sup>14</sup> Almost 48,000 enslaved people arrived in 1790 alone. Though these numbers constitute the most exhaustive inventory at the time of this writing, this data likely presents an underestimate due to the ‘constant influx of slaves brought in via the thriving contraband trade, which naturally left few written traces.’<sup>15</sup> By 1791 Saint-Domingue was the world’s largest marketplace for human life, and 90% of its population was enslaved.

The conditions of enslavement were immeasurably brutal, marked by physical, psychological, and sexual torture.<sup>16</sup> The slave masters were unsurpassably cruel in their punishment, neglect, and wanton violence, the labour was dangerous, and the risk of deadly disease was constant. Over half of those who survived the passage from Africa would die within a few years. Religion, where sociality and hope could coalesce, provided a location for revolutionary strategizing.<sup>17</sup> What began as an uprising against the lived realities of their enslavement became an attack on the overarching edifice of racial slavery as a whole.<sup>18</sup> The plantation system that structured this sacrifice of life to commodity was the target of the uprisings: attacks began at the richest sugar-growing area, where fields were set alight, buildings burned, and overseers driven out or killed.<sup>19</sup> As plantations were set ablaze on the French colony of Saint-Domingue, the independent Republic of Haiti was being born.

The dependable signification of these events as ‘the Haitian Revolution’, invaluable to the production of a body of knowledge, comes at a cost. Simplification is required for a legible narration. Essential to the story is the depth of motivations and breadth of subject positions that enslaved people and their allies embodied: their actions were salient within and beyond an incredible range of African, Indigenous, Vodou, and Christian cosmologies that overlapped and intersected.<sup>20</sup> Even the signifier itself is recent and historiographically contingent; Popkin writes that ‘the Haitian Revolution’ was only ontologised as an object of scholarly inquiry (like the American or French Revolutions) around 2010,<sup>21</sup> historically tossed between representations as a slave rebellion, an anticolonial war, or a race war.<sup>22</sup> The discursive construction of the Haitian Revolution mobilises a particular set of political stakes, and it is impossible to describe these stakes and the character of the Revolution as a singular event without reference to the conceptual-material categories that rendered the struggle meaningful while simultaneously failing to subsume its logics entirely.

The Haitian Revolution constitutes a world-historical event of incredible causal force, retaining deep symbolic significance to this day as the material and discursive birth of a radically different future. It resulted in Haitian independence from France, a universal right to freedom from slavery in Haiti (and Saint-Domingue),<sup>23</sup> and a period of emancipation for all enslaved people in the French empire.<sup>24</sup> The Haitian Revolution ‘was monumental, a cataclysmic rupture in the eighteenth-century order of things.’<sup>25</sup> It shaped the politics of the Atlantic world, facilitating other struggles for liberation<sup>26</sup> as well as inspiring discourse on abolition in pro-slavery states.<sup>27</sup> It was the most radical

revolution constitutive of the modern world order.<sup>28</sup> Once explicitly removed from a Eurocentric canon,<sup>29</sup> ‘the events of 1791 to 1804 and beyond are now the subject of a rich and diversified historical literature reflecting a multiplicity of points of view.’<sup>30</sup> This historical work to contextualise the Revolution within global systems of racial capitalism cements its causal capacity within these processes: the Haitian Revolution has become a site from which to theorise the frameworks of politics itself<sup>31</sup> and a conceptual repository for our most basic categories of experience.<sup>32</sup> The Revolution is constituted, materially and conceptually, at the limits of slavery, emancipation, and freedom, categories that each fail in different ways to capture and represent it: ‘a recognition of the Haitian Revolution’s importance requires acknowledging its full complexity.’<sup>33</sup> The concept of human rights, particularly, traverses the limits of freedom and emancipation in the context of the Haitian Revolution.

Genealogies of human rights present a terrain where the radical potential of the Haitian Revolution was silenced.<sup>34</sup> The fact that both the abolition of slavery and the French and American Revolutions are emplaced in hegemonic narratives of the development of human rights makes the omission of the Haitian Revolution especially noticeable. The character of historical discourse is the function of power, not just the quality of an event itself: history is made both through actions and through the recording of them.<sup>35</sup> Fischer argues that a range of intellectual, political, and cultural efforts were mobilised to remove it from a respectable history of Western modernity, when in fact, a crucial element of that modernity was the suppression of struggles for racial equality.<sup>36</sup> The Haitian Revolution cannot be reduced to the language of a struggle over human rights, nor can it be simplified into a republican tradition unchallenged.<sup>37</sup> Instead of fixing its position within a teleological narrative, Wall argues that the Haitian Revolution shows a version of human rights discourse forged in the midst of political violence, uprisings, and making claims of humanity.<sup>38</sup> ‘More than any of the great thinkers of the enlightenment, it is the violent and allegedly irrational slaves that present us with the truth of rights.’<sup>39</sup>

Enslavement became a unique thought experiment for Enlightenment philosophers. Rather than being troubled by their material complicity in very real imperialism, they could coolly intellectualise it: a safely imaginary location to comment on the human condition. Davis ‘examined the issue of slavery as a testing ground for Western culture during a revolutionary age.’<sup>40</sup> Slavery was the perfect conceptual opposition for the purest virtue: freedom.<sup>41</sup> Slavery was, theoretically, the ultimate expression of evil as manifested through political power.<sup>42</sup>

Yet this political metaphor began to take root at precisely the time that the economic practice of slavery – the systematic, highly sophisticated capitalist enslavement of *non*-Europeans as a labor force in the colonies – was increasing quantitatively and intensifying qualitatively to the point that by the mid-eighteenth century it came to underwrite the entire economic system of the West, paradoxically facilitating the global spread of the very Enlightenment ideals that were in such fundamental contradiction to it.<sup>43</sup>

Sala-Molins’ *Dark Side of the Light* takes aim at the simultaneous centrality and elision of slavery to Enlightenment thought through the Code noir, the French decree outlining the conditions of enslavement in its empire. The exploitation of enslaved human beings was simultaneously theoretically reified and materially naturalised.<sup>44</sup> At the centre of the

Enlightenment is the failure of its ultimate purported value: universal freedom.<sup>45</sup> The rejection of abolition as the obvious extension of this supreme ideal burned the last bridge between theory and practice; now the enslaved would set the plantations alight. While Locke and Rousseau retreated to the realm of metaphorical 'slavery', Haitians broke the physical chains that shackled human beings.<sup>46</sup>

