

“Inherent Vice”: Marine Insurance, Slave Ship Rebellion and the Law’

Abstract

Reparations activism has forced many large multinational insurance corporations to disclose their early profiteering from underwriting slavery and the slave trade. This paper further contributes to the reparative project of tracing slavery’s occluded legacies by analyzing aspects of the development of British, French and American marine insurance law in response to shipboard rebellion in the transatlantic slave trade, and the American ‘domestic’ maritime slave trade. It explores the ways in which marine insurance developed and adapted its ancient legal concepts – notably, the concept of ‘inherent vice’ - to the requirements of commodifying life for the purposes of modern slave trading. This history further illuminates the conceptual lineaments and practices that were involved in the slave trade’s processes of dehumanization but it also highlights the ways in which marine insurance lawyers, in the face of shipboard rebellion, were compelled debate not only the humanity of the enslaved but their desire for freedom. In this context, the archive of marine insurance offers an unexpected route into the history of resistance to slavery.

Keywords: marine insurance, transatlantic slave trade, insurance law, slave ship rebellion, resistance, reparations, inherent vice, the *Creole* mutiny.

The question of how we can further and more concretely specify the multiple legacies of transatlantic slavery is currently at issue both inside and outside the academy. The campaign for slavery reparations has been reactivated and the extent of contemporary human trafficking is raising questions about the legal history of enslavement and its afterlives. At the same time, the memorialization of Atlantic slavery is taking shape but in the context of an increasingly reactionary set of public discourses about racial justice. In short, questions of how to relate the imperial past of slaving – the forced transportation of twelve million Africans to the New World between the sixteenth and nineteenth centuries - to an uneasily multicultural present is the subject of raw and contested public debate in a variety of ways and places. Most broadly, the conjuncture of these current concerns seem to be coalescing around a set of interrelated questions concerning the historical construction of ‘race, the global production of labour, the formation of cultural identity and the shifting meanings of freedom.

The question of how we define, and chart, slavery’s legacies is highly charged

not least in intellectual, political and historiographical terms. The material long-term consequences of slavery, which can be traced in economic, political and institutional terms, are dialectically related to the ways in which slavery shapes historical forms of collective memory. The first set of issues includes critical investigations of the historical making of 'race' and the ways in which its meanings are expressed in histories of exclusion, disenfranchisement, economic and educational marginalization and legal inequality. These histories have their origins in slavery and continue to be manifest – albeit in different ways and forms - around the Atlantic world and beyond.¹ The second set of questions have to do with the different ways in which the memory of slavery has been imagined, represented and mobilised in different places.

The critical relationship between historical inheritance and cultural memory is, perhaps, most evident in the context of the recent – now Atlantic wide – reparations campaigns. Here, conceptions of trauma and healing on the one hand and political critique and material redress on the other collide. While the demand for reparation has a long history, it is receiving unprecedented publicity right at the moment.² Finding ways to propel history and cultural memory into the adversarial sphere in order to make legal arguments about the liability of corporations, institutions and states has been a key component of the recent campaigns. These challenges have been bound by legal discretion but they have also served to open up wider – and forceful - arguments about the nature and meaning of historical and moral debt. In this sense, as David Scott has put it recently, the current reparations argument has the potential to 'redescribe the past's relation to the present' in ways that highlight the relationship between 'debt' on the one hand and 'theft' on the other. By demonstrating that debt and theft are 'internally, not accidentally, connected', the call for reparation demands that slavery be 'fully integrated into the story of the making of the modern world'.³

One of the ways of securing the notion of a concrete legacy is to engage in historical research projects that attempt to ‘trace the money’. For example, a decade ago, African American academics began to research the extent to which many of today’s multinational corporations have their foundations in slavery especially, banks, railroad and tobacco companies and insurance companies. More recently, the British based *Legacies of British Slave-ownership* research project has mined, and made publicly accessible, the records of the Slave Compensation Commission, instituted in 1833, to organize the payment of the £20 million paid to British slave owners on the ‘loss’ of their property as a result of the British Emancipation Act. Their research is enabling the delineation of a much more nuanced picture of not only the private wealth built on slaving but of the subsequent post-emancipation trajectories of monies acquired and funneled into nineteenth century businesses such as banking, railroads and insurance.⁴

The landmark lawsuits, launched against American corporations (financial, railroad, tobacco, insurance and textile) and fought between 2002 and 2007 have since failed or stalled but they stimulated widespread public debate and provoked significant reaction.⁵ These cases, and the disclosures and apologies that they elicited, have become milestones in the ongoing argument for reparations, an argument that participates, at a historiographical level, in a culture of catastrophe, debt, and compensation in which, ironically enough, financial insurance is itself central.

The fact that several of today’s large insurance companies – for example, Royal and Sun Alliance, AIG, New York Life, Aetna, and Lloyd’s - can trace their lineages back to the days of slavery is probably unsurprising. The eighteenth century ‘commercial revolution’ coincided with the take off of modern finance capitalism. Although already long established, the further development of marine insurance in

this context, in part, helped to organize and stabilise the terms for empire building and it quickly took on a moneymaking, capital accumulating, logic of its own.⁶ That it was extended, therefore, to help smooth the nerves of the thousands who entered the highly risky but extraordinarily lucrative business of human trafficking and provided a way for others to speculate on the venture at home is also probably not a surprise. The frame of the reparative, however, provokes further questions. What more can the scant and unlikely insurance archive reveal if rubbed against its unpromising grain and contextualized not only within the frames of business history or economic history but in relation to a wider legal, social and cultural context that, as I have suggested, is shaped currently by notions of risk, the promise of compensation and where attributions of value are increasingly measured and understood in monetary terms? How can the historical implication of insurance in the business of transatlantic slavery illuminate our current understandings of personhood, property and human agency? Given our hyper-speculative, hyper-financialised neoliberal contemporary culture and the coercive modes of subjectivity that it constructs for us, to ask questions about the ways in which the transatlantic slave trade contributed to the global spread of finance capital and about how finance capital has managed to colonise human life seem prescient. That European speculators invested in the slave trade through the mechanism of insurance might be a given but on what terms?

As is well known, the transatlantic slave trade was one of the most lucrative but also one of the most risky of all overseas trade ventures during the eighteenth century. As one commentator put it in 1795, “The African commerce ... holds forward one constant train of uncertainty, the time of slaving is precarious, the length of the middle passage uncertain, a vessel may be in part, or wholly cut off, mortalities

may be great, and various other incidents may arise impossible to be foreseen”⁷ How then did traders and investors conceive of kidnapped and forcibly transported Africans for insurance purposes? If it was well known that ‘mortalities may be great’, what exactly did those with a financial interest in slave trading think they might be losing at sea? Were Africans conceived to be property or persons?

The unstable mixture of personhood and property was intrinsic to the legal securing of plantation slavery itself but that instability began well before kidnapped Africans reached American landfall. In other words, it was during the period of transit at sea that Africans were forcibly transformed into the exchangeable commodities that they were understood to be when disembarked in the Americas. As Marcus Rediker has noted, the slave ship was a modern ‘war machine, mobile prison or factory’ that violently produced slaves en route to the Americas. He writes,

in producing workers for the plantations the ship factory also produced ‘race’. At the beginning of the voyage, captains hired a motley crew of sailors who would on the coast of Africa become “white men”. Captains loaded on board the vessels multiethnic groups of Africans who would, in the American port, become “black people” or a “negro race”.⁸

The voyages thus transformed those who made them and they depended on almost inexpressible physical violence. They also depended on conceptual violence. As well as guns, chains and whips, the slave ship’s log and ledger, the bill of lading, and account books were required to produce captives. African bodies were rendered through legally binding documentary practices that converted each one into an exchangeable unit. The numbers and columns of modern accountancy captured life and scaled it into credits and debits. Market calculations, abstraction, measurements

of suffering and rubrics of equivalence all commuted life in to mere matter.⁹ The merchants also calibrated life and death into a mathematical equation when they took out insurance policies to cover their voyages.