Through these actions they 'insisted that human rights were theirs too.'<sup>47</sup> Similarly to discourses that give a privileged place to Haiti as the most radical revolution, Wall contends that the Haitian Revolution was a site where a genuine essence of radical human rights was enacted.<sup>48</sup> This idea of a practice of rights-as-resistance also took place through the slow development of 'customary rights': for example, when enslaved people defended their access to their own garden plots.<sup>49</sup> Kaisary's conceptualisation of the Haitian Revolution as a radical site for reimagining human rights similarly posits enslaved people as revolutionary agents.<sup>50</sup> He argues that the *négritude* movement, in its representations of the Haitian Revolution, offer poetics of anticolonial freedom:<sup>51</sup> 'Césaire and James recall the enslaved as participatory subjects in a struggle for rights and assert a revolutionary black consciousness that instructs us to imagine a *radically universal* human rights discourse.'<sup>52</sup>

Nesbitt argues that the greatest contribution of the Haitian Revolution to human rights – and more broadly to humanity – is universal emancipation.<sup>53</sup> This material and discursive transformation, he continues, is constitutive of modernity itself. Though freedom from enslavement was one of the driving motivations of the Age of Revolutions as a whole, only the Haitian Revolution culminated in an actual slavery-free society rather than emancipation for a subset of the population (white, propertied men). Though the Haitian Revolution effected and was effected by 'Radical Enlightenment' currents, it was 'No mere imitation of events in France,' and 'quickly came to succeed its model in its commitment to human rights.'<sup>54</sup> It was qualitatively different: rather than strengthening or widening the provision of individual rights, the Haitian Revolutionary abolition of slavery was posited as the creation of a society without slavery. Nesbitt's analysis moves between the legal-juridical designation of universal emancipation and the praxis of formerly-enslaved people who fled plantation labour to form a rural peasant class, subsuming these or other articulations of freedom under the signifier of 'the Haitian Revolution'. The concept of universal emancipation that forms the radical impetus of the Revolution and its critique of Enlightenment and individualist rights is attributed to the latter: those who took flight from the plantations, forced labour, and capitalism.<sup>55</sup>

'[T]he 1801 Constitution speaks directly to the question that would challenge and haunt political leaders throughout the nineteenth-century Atlantic world: how do you get from slavery to freedom?'<sup>56</sup> In addition to the declaration of universal emancipation, the 1801 Constitution marked the event horizon of the Haitian Revolutionary struggle for independence: the point at which conflict with France became inescapable. Louverture's state-building and ascent to power occurred alongside the meteoric rise of another ambitious general to a particularly threatening seat of authority: Napoleon Bonaparte's overthrow of the Directory. Napoleon had been clear about his desire to retain Saint-Domingue and Louverture feared that the new ruler of France would reinstate slavery (which he did throughout French colonies in 1802). Louverture wrote otherwise, but Napoleon assumed he was scheming for independence.<sup>57</sup>

Napoleon interpreted Louverture's defeat of the Spanish and occupation of their colony of Santo Domingo as only more evidence of his complete disregard for French authority and 'alarming tendency to take his own decisions.'<sup>58</sup> Then, early in 1801, Louverture moved to draft a constitution for Saint-Domingue without French approval. Though the 1801 Constitution contained segments from Bonaparte's own constitution and the French Declaration of the Rights of Man<sup>59</sup> as well as explicitly reinforcing Saint-Domingue's status as a French colony, Napoleon saw it as a direct challenge to his rule.<sup>60</sup> To him, the existence of the 1801 Constitution was itself intolerable.

The Constitution of 1801 contains an oppositional gap between a conceptualisation of freedom forged through the experience of the formerly-enslaved and a more conservative vision<sup>61</sup>; radical revolutionary imaginaries diverged from their legal-juridical articulation within the text of the Constitution. Of particular importance is the simultaneity of the extension of the plantation system and the codification of a universal right to freedom from enslavement. The 1801 Constitution states: 'There cannot exist slaves on this territory, servitude is therein forever abolished. All men are born, live and die free and French.'<sup>62</sup> Yet, a few sections below, the same document codifies a system of agricultural production called 'cultivatorship'. Emphasising the economic importance of the plantation structure, cultivatorship forced formerly-enslaved people to continue to labour in circumstances similar to those of slavery,<sup>63</sup> often under the same plantation owners. Their new status as rights-bearing subjects granted the legally emancipated cultivators no agency to choose their residence or occupation; their social mobility was effectively limited.<sup>64</sup>

Kaisary explains the contradictory nature of the 1801 Constitution through the diversity of opposing influences present at this revolutionary juncture.<sup>65</sup> It was drafted by a Constituent Assembly; convened by Louverture, and included members of the former planter class and slave-owners who imbued a sense of 'hostility and scepticism with regard to the revolution's most radical agenda, but also one of concern for Saint-Domingue's infrastructure, defence and economic autonomy as it sought to instantiate a society without slavery.'<sup>66</sup> There were no ex-slaves on the committee.<sup>67</sup> The constitution contains the abolition of slavery – the key revolutionary demand – as well as consistently catering to the interests of imperial capital, paring an ideal of liberation down to a thin, conservative, practical liberty.<sup>68</sup> Fick argues that Louverture saw a clear distinction 'between freedom as the abolition of chattel slavery, on the one hand, and freedom as the right of the enfranchised citizen to exercise individual liberties, on the other.'<sup>69</sup>

For Phillipe Girard this combination of revolutionary activism and *realpolitik* was typical of a tumultuous era and cannot be considered independent from the Atlantic system.<sup>70</sup> Saint-Domingue faced both international and domestic pressures.<sup>71</sup> Though slavery had been abolished, Haiti still had to deal with the labour needs of colonial plantation agriculture.<sup>72</sup> The Atlantic economic system was characterised by the export of labour-intensive tropical crops to the metropolises, particularly coffee and sugar.<sup>73</sup> Concluding that subsistence and smallholder farms would be unable to produce to such requirements, the 1801 Constitution recognised limited options for self-sufficiency and institutionalised the 'cultivator' system to bolster plantation agriculture: 'The colony being essentially agricultural cannot suffer the least disruption in the works of its

cultivation.<sup>74</sup> Nesbitt emphatically condemns the deviation from revolutionary ideals as unjust and regressive:

This makes the 1801 Saint-Domingue Constitution a truly deformed document. Appended to its founding principle of human autonomy is an utterly antidemocratic system that subjugates individuals to a series of authority figures: the Catholic religion, a paternalistic family structure, the plantation system, and the unlimited authority of Toussaint himself.<sup>75</sup>

Nesbitt however concludes that this was structurally necessitated by external factors, making it senseless to blame Louverture for failing to protect universal emancipation under conditions of racial capitalism.