In order to track something of this latter process, we need to turn, in part, to legal history, and to note the law as it developed in the aid of empire and globalising commerce. No new concepts were developed in common law to deal with this new branch of modern maritime trade, ancient aspects of customary commercial law – or what was known as the Law Merchant - were simply co-opted for the purposes of transatlantic slave trading.¹⁰ The commercial concept that enabled marine insurance to be extended to captive Africans was ‘inherent vice’. The evocative term has an ancient history in maritime insurance law and it remains fundamental to the process whereby the risks associated with transporting goods are adjudicated for financial reasons today.¹¹

‘Inherent vice’ refers to the essential capacity of a commodity to perish or deteriorate. Insurers have never, and still do not, underwrite losses that are deemed as caused by the ‘inherent vice’ of a commodity. So for example, while in maritime transit, wine casks might leak, tobacco might dampen, wheat has the potential to mold, fruit to ferment, and iron can weaken. The oldest marine ordinances, dating back to the medieval period, devoted much space to establishing categories of especially corruptible or perishable goods. It is in these parts of the early documents of commercial law, that the boundaries separating things, animals and people were first established and then smudged for the purposes and for assigning their insurable value while in transit.¹² During the period of the African slave trade, the legal question of how to adjudicate ship board deaths on the basis of ‘inherent vice’ served to

contain and legitimize this imperative but it also came to be embroiled in what slave traders and speculators did not want to think about too closely or, indeed, to pay for. Unlike any other commodity, Africans could resist.

When deployed in the context of underwriting African cargoes, 'inherent vice' referred to 'natural death'. Fatalities aboard a slaving ship caused by disease epidemics, a lack of nourishment, and sadness unto death or suicide were manhandled together, and understood indiscriminately to be the result of 'natural death' and underwriters would not cover the risks of these things happening. In this sense, the term functioned as a formula of equivalence that legally and actually reduced so many people to so much inherently perishable matter.¹³

In this context, the use of the concept, 'inherent vice' as 'natural death', glossed the link between instrumental reason and violence helping to secure the economic efficiencies for which it was designed and practiced but it also generated wider historically powerful meanings that helped to reinforce the historical making of 'race'. If the majority of those who perished during the Middle Passage were understood to have done so as the result of some innate and invisible defect secreted within their own bodies, then those bodies were - prior to forced embarkation - already marked as not only civilisationally inferior but corporeally flawed. This assumption is reflected in the fact that the despair that killed no matter how slave ship crews tried to prevent it was named. It was termed, *la melancolie noire* by the French, and *banzo* by the Brazilians. British slave ships' surgeons noted that Africans suffered from the lethal effects of 'nostalgia'.¹⁴ In other words, the slave merchant's 'knowledge' contributed to a - racialised - history of madness.

But there are other ways of looking at this history of untold victimhood and obliteration because as traders were well aware, Africans were a very particular type of commodity – one that might have been conceived as having the capacity to perish but also one – the only one - that could fight back. Revolts on board transatlantic slaving ships increased dramatically in the second half of the eighteenth century, with ten per cent of all voyages experiencing an insurrection.¹⁵ On French ships there was on average one revolt in twenty-five voyages.¹⁶ In response to African rebellion, slave traders demanded marine insurance policies that would cover them for losses incurred during an insurrection, underwriters looked for ways to minimize their costs and lawyers began to debate the terms on which such losses might, or might not be, eligible for compensation. It was precisely the recurrence of shipboard revolt that required legal theorists, like slaveholders, to confront the contradiction of slave property, their dual character as human beings and as commodities. Yet they were also forced not only to recognize slaves' humanity but also to consider their desire for freedom.

English marine insurers responded to these issues by taking instrumental steps that altered the extent of their financial coverage. Firstly, they began to refuse to underwrite the entirety of the slaving process; policy clauses excluded 'trading in boats'. The phrase referred to the most incendiary part where Africans were transported from the shoreline to the large vessels moored off the coast. Secondly, they introduced, what we would now call, an 'excess clause'. They would not compensate for insurrection if less than five per cent, or sometimes ten per cent, of the number of slaves held were killed.¹⁷ This form of policy, set out in John Weskett's widely used insurance manual, first published in 1783, became standard in England, largely due to Lord Mansfield's successive rulings, until insuring the slave trade

became illegal in 1807.¹⁸

French underwriters, however, returned to the concept of 'inherent vice'. They looked to extend the reach of the concept so that it applied to losses arising from revolt during the Middle Passage as well as those caused by disease and *la melancolie noire*. If the capacity to violently resist could also be construed as a hidden defect lodged in the very nature of the commodity that they were so keen to underwrite, slave rebellion could be made uninsurable.

In the same year that Weskett published his standardised marine insurance guide, Balthazard-Marie Emérigon, chief advocate in Marseille, published another one that would be used extensively around the Atlantic well into the nineteenth century.¹⁹ If Weskett's *Digest* was designed as a practical and easily accessible condensation of key terms and legal points for all parties who had an interest in foreign trade, Emérigon's treatise was a vast, and extremely thorough, scholarly work that had taken decades to assemble. It is an extraordinary text that traces expertly, and in minute detail, European jurisprudential developments in the context of marine insurance. It is also interlaced with Emérigon's own reflections and, at times, vividly literary discursive interventions. Emérigon made it quite clear that he detested the slave trade and he devoted a chapter of his treatise to the legal issues concerning the 'Death and Revolt of Negros'. Here, he inveighed against the idea that African slave revolt might have anything to do with the essential capacities, or 'natural' qualities of a human being. In navigating his way through the question of the status of lost slaves as a form of property, Emérigon argued that the concept, 'inherent vice', could not be applied to the internal constitution of human beings, and he made a set of remarkable statements in the process. Referring back to Colbert's 'Ordonnance de la Marine' of 1681, he argued that 'la vice propre de la chose' refers to,

the physical corruption that corrodes, spoils and destroys *merchandize* properly so called; and that the words *decay, diminution, deterioration, spoiling, perishing*, commonly used relate neither to the affection of the human mind, nor to the violent struggle produced by the love of liberty.²⁰

Reverting to classical injunction, he then stated,

When one takes Negroes on board, they are one's enemy, for as the Scythian ambassadors said to Alexander, there is never friendship between a master and slave, in the midst of peace the right of war still subsists. The insurers of a vessel embarking on a slaving voyage knows that enemies will be brought on board and, who, by their actions may cause the loss of the ship: an insurrection is always a peril of the sea.²¹

Emérigon's assertion, that shipboard revolt was to be understood as politically targeted and fully appropriate resistance, meant that the losses sustained in such an event should, for insurance purposes, be automatically covered by a standard marine policy that included attacks by 'enemies'. More generally, his statements rendered slavery historical, contingent, and certainly not essential. Perhaps unsurprisingly, subsequent French marine insurance lawyers took issue with Emérigon's dismissal of the applicability of 'inherent vice' to cases of insurrection in the transatlantic trade. Financial implications (for underwriters) aside, Emérigon's intervention removed African captives from the generic list of things that could be categorized simply as

perishable cargo, and thereby exposed the practice of modern slave trading for what it was.

In 1810, the French lawyer, Jean Julièn Estrangin, explicitly countered Emérigon's reasoning while re-considering the things for which an underwriter was not liable. He re-asserted that losses accrued by the 'natural death' of 'animals or negros' could not be compensated, and that the exception included the latter's death by despair or suicide because both eventualities were arrived at by 'la nature ou la vice de la chose' or sometimes by the master's negligence. He noted that it was inevitable that slavers would embark 'men' who may perish because of their despair or by suicide as these were ways of escaping enslavement and the treatment that they experienced aboard ship. In order to diffuse Emérigon's misplaced politics, he also pointed out that it was inevitable that African captives would rise up. For Estangin, all the 'inevitable' were analogous: death from revolt *and* despair should be equally attributed to the 'vice' or 'la caractère de la chose' and, as such, charged to the ship owners unless other particular causal circumstances could be found.²²

In 1827, Emérigon's treatise was re-published by Pierre Sèbastien Boulay-Paty. He also inveighed against Emérigon even though the French government had outlawed the transatlantic slave trade, and thus banned its legal insurance, in 1818. It is difficult to be certain why Boulay-Paty bothered with the intervention, given that the legal issues were no longer applicable. Memories of the Haitian Revolution, however, were fresh in the 1820s while the continuing French slave trade remained an unresolved problem and the subject of contested public debate.