This paper refuses to join the idealist debate over the ‘correct’ theoretical position, or at least one expressed as a lamentation that a universal right to freedom from enslavement was philosophically irreproachable yet hobbled by local realities in its implementation. Such narratives, that historic ideals of human freedom and ground-breaking articulations of rights suffered through an untimely birth into an unwelcoming world, echo through Haitian Revolutionary history. Accepting the terms of this contestation, however, limits possible critique and delimits its object. The apparent failure of this articulation of rights is either situated externally to the Haitian Revolution (with the larger context of the Atlantic system, for example), or described as an internal anomaly to the goals of the Revolution (in the individual decisions of revolutionary leaders). Obviously, the causal impact of such factors affects an articulation of rights, but an analytical separation of theory and practice obfuscates the co-constitution of emancipation and subjection. More than the limitations internal and external to the Haitian Revolution that affect its articulation of rights, this paper holds that the mode of this articulation – legal emancipation through the state apparatus under racial capitalism – necessarily constrains the actualisation of a meaningful universal right to freedom from enslavement. The next section centres a materialist analysis of labour through emancipation in order to examine the social and legal forms that underpin it.

## **Emancipation and capitalism: the birth of the proprietorial subject**

It was by no means sufficient to ask: who should emancipate? who should be emancipated?

The critic should ask a third question: what kind of emancipation is involved? What are the essential conditions of the emancipation which is demanded?

-Marx, On The Jewish Question.<sup>76</sup>

The coexistence of the moment of emancipation with the legislation of cultivatorship brings into question the capacity for a universal right to freedom from enslavement under capitalist social and legal forms. But rather than holding the idealist evaluative stance, puzzling over the Enlightenment void apparent between theory and practice, this inquiry begins with the economic and legal-juridical co-constitution of emancipation and subjection. It aims to examine the function of rights and the characteristics of the individual that they create and attach to. This section will posit the proprietorial subject: necessitated by both rights and cultivatorship and legible to the state. It argues that the birth of the rights-bearing subject is a necessary precondition for capitalist exploitation, and that it manifests and reifies relationships of property undergirding the capitalist social form. This argument, made here through Nesbitt’s reading of

Marx<sup>77</sup>, is related to those that centre a phenomenological continuity of racialized exploitation through the birth of the rights-bearing subject. The two strands are not always distinct, with areas of explicit overlap, like Hartman's Marxian interpretation of the economic coercion that legal-judicial emancipation, and thus the transition into wage labour, allows. This conclusion echoes the work of Evgeny Pashukanis, who theorised the imbrication of the law's form, in addition to its content, with capital.

With Pashukanis' critique of the legal form, this paper's materialist focus on cultivatorship breaks down the 'contradiction' upheld in idealist debates wherein theoretical purity exists separately from practical application. Rather than bifurcating the articulation of a universal right to freedom from enslavement in the 1801 Constitution into a speech-act of emancipation on one hand and an unfortunate toll its bearers must pay on the other, Hartman and Walcott's work provides an ethical and aesthetic lens through which to acknowledge the possibility and conditions of their coexistence. Walcott's titular 'long emancipation' problematises our understanding of legal-judicial manumission as an epochal break. Walcott's argument that legal freedom failed to rupture foundational plantation logics<sup>78</sup> reflects historical accounts of the Haitian Revolution recounting the cultivatorship system as a continuation of plantation agriculture.<sup>79</sup> Under Dessalines,

as under Toussaint, beatings with *lianes* or *cocomacacs* continued as overseers and managers exacted by coercion and physical abuse the maximum labour from their workers. And so, the mass of the population in the new nation had been returned in servitude to the same agricultural tasks they had known under slavery, with little tangible hope of ever achieving their aspirations.<sup>80</sup>

Cultivatorship challenges the dichotomy between slavery and freedom. Instead of discursively constructing the limitations of rights as an exceptional circumstance to be ameliorated in the future, Walcott and Hartman address these limitations as defining features. Hartman and Walcott mobilise an abolitionism that allows for the denaturalisation of the social order by interrogating the commonplace forms of violence that sustain it and the discursive categories it mobilises. The framework of the 'long emancipation' calls the analyst to take seriously the material conditions of the formerly enslaved rather than solely the political speech-act positing them as bearers of rights that somehow contradicted those material conditions. Understanding emancipation within an economic continuity<sup>81</sup> allows a reading of exploitation as contiguous through the lives of cultivators and other formerly enslaved people.

This paper, following Nesbitt, interprets the trans-Atlantic slave trade as constitutive of the capitalist social form in contrast to other Marxist historiography designating it as separate and pre-capitalist.<sup>82</sup> The systematic increases in commodity production, specifically as increases in monetary wealth, are manifested as a capitalist social compulsion before and after emancipation.<sup>83</sup> Eric Williams' groundbreaking *Capitalism and Slavery* 'forces us to consider the development of global capitalism as a complex process marked by the historical and variable presence of multiple forms of labor: slave-based, sharecrop, domestic, wage labor, and others.'<sup>84</sup> 'Capitalism' captures more than the technical processes of production; rather, it encompasses an entire social relation.<sup>85</sup>

Marx's 'social form' refers to the way that social relationships are determined by a central organising category of that society; capitalism, he concludes, is governed by

value ‘and its general form of appearance as a commodity bearing a monetary price or exchange value.’<sup>86</sup> Capitalism is a ‘historically specific social form, a form constituted by definite and historically unique institutions, social relations, and discourses (including slavery and its attendant racist ideology).’ The social form determines labour relations as well as global commodity production, organised under capitalism to maximise profit.<sup>87</sup> If the capitalist social form governs the slave mode of production, wage labour, and the different forms of unwaged or forced labour like cultivatorship, it follows that both the enslaved and emancipated are subjects of capital though in different ways.

The key to understanding the capitalist social form, and thus the co-constitutive relationship between capitalism and slavery, Nesbitt argues, is the transformation of labour into labour-power. Money makes labour socially legible: attributing a price or wage regulates social interaction under the capitalist social form.<sup>88</sup> Specific to the capitalist social form is the transformation of labour into labour-power<sup>89</sup> – the ‘value-form’ of labour – a commodity with a price (a wage) that can be alienated and exchanged.<sup>90</sup> This is the basis for the exploitation of labour: labour-power can be purchased at a price below the value of what it produces, creating surplus value, a particular form of profit. Wage labour, and the surplus value extracted from labour-power, is the engine that produces value within the capitalist social form.<sup>91</sup> The exploitation of labour-power on the basis of the wage, however, does not necessarily render slave, unwaged, and forced labour precapitalist in nature:

Slave and other forms of non-wage labor made real and significant contributions to wealth production and accumulation well into the nineteenth century. Their contributions, however, were not in the form of surplus value, but only as profit withdrawn from a global mass of surplus value by capitalist slaveowners, for example, by providing raw materials such as cotton for capitalist firms at prices and in quantities not possible with scarce wage labor.<sup>92</sup>