Despite the fact that Emérigon's argument was, in effect, no longer relevant, it seems that his comments required a response. After all, he had, in a few brief words, punctured the idealized rules of commerce by transforming enslaved Africans into

legitimate defenders of their freedom against imperial tyranny. Moreover, his classical reference had laced African suffering with republican dignity. In these terms, acts of rebellious self-destruction on the violent fringes of Empire were stoical and patriotic suicides rather than as barbaric depravities or heathen sins.

In annotating Emérigon's championing of the enslaved's right to 'liberty or death', Boulay-Paty wrote that, 'the Stoics allowed the suicide of their sage', though the 'Platonists say that God gives you life and you must not take it without his permission,' Envisioning captive Africans as so many water-borne and cowardly Catos, he went on to assert, '[t]he so-called heroism of the Stoic was weak and desperate. He gave up his life to avoid the stomach-ache which he did not have the courage to endure'.²³ In legal terms, these pointed annotations were superfluous. Boulay-Paty agreed with all other previous experts that African death from despair or suicide *and* revolt should be excepted on the basis of 'inherent vice' or pathological defect. All these causes of death stemmed from the 'same affections of the soul' and all were 'products of the desire to escape slavery': they were born in the 'caractère de la chose'.²⁴

So emerging from the archive of marine insurance law, entangled in the forms of monetary value and profit, and propelled by the actions of enslaved rebels, came the profoundly modern philosophical and political question – how is the impulse to defend human freedom to be understood? Was it an essential or innate capacity attributable to all humanity? If it was, could it be deemed as an 'inherent vice'? Did this 'capacity' have to do with human nature or second nature? Why did this kind of reflection matter? It came to matter because, as the debate between the French lawyers indicates, the question of whether one could legally and financially underwrite the consequences of ongoing violent resistance to enslavement – provoked

by the African captives themselves - took place as an increasingly effective set of campaigns against slave trading and slavery gathered pace and in a period indelibly shaped by the American, French and Haitian revolutions. In this wider context, the alienating commercial term, 'inherent vice', and the question of whether or not it could be applied to human beings, became charged with political meaning.

In 1845, a high profile marine insurance case was heard on Appeal in the New Orleans Supreme Court. It was a dispute over a claim for the so-called loss of a cargo of enslaved African Americans who had not perished, or been killed as the result of their resistance but who had escaped. An American slave ship called the *Creole* had been carrying 135 enslaved African Americans from Virginia to the New Orleans slave markets. It was one of thousands of vessels plying the route as part of the burgeoning 'domestic' slave trade that developed after the Americans formally ended their part in the transatlantic slave trade in 1808. Near the Bahamas, the captives rose up, took over the ship and demanded that it be sailed into Nassau. The British had abolished slavery in 1838 and on arrival, the Africans were eventually – after extraordinary pressure from local Bahamians - legally declared to be free persons.²⁵ The action caused a diplomatic incident between the US and Britain but it also registered as a set of insurance claims for the loss of the American trader's property.²⁶ The *Creole*, like most of the ships operating in the domestic slave trade, was not a dedicated slave-producing machine as the large transatlantic slavers had been. It carried passengers and other cargo – tobacco in this instance – as well as captives. Security was lax despite the financial value of what was aboard.

The traders had covered their cargo against standard 'perils of the sea' but not all of them had bothered to insure against the possibility of insurrection.