Surplus value is extracted both directly from the wage and indirectly, as abstract profit formed in part from the exploitation of enslaved people as a means of production.<sup>93</sup> The labour of enslaved people has not been transformed into labour-power; their entire being is property of the slaveowner and physically tortured for the production of profit.<sup>94</sup> To Colin Dayan, slaves have ‘negative personhood’.<sup>95</sup> Existing in a negative relationship to law, the enslaved person cannot have any independent relationship with property themselves.<sup>96</sup>

Holding that slavery was intrinsic to the development and intensification of capitalism, Nesbitt’s stance on the distinction between slave and wage labour is more radical than merely stating that slaves are simply workers whose wages were withheld. The enslaved cannot alienate their labour as labour-power because this would require them to be the proprietors of it. ‘Property’ reflects a specific economic concept describing the relation of ownership that is embodied in law.<sup>97</sup> Article 13 of the 1801 Constitution states, ‘Property is sacred and inviolable. All people, either by himself, or by his representatives, has the free right to dispose and to administer property that is recognized as belonging to him.’ Proudhon traces this tradition of property rights back to Roman law: one is free to use and abuse their own property within the limits of the law.<sup>98</sup> These laws refer to property specifically rather than possession: *jus in re*, or the right in a thing, legally codifies the complete and absolute power of a proprietor over their property.<sup>99</sup>

Differentiating between slave and waged/unwaged/forced labour on the basis of proprietorship rather than the (non)payment of a wage allows one to argue both that slavery was constitutive of the development of the capitalist social form, and that slavery and capitalism, and conditions of slave and waged labour, are functionally and analytically distinct.<sup>100</sup> The worker owns and can sell units of their labour-power, but not more:

The continuance of this relation demands that the owner of the labour-power should sell it only for a definite period, for if he were to sell it rump and stump, once for all, he would be selling himself, converting himself from a free man into a slave, from an owner of a commodity into a commodity. He must constantly look upon his labour-power as his own property, his own commodity, and this he can only do by placing it at the disposal of the buyer temporarily, for a definite period of time. By this means alone can he avoid renouncing his rights of ownership over it.<sup>101</sup>

The worker is coerced under threat of starvation to sell their labour-power but they must, in principle, be able to pursue or decline its sale of their own volition. Marx writes, 'labour-power can appear upon the market as a commodity, only if, and so far as, its possessor, the individual whose labour-power it is, offers it for sale, or sells it, as a commodity. In order that he may be able to do this, he must have it at his disposal, must be the untrammelled owner of his capacity for labour, i.e. of his person.'<sup>102</sup> The capitalist does not own merely the totality of the labour-power of the enslaved as they might purchase a unit of labour-power from a worker: the capitalist, the plantation owner, is the proprietor of whole and suffering human beings. The inability of the enslaved to alienate their labour-power lies in their debasement: treated as a form of constant capital, 'functionally no different from other mechanized and natural means of production, from wind and waterpower to mules, horses, and machines.'<sup>103</sup>

Proprietorship is necessary for the production of surplus value, both directly through the exploitation of wage labour and indirectly through profit from the exploitation of the enslaved. The direct extraction of surplus value through the wage requires a worker in possession of their labour.<sup>104</sup> This mode of subjectification by and for capital, under the capitalist social form, requires emancipation and the attribution of the right to property in oneself: 'Therefore, the root of 'owning oneself' is not inalienability but alienability.'<sup>105</sup> The birth of the rights-bearing subject is necessary to capitalism in as much as surplus value, the lifeblood of capitalism, requires wage labour. Surplus value can also be accrued as profit; thus, both labour and labour-power are mobilised for the extraction of surplus value and are necessary to the development and intensification of capitalism. The subject of capital is characterised by two modes of proprietorship: they have the right to proprietorship of their labour in order to alienate it, and they have the right to proprietorship of (or exploitation by another's proprietorship of) material resources or the means of production.

Though the Haitian Revolutionaries did not articulate it in writing, Kaisary claims there is evidence from as early as 1792 that they identified the tension between private property and the pursuit of social justice.<sup>106</sup> In letters to the French General Assembly of Saint-Domingue from early revolutionary leaders including Louverture, 'the grotesque material inequalities produced by slavery are held up as the end result of a debased mode of exploitation that is in itself a monstrous moral paradox.'<sup>107</sup> This is the case even, and

especially, in situations where basis for access to proprietorship is purportedly equal. Marx writes that in fact, the removal of the property qualification and explicit legal discrimination on the basis of property ‘not only does not abolish private property; it actually presupposes its existence.’<sup>108</sup> The state claims its citizens are all equal, but the effective distinctions with regard to property (and other forms of wealth and social status) still exist: the inequality itself is naturalised.<sup>109</sup> Property, under the state in the capitalist social form, then becomes non-political.

The bourgeois state is unable to recognise and provide for the material needs of those it is supposedly responsible for. The political state rests upon a presupposed ontological schism between public-political and private-civic being, ‘the species-life of man as opposed to his material life.’<sup>110</sup> The precarity of cultivatorship illustrates the perennial contradiction between the living individual and the citizen: ‘man is the imaginary member of an imaginary sovereignty, divested of his real, individual life, and infused with an unreal universality.’<sup>111</sup> An analogous gap emerges between the categories of the rights of man and the rights of the citizen. Every single person on the territory of Saint-Domingue was vested with a constitutional guarantee of their political right to freedom from enslavement, but the fruits of this liberty could only be cultivated on the plantations. Because political existence fails to capture the concrete materiality of human-being, political freedom is *ipso facto* limited: ‘by emancipating himself politically, man emancipates himself in a devious way, through an intermediary, however necessary this intermediary may be.’<sup>112</sup> To Marx, this shallow political emancipation opposes true human emancipation, locking it to inadequacy through the machinery of the state. ‘The limits of political emancipation appear at once in the fact that the state can liberate itself from a constraint without man himself being really liberated; that a state may be a free state without man himself being a free man.’<sup>113</sup> Haiti would be liberated, but the context of a hostile Atlantic system – literally, the surrounding waters of the Middle Passage – sealed the fate of independence to cultivatorship.

This illustrates another characteristic of the proprietorial subject: their necessary legibility under, and thus capacity to be interpellated by, the state. In scholarship on law and development the argument that the state gains legitimacy through the protection of property and consolidates itself through the formalisation of these rights is not uncommon.<sup>114</sup> Property rights are presented as a precursor to capitalism and state legitimacy<sup>115</sup>: systems of property rights and ownership provide the foundation for, and facilitate the development of, the capitalist social form. *Jus in re* property laws facilitate the extraction of profit by proprietors as well as presupposing the policing of that property to maintain social control over these material hierarchies.