Therefore, it was in the underwriter's interest to argue that the uprising had been the cause of the trader's loss rather than subsequent 'British interference'. Again, no new legal concepts had been developed in commercial law to support a domestic maritime slave trade. American underwriters drew on European legal conventions – notably, from the English and French marine traditions - that had long been used in the transatlantic trade. The debate about the applicability of the marine insurance term, 'inherent' vice' to forcibly trafficked people exploded in the middle of the hearing. The lawyers for the insurance company seized on the concept in order to appeal to the universal and innate human impulse for freedom. In an extraordinary brief, given the antebellum context in which they were arguing, they claimed that the slave owners should not be compensated because they had ignored a fundamental truth when fitting out and prosecuting the voyage: that the 'nature of the slave' was marked by an 'ever wakeful and ever active longing after liberty.'²⁷

In an attempt to avoid the attribution of their loss to the mutiny, the trader's lawyers raised Emérigon's objections to the relevance of 'inherent vice' in relation to human beings. But they were not prepared to follow through with the terms of Emérigon's argument. They could not countenance the captives as legitimate enemies. They argued for their criminal agency instead of their political agency by suggesting that their loss had been caused by piracy; attack by pirates was a risk that was covered by standard marine insurance policies as one of the 'perils of the sea'. The defendants made short shrift of Emérigon's argument as illogical, and they cited Estrangin and Boulay-Paty in their argument. They also dismissed the notion that slaves could turn pirate. They argued that the slaves had not been motivated by plunder but by the 'mere desire of liberty'. Moreover, the policy covered 'external attack' and 'the carrying off of the slaves by pirates, not the case of the subject matter

of the insurance itself assuming a piratical character.’²⁸

The underwriters won the Appeal case although not on the basis of the ‘inherent vice’ argument in the end. For Judge Bullard, there was insufficient official evidence to confirm that the British had ‘interfered’ in Nassau beyond acceding to the demands of the American Consul who had been present when the vessel entered the harbor. He concluded that ‘the insurrection of the slaves was the cause of breaking up the voyage, and prevented that part of the cargo, which consisted of slaves, from reaching the port of New Orleans’.²⁹ In his summing up, however, he returned to the concept of ‘inherent vice’ in order to dismiss its clearly incendiary potential in the context of slave ship rebellion by attending to local conditions. In this sense, he sought to affirm the legitimacy of the American ‘domestic’ slave trade by contrasting it to the outlawed transatlantic trade, and the ‘types’ of captives at issue in each case. He suggested that there existed an essential difference between enslaved Africans and enslaved African Americans. The application of ‘inherent vice’, he said, was not ‘unreasonable’ with regard to Africans who fought back during the Middle Passage, as a consequence of their being ‘reduced for the first time to a servile condition, and when their resistance might be regarded as anything but criminal.’³⁰

Two of the *Creole*’s insurance policies had covered insurrection, and the ruling meant that the insurers were liable for these losses. The lawyers took up the Judge’s comments as grounds for demanding a re-hearing to see if they could reverse the decision. In their brief, they took explicit objection to the Judge’s historicizing comments because they threatened to cancel the abstractions that the concept of ‘inherent vice’ supported. These were abstractions designed to transcend geopolitical boundaries in the name of protecting mercantile profit, and which captured for financial purposes the durabilities, or otherwise, of valuable slaves. For them, the

essential origin of the cause of the loss was at issue. The morality, legality or the geographical place of the 'cause' was therefore irrelevant.³¹

Judge Bullard threw the application for a re-hearing out. He was not convinced by the lawyer's argument that 'inherent vice' was a universal concept. He did not think that it could be applied to the *Creole* at all. In fact, he took up Emérigon's original objection to the idea that the spirit of revolt could be construed as a kind of pathologised defect in the slave though indirectly.³² The concrete issue for him was the fact that only nineteen of the full cargo of captives had engaged in the mutiny. He stated that, 'however plausible it may appear to apply to those few, the principle that relates to the natural decay or self-combustion of the subject matter insured, we do not clearly perceive how it can apply to others who remained passive.' He concluded, '[o]n the contrary, we think, their forcible resistance to the authority of the master of the vessel on the voyage, was a peril within the policy.'³³ With these final words, Bullard, in line with Emérigon's reasoning, loosened the case from a commercial legal structure in the which the nature of slaves, construed as commodities, was at stake, and recognized their act as mutiny and its agents for what they were – human beings.