The legislation of economic coercion by the capitalist state can be direct, like the articles in the 1801 Constitution enshrining cultivatorship, or indirect, as the implicit compulsion to sell one’s labour power. ‘Marx, describing a dimension of this paradox, referred to it with dark humor as a double freedom – being free to exchange one’s labor and free of material resources.’<sup>116</sup> Marx’s juxtaposition of the concept of freedom with the domination of capital implicitly questions the consent and agency of the worker, as well as the limited quality of the ‘freedom’ that the capitalist state is poised to deliver. The property in question here, the resources that Marx implies, are the material requirements of human life. The relationships through which to access

these resources, structured by proprietorship, become the private responsibility of the individual subject.

The consolidation of the capitalist social form in law reaches beyond the prioritisation of proprietorship as an encompassing ideology to the structure of the legal form itself. Rather than critiquing the content of the law, Pashukanis explores the imbrication of the legal form with the commodity form.<sup>117</sup> Just as the capitalist social form is historically specific, so is the legal form that regulates these social relations through the ‘identification and deployment of rights, duties, and claims that individuals as abstract ‘legal subjects’, have against other legal subjects within some larger political community.’<sup>118</sup> Exchange constitutes both value and the legal subject, as these social relations of commodity exchange presuppose and require a legal structure to regulate them. Balibar argues that, in Marx, there is in fact no economic process without juridical mediation.<sup>119</sup> Commodities cannot bring themselves to market; instead, their guardians must engage in relations of exchange:

They must therefore, mutually recognise in each other the rights of private proprietors. This juridical relation, which thus expresses itself in a contract, whether such contract be part of a developed legal system or not, is a relation between two wills, and is but the reflex of the real economic relation between the two.<sup>120</sup>

‘At the same time, therefore, that the product of labour becomes a commodity and a bearer of value,’ Pashukanis writes, ‘man acquires the capacity to be a legal subject and a bearer of rights.’<sup>121</sup>

Because the subject of capital must be able to participate in 1) the production of surplus value through the proprietorship and exploitation of one’s self and labour and/or 2) the production of surplus value through the proprietorship of or exploitation through the means of production while 3) these relations are legible to and mediated by the state, rights can be conceptualised as productive of and reifying multiple relations of proprietorship that structure the capitalist social form. This, again, is not an evaluation of the actions or outcomes of the Haitian Revolution, but stems from what the coexistence of a universal right to freedom from enslavement with cultivatorship illustrates about political emancipation and the function of rights under capitalism. In addition to the ways proprietorship facilitates the suffering associated with capitalist exploitation, ‘the rights and duties associated with the legal form can only be made real with the use of violence.’<sup>122</sup> A universal right to freedom from enslavement must be situated ‘after’ the violence of the legal form, and ‘after’ the proprietorial logics of the capitalist social form.

### **After property: against racial capitalism**

Qualitatively distinct from metaphorical mobilisations within European Enlightenment philosophy, experiences of enslavement present a phenomenology of unfreedom. If a right to freedom from enslavement is not accessible to the cultivator, it is not universal. Racialised property relations under capitalism preclude this universal access to the means of life. This presents both an analytical and practical challenge, in service of which the following discussion contributes to the theoretical clarification of racial capitalism and its potential mobilising capacity. If liberation is not to coexist with the threat of homelessness, starvation, and death compelling one to trade life-force for sugar, then the

foundation for a universal right to freedom from enslavement must be found outside the capitalist social form: after property.

An analysis of racial capitalism sophisticates both the relevant conceptual categories and narrations of causality and motive: providing greater theoretical explanatory power as well as a more incisive political project.<sup>123</sup> The tendency of European capitalism was not to homogenise the proletariat, ‘but to differentiate – to exaggerate regional, sub-cultural, and dialectical differences into ‘racial’ ones.’<sup>124</sup> Rather than remaining stable, both racial categories themselves, and the relationships between race and labour, are constantly adapting to their social and economic contexts.<sup>125</sup> The hierarchical differentiation of the proletariat, central to the capitalist social form, is a plurality of racisms that structure relationships of domination.<sup>126</sup> The analytical framework of racial capitalism is uniquely capable of characterising processes of primitive accumulation and their enmeshment in imperialism and colonialism, of engaging theoretically with the implications of ideological frameworks like classical liberalism and democracy under capitalism, and, as this section will attempt in its conclusion, an intervention in service of radical activist projects.<sup>127</sup> In arguing that racialized relationships of property prevent a universal right to freedom from enslavement from materialising, this paper points toward a project of theorising after property, towards other modes of accessing the means of life.

Although the 1801 Constitution does not engage with race as explicitly as the 1805 Constitution of Haiti, which constructs racial categories relative to citizenship, it exemplifies how relations of proprietorship structuring the capitalist social form can be racialized. This section outlines three examples: first, how racial slavery and the threat of racial slavery are constitutive of the capacity to own one’s body and labour, second, the imbrication of race and class in the policing of property and movement, and third, how race can act as a marker of class/access to proprietorship. The 1801 Constitution solidified class distinctions on the basis of race, and racial distinctions on the basis of class, through access to proprietorship. It guaranteed continued access to the means of production for the predominantly white economic elites and minimal access to proprietorship, of their own forced labour and of land or resources, for the formerly-enslaved Black population. Racial slavery was constitutive of the capacity to own one’s body and labour. It is impossible to disimbricate race and class; the island’s economic elite were known as *les grands blancs*, literally, ‘the big whites’, or as ‘Blancs blancs, or ‘White whites,’ whose ownership of property made them true whites.’<sup>128</sup>

The capacity for different modes of proprietorship was organised on an explicitly racialized basis, and the threat of the reintroduction of racial slavery continued to structure economic and social relations in Saint-Domingue. Kaisary noted the theme of indebtedness in the 1801 Constitution, situating Louverture’s conceptualisation of freedom (that could be reconciled with cultivatorship) ‘in the context of a discourse that had been circulating around the Atlantic World since at least 1791 – a discourse under which rights and freedoms could be treated as ‘transactional’ or ‘reciprocal.’ If the state guaranteed freedom to its citizens, they were indebted; their reciprocal duty, in this case, was their labour. ‘[I]t is possible to see in the Constitution the intention of fostering solidarity amongst a community of former slaves who individually and collectively owed a duty to the state to safeguard their emancipation,’ Kaisary writes.<sup>129</sup>

Such measures were justified in the name of economic necessity and the context of a hostile slaveholding, imperial world: profits derived from the maintenance of the plantations, albeit without slave labour, would enable Saint-Domingue to maintain a large and powerful army which remained the ultimate guarantor of abolition – the re-imposition of slavery was potentially only a French, British or American invasion away.<sup>130</sup>

Emancipation traps the burdened individual in a negotiation between civic morality and economic exchange. '[F]reedom is not a natural right but a gift that requires reciprocity in the form of duties, obedience and work.'<sup>131</sup> Article 76 of the Constitution 'proclaims that every citizen owes his services to the land that nourishes him and that saw him born; to the maintenance of liberty equality and property every time the law calls him to defend them.'<sup>132</sup> The Constitution is also marked by the debt owed specifically to Toussaint Louverture for the revolution's success. In Title VIII, Louverture is awarded the permanent position of governor 'in consideration of the important services that the general has rendered to the colony in the most critical circumstances of the revolution.'<sup>133</sup>

The expression of proprietorial relationships in the 1801 Constitution is also visible through the policing property and movement that imbricates race and class. Enshrining the system of cultivatorship, Louverture laid the foundations for a powerful militarised state to police 'a disempowered agricultural mass of citizen-labourers.'<sup>134</sup> The drive of newly emancipated Black workers to exercise agency over their circumstances often manifested in a desire to become independent smallholders, which Louverture effectively outlawed:

Toussaint promulgated a new ordinance that expressly prohibited all land transactions involving fewer than fifty *carreaux* (roughly 165 acres), for which were required special permits validating the financial resources and capacity of the purchaser to develop the land. Thus any individual worker, or any association of workers, wishing to purchase a *carreau* or two were effectively blocked from doing so. Such were the rights to property of the average citizen.<sup>135</sup>

This legislative and administrative burden perpetuated the racialized class distinction by disproportionately affecting the formerly-enslaved who were unable to afford more.

Continued access to the means of production by the *grands blancs* or mixed-race economic elites, however, was explicitly facilitated. Though many plantation owners had fled to France by 1801,<sup>136</sup> six articles in the 1801 Constitution pertained to 'Finances, of Sequestered and Vacant Estates.'<sup>137</sup> These articles addressed the departure of the plantation owners by protecting their right to proprietorship of their land. The 'Sequestered and Vacant Estates' were now controlled by military officers and government officials. Title XII protected the interests of the new owners of abandoned plantations, among whom were Louverture and Dessalines.<sup>138</sup> Louverture leased these plantations to other top generals or invited the white planters back to oversee them while the cultivators were forced to work under direct military supervision. Commanders who failed to report idle workers faced arrest, detainment, or being stripped of their office.<sup>139</sup> Article 55 continues: 'The state police force of the colony shall be part of the Armed Forces [... it] is instituted for the high police of security of the countryside; it has the charge of the wealth of the colony.'<sup>140</sup> Plantation managers and conducteurs had to prepare reports for the commanders, who had the authority to punish them should their workers fail to produce.<sup>141</sup>

The specific process of racialisation is not generalisable from the Haitian case but exists as an example of the ways that race can act as marker of class or access to

proprietorship more generally. As Stuart Hall phrases clearly and incisively, ‘Race is the modality in which class is lived. It is also the medium in which class relations are experienced.’<sup>142</sup> With this, Hall problematises the overly-simplistic binary designating labour and capitalists, addressing the discrepancies in the analytical cohesion of such categories. The position of Black labour is not just coloured by race, Hall argues, it functions through race, rendering class and race relations inseparable.<sup>143</sup> Proprietorship is one of the foundational logics imbricating race and class, illustrated in the moment of emancipation where the rights-bearing subject is recognised as a subject of capital under the state.

Proprietorship structures our access to the resources necessary to sustain human life: the fundamental, material conditions of our existence. If racialized property relations under capitalism prevent the materialisation of a meaningful universal right to freedom from enslavement, then a political future capable of guaranteeing access to the means of life might exist after property. Such a future must be comprehensively and radically different: ‘Marx’s critique holds the ultimate political consequence that only a transformation of this encompassing social form, as opposed to one or more of its superficial but necessary aspects, could hope to pass beyond the limits of capitalism.’<sup>144</sup> As the capitalist social form is specific and historically contingent, the relationships of proprietorship undergirding the extraction of surplus value are not necessarily the only way a society can structure access to the means of life.

One way to conceptualise a contemporary political project entailing a universal right to freedom from enslavement is through abolition, specifically alongside Gilmore’s work, and the analytic of racial capitalism. Gilmore defines racism as ‘the state-sanctioned and/or extralegal production and exploitation of group-differentiated vulnerability to premature death.’<sup>145</sup> Prison, to her, is only one variation of this wider theme: a mode of accelerating mortality. In addition to the utility of this conceptualisation to track the complex context-dependent manifestations of racial discrimination, her framework points explicitly toward a broader range of causal factors that accelerate mortality on a racialized basis. Specifically, she considers economic and environmental justice to be central to antiracist action.

Walcott draws from indigenous philosophies to contend that our stewardship of the commons should ‘advance the wellbeing of all life forms.’<sup>146</sup> Thinking after property can provide an alternative foundation to the universal right to freedom from enslavement and a basis to imagine different modes through which our collective social existence can be organised to provide access to the means of life. Abolitionist thinking takes embodiment seriously; a materialist analysis follows from the fundamental physicality of suffering, labour, and imprisonment. A universal right to freedom from enslavement must be felt by all as care, leisure, and nourishment. Such a guarantee echoes Gilmore’s description of abolition as ‘small-c communism,’ and thus ‘red’, but also, ‘green’ in that the reinvention of our collectivity is an ecological one.<sup>147</sup> Whereas other visions of the commons have been corrupted through the lens of proprietorship,

A renewed idea of the commons for our times brings along with it a different idea of care, too, including for the earth itself. Stewardship is an essential part of abolition, and in this instance would include collective responsibility for our shared resources as a basis for how we care for each other.<sup>148</sup>

Stewardship of the global commons would represent a facet of a larger ethic of care, structuring relationships within and between individuals and collectives, that ‘begins with attending to the most vulnerable among us first, would open us up to an altogether different, and better way of living together.’<sup>149</sup> If individualism was a learned trait, so too can communalism be practiced: the abolition of property makes space to (re)generate relations between us.<sup>150</sup> ‘Habits, and thus realities, can be changed.’<sup>151</sup> Stewardship of the commons – where access to the means of life is guaranteed by an ethics of communalism to each according to their needs<sup>152</sup>—not only makes a universal right to freedom from enslavement possible, but renders the continuation of the plantation economy and prison-industrial complex inconceivable.

The proprietorial logics that limited the material and theoretical capacity of a universal right to freedom from enslavement in the context of the Haitian Revolution did not proceed unchallenged, or without alternative. Fick and Kaisary both present two conceptualizations of freedom enacted through the Haitian Revolution. The first, promulgated by Louverture and codified in the 1801 Constitution, is a legal-juridical emancipation that coexists with forced wage-labour through the cultivator system. The second conceptualisation, Fick argues, was held by people who were formerly enslaved and reflected in their praxis rather than recorded in any legal documents: freedom, to the formerly enslaved, included a small parcel of their own land, to labour on it and produce for themselves and the local market.<sup>153</sup> The material requirements to sustain human life are a minimal basis for any conceptualisation of freedom. Envisioned in this context, freedom was grounded in access to the means of producing the material requirements of life, unimpeded by the state.

Louverture pushed back, aiming to prevent any production that was simultaneous with, or worse, in competition to the established plantations.<sup>154</sup> Subsequent revolutionary leaders pursued the repression of an agricultural working class even more drastically; Dessalines and Christophe ‘repeatedly ordered the destruction of food crops in an effort to force former slaves back onto sugar plantations.’<sup>155</sup> Yet between 1800 and 1850 Haiti produced a surplus of food, despite the best attempts of state policy. Rather than confinement to produce coffee and sugar, thousands fled into the countryside to create new lives and communities. Those who refused the militarised cultivatorship system grew millet, sweet potatoes, manioc, bananas, yams, corn, beans, and rice. These pockets of self-sufficiency were hard-won, wrested from the clutches of forced labour and state repression.<sup>156</sup>

Freedom for the mass of insurgent slaves, if it was to be realized at all, was fundamentally intertwined with an independent claim to land. Work and labour for the profit of another or for the production of export crops on which the colony’s existence depended was profoundly antithetical to their own vision of things.<sup>157</sup>

The self-defined aspirations of the formerly enslaved were far-removed from their post-emancipation reality as ‘servile but legally free plantation labourers.’<sup>158</sup>

Within the capitalist social form, access to the means of life is structured through racialised proprietorship: the ethical, political, and material basis for the production of group-differentiated vulnerabilities to premature death. Thinking after property, then, might offer a theoretical opening through which to posit new relationships to the material requirements of human life and livelihood. The project of ameliorating

group-differentiated vulnerabilities to premature death is necessarily, antiracist and anticapitalist:

A race-blind politics risks leaving untouched the injustices produced by historic and contemporaneous racisms. Instead, an alternative approach is proposed, one that invites movements to wilfully entangle demands for economic justice with anti-racism and thereby embrace and demystify the differences inscribed into the collective body of the proletariat by capitalism.<sup>159</sup>

Aiming praxis toward the immediate and long-term group-differentiated vulnerabilities to premature death, antiracist action targets the capitalist social form and anticapitalist struggle necessarily attends to the ways that exploitation is racially differentiated. This is not a position of theoretical idealism; its material force is manifested in the ways that challenging the immediate threats to the survival of Black people are also broader challenges to the racial capitalist political economy of suffering, from grand and petit marronage in Saint-Domingue to the struggle for civil and economic rights exemplified by the Black Panther Party's Free Breakfast for School Children Programme. The Panthers' food justice project was a commitment to ameliorating the group-differentiated vulnerability to premature death, sanctioned by the state and borne by hungry children. As those whose needs were the greatest were those whose marginalisation was at best overlooked and at worst caused by the US government itself, feeding children and centring Black communalism was a direct challenge to the legitimacy of the American state.<sup>160</sup> More than the meals themselves, the Free Breakfast for School Children Programme was an outgrowth of a political community claiming universal access to the means of life beyond the capitalist social form. The project of ameliorating group-differentiated vulnerabilities to premature death is *ipso facto* the project of guaranteeing a universal right to freedom from enslavement.

## Conclusion

This paper began with the dream of universal freedom, brought closer to reality by the struggle of the enslaved than any sophistry in a French salon. It aimed to think with the condition of cultivatorship, centring the characteristics of a phenomenology of unfreedom rather than a pure disembodied abstraction. This inquiry denies sole authorship of its conceptual frameworks in as much as what it uncovers about rights, freedom and property has been experienced by others beforehand. Taking this experience seriously as purposeful enactment requires the theorist to 'populate this space with different actors, with different perspectives, and admit among the central actors in this story the enslaved, for whom the questions of rights were never only abstract.'<sup>161</sup> Knowledge produced in struggle is simultaneously addressed to the real, material circumstances of one's immediate existence and timeless ethical quandaries.<sup>162</sup>

This article illustrated, through the 1801 Constitution and its economic context, how property itself undermines the possibility of actualising a universal right to freedom from enslavement. It began by exploring different narrations of the Haitian Revolution, particularly those that linked it to genealogies of human rights. Rather than taking an idealist evaluative stance, it set out to explore the co-constitution of emancipation and subjection that manifested in the forced labour of the cultivatorship system coexisting with a legal right to freedom from enslavement. It proposed the proprietorial subject of capital:

proprietorship, within the capitalist social form, links the subject to the apparatus of the state. The next section analysed the racialisation of proprietorship through the 1801 Constitution. The state failing to guarantee, or actively impeding, access to the material requirements of human life impacts marginalised communities disproportionately. This is due to the co-constitution of race and class in producing group-differentiated vulnerabilities to premature death. The final section argues that dispensing with proprietorship opens other avenues toward a meaningful right to freedom from enslavement in thought and praxis. It concludes that thinking ‘after rights’ through the abolition of property might allow for radically different, and more just, forms of social organisation.

The character of this narration – of the proprietorial subject of rights, of subjection by racial capitalism, of the limitations of political emancipation, and group-differentiated vulnerabilities to premature death – is not intended to imply resignation. The recognition of oppression is interwoven with resistance. Each instance of insistence on abolition challenges the failure of the Enlightenment to substantiate universal rights. Ameliorating group-differentiated vulnerabilities to premature death is a radical political and philosophical stance: access to the means of life is the minimal condition of freedom.

## Notes

1. Kathryn McNeilly, ‘After the Critique of Rights: For a Radical Democratic Theory and Practice of Human Rights’, *Law and Critique* 7, no. 3 (2016): 269-88.
2. For example, see Sumi Madhok, *Vernacular Rights Cultures* (Cambridge: Cambridge University Press, 2021).
3. See Louiza Odysseos, ‘After Rights, After Man? Sylvia Wynter, Sociopoetic Struggle and the ‘Undared Shape’’, *International Journal of Human Rights* (2023) <https://doi.org/10.1080/13642987.2023.2227101>, on reimagining the subject of rights ‘after Man’, and Quỳnh N. Phạm, ‘Nông Dân Being Wronged: Fighting for the World in a Place’, *International Journal of Human Rights* (2023) <https://doi.org/10.1080/13642987.2023.2251252> on the ways that subaltern struggle provides other language to articulate just relations ‘After Rights’.
4. Nick Nesbitt, *Universal Emancipation: The Haitian Revolution and the Radical Enlightenment* (Charlottesville: University of Virginia Press, 2008): 1.
5. See Marie Petersmann, ‘In the Break (of Rights and Representation): Sociality Beyond the Non/Human Subject’, *International Journal of Human Rights* (2023) <https://doi.org/10.1080/13642987.2023.2227124> for more on how the attribution of rights, particularly to non-human subjects, reifies a legal order.
6. Preceding independence and sovereignty in 1804, the 1801 Constitution is drastically different than the more radical 1805 Constitution of Haiti. The latter presents a unique site for future research on the racialization of property through citizenship but is outside the scope of this paper.
7. Étienne Balibar, ‘Hegel, Marx, Pashukanis and the idea of abstract right as a bourgeois form.’ in *Institution: Critical Histories of Law*, eds. Francis Cooper and Daniel Gottlieb. Volume 5, CRMEP Books. (London: Kingston University, 2023), 74-100.
8. Balibar, ‘Hegel, Marx, Pashukanis’, 2023, 77.
9. Ibid.
10. Rinaldo Walcott, *On Property: Policing Prisons and the Call for Abolition* (Windsor Ontario: Biblioasis, 2021), 96.
11. Ruth Wilson Gilmore, *Golden Gulag: Prisons Surplus Crisis and Opposition in Globalizing California* (Berkeley: University of California Press, 2007), 28.

12. Jeremy D. Popkin, *A Concise History of the Haitian Revolution* (Malden MA: Wiley-Blackwell, 2010).
13. Michel-Rolph Trouillot, 'Motion in the System: Coffee, Color, and Slavery in Eighteenth-century Saint-Domingue', Review (Fernand Braudel Center). Research Foundation of SUNY.
14. Trans-Atlantic Slave Trade – Estimates. Time frame selected: 1785-1790. <https://www.slavevoyages.org/assessment/estimates>
15. Laurent Dubois, *Avengers of the New World: The Story of the Haitian Revolution*, (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005), 39.
16. Ibid.
17. Dubois, *Avengers of the New World*, 2005.
18. C. L. R. James, *The Black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution* (London: Penguin Books, 2022) and Nesbitt, *Universal Emancipation*, 2008, 3.
19. Popkin, 'The Haitian Revolution Comes of Age,' 2021.
20. See Robbie Shilliam, 'Race and Revolution at Bwa Kayiman', *Millennium* 45, no. 3 (2017): 269–92. <https://doi.org/10.1177/0305829817693692> for an account of the Haitian Revolution, particularly its genesis, within a Vodou cosmology. See also Sudhir Hazareesingh, *Black Spartacus: The Epic Life of Toussaint Louverture* (London: Allen Lane, 2020).
21. Jeremy D. Popkin, 'The Haitian Revolution Comes of Age: Ten Years of New Research', *Slavery & Abolition* 42, no. 2 (2021): 382–401. <https://doi.org/10.1080/0144039X.2020.1834279>. Claims of the importance of the Haitian Revolution preclude the recent scholarly consensus Popkin identifies; C. L. R. James introduces it as 'the third great Enlightenment Revolution' in *The Black Jacobins*, 1938 [James, *The Black Jacobins*, 2022]: ix].
22. Philip Kaisary, 'Human Rights and Radical Universalism: Aimé Césaire's and CLR James's Representations of the Haitian Revolution', *Law and Humanities* 6, no. 2 (December 2012): 197–216. <https://doi.org/10.5235/LH.6.2.197>.
23. See Nesbitt, *Universal Emancipation*, 2008. Philip Kaisary also mobilizes the concept of a 'universal right to freedom from enslavement' in 'Hercules, the Hydra, and the 1801 Constitution of Toussaint Louverture', *Atlantic Studies* 12 (2015): 393-411. <https://doi.org/10.1080/14788810.2015.1072678>.
24. James, *The Black Jacobins*, 2022
25. Ibid., ix.
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29. Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston, Mass.: Beacon Press, 1995). See also: Reinhardt (2005), Bhambra (2015, 2016, 2020), and Getachew (2016) for historiographical commentary on the disciplinary stakes of excluding the Haitian Revolution.
30. Popkin, 'The Haitian Revolution Comes of Age,' 2021, 382.

31. See, for example, Nesbitt, *Universal Emancipation*, Susan Buck-Morss' *Hegel, Haiti, and Universal History* (Pittsburgh, Pa.: University of Pittsburgh Press, 2009), or Louis Sala-Molins' *Dark Side of the Light: Slavery and the French Enlightenment* (Minneapolis: University of Minnesota Press, 2006).
32. See, for example, Neil Roberts, *Freedom as Marronage* (Chicago: University of Chicago Press, 2015) for a conceptualisation of freedom through its opposition with slavery.
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34. Illan rua Wall, *Human Rights and Constituent Power: Without Model or Warranty* (Abingdon: Routledge, 2012). See also Philip Kaisary, 'The Haitian Revolution and Socio-Economic Rights.' in *Social Rights and the Politics of Obligation in History*, eds Steven L. B. Jensen and Charles Walton, 82–98. *Human Rights in History*. (Cambridge: Cambridge University Press, 2022). doi:10.1017/9781009008686.005.
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43. Buck-Morss, 'Hegel and Haiti', 2000, 821.
44. Ibid.
45. 'Although abolition of slavery was the only possible logical outcome of the ideal of universal freedom, it did not come about through the revolutionary ideas or even the revolutionary actions of the French; it came about through the actions of the slaves themselves.' Buck-Morss, 'Hegel and Haiti', 2000, 833.
46. Shilliam, 'Race and Revolution', 2017.
47. Dubois, *Avengers of the New World*, 2005.
48. Wall does not argue that the Haitian Revolution and the Enlightenment are mutually exclusive categories; Sala-Molins also argues for the constitution of the Enlightenment by enslaved people.
49. Dubois, *Avengers of the New World*, 2005.
50. Kaisary, 'Human Rights and Radical Universalism,' 2012.
51. Ibid., 208.
52. Ibid., 199. Emphasis original.
53. Nesbitt, *Universal Emancipation*, 2008.
54. Ibid., 3-4.
55. Ibid., and Roberts, *Freedom as Marronage*, 2015.
56. Kaisary, 'Hercules, the Hydra', 393.
57. Ibid.
58. Popkin, *A Concise History*, 2010, 107.
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### **Notes on contributor**

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