In order to protect their interests, eighteenth and nineteenth century underwriters and their lawyers adopted an ancient, and mobile, maritime concept, 'inherent vice', but then had to grapple with it in the attempt to 'account' for the insurgency of what needed to be construed as a transportable commodity. Consistent and ongoing resistance within the Atlantic slave trades, forced the concept to unfold in strange ways: insurers used it to argue away the bases of their profit-making in order to secure their profits, turning abolitionist when it suited them insofar as they argued for the essential humanity and agency of the commodities that brought them

their business. On the other hand, slave merchants seeking recompense for their bloody adventures were forced to acknowledge their reified cargos as fugitives, pirates, freedom fighters, and insurgents. Nobody had asked the enslaved aboard the *Creole* for their version of the uprising: their voices were inadmissible in law. Moreover, no historical record exists of their fate once they disembarked as self-emancipated men and women and disappeared into the Atlantic vortex. Nevertheless, their spectacular actions left a wake of economic and legal chicanery swirling around the macabre concept of ‘inherent vice’ and around the nature of human property.

The marine insurance archive provides evidence of what needed to be kept silent. In a sense, it can be seen as little more than an accumulation of silences. Nevertheless, it offers rich material if read against its unpromising grain, and pitted against its antithesis, the archive of the revolutionary Black Atlantic. Doing so opens up the legacy of the transatlantic slave trade *and* resistance secreted deep within the historical contours of modern speculative finance capitalism and its contemporary practice. The implication of the modern insurance industry in the history of slaving is enabling new ways of tracking and representing the profits of slavery thereby shaping and energising the contemporary demand for reparation. The aim here has been to shed some light on how that legacy helped to yoke our modern meanings of commerce, commodity and civility together. The concept of ‘inherent vice’ remains central to the underwriting of all transportable goods. It was key to a 1938 Baltimore insurance case concerning a cargo of bananas that had perished as the result of a stranding. A legal precedent, *Tatham v. Hodgson* (1796) was cited in the final ruling.³⁴ No further comment was made about the fact that this was an English case brought not about fruit but for a cargo of 168 kidnapped Africans, two thirds of who

had died during a horrifically long Middle Passage.³⁵ That case is a stark reminder that the marine insurance business sought to profit from death and not from life. The case of the *Creole* complicates that legacy. By the last decades of the eighteenth century, African captives determined to resist their fate through shipboard rebellion had already forced the question of whether a captured African – *en route* to his or her life of enslavement – could be the object of insurance, and if so on what terms. The question demanded an acknowledgement of human agency, however circumscribed, glossed or rationalized. It continued to disturb the commercial legal structures that had long supported commercial trading in enslaved peoples well into the nineteenth century, and even beyond. In this sense, exposing the place of slavery in the development of financial insurance contributes to, what we might call ‘reparative history’.

¹ Two notable recent examples of tracing material legacies of ‘race’ and slavery are Ta Nehisi-Coates, ‘The Case for Reparations’, *The Atlantic*, (June 2014), at <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/> and Michael Ralph, “Life ... in the midst of death”: Notes on the relationship between slave insurance, life

insurance and disability', *Disability Studies Quarterly*, (32, 3, 2012) at <http://dsq-sds.org/article/view/3267/3100> (accessed, February 10 2015.)

² The recent call for reparations by the CARICOM nations is fuelling the current campaign. See http://caricom.org/jsp/pressreleases/press_releases_2013/pres285_13.jsp (accessed February 14 2015); Hilary McD. Beckles, *Britain's Black Debt: Reparations for Caribbean Slavery and Native Genocide* (Kingston, University of the West Indies Press, 2013).

³ David Scott, 'Preface: Debt, Redress', *Small Axe*, (18, 1, 2014), pp. vii-x, p. ix.

⁴ See the *Legacies of British Slave-ownership* project at <http://www.ucl.ac.uk/lbs/>. Also, Catherine Hall et. al. (eds.) *Legacies of British Slave-ownership: Colonial Slavery and the Formation of Victorian Britain* (Cambridge, Cambridge University Press, 2014).

⁵ For a comprehensive collection of documents relating to these lawsuits see <http://business-humanrights.org/en/slavery-reparations-lawsuit-re-usa#c9314> (accessed February 14 2015).

⁶ Joseph Inikori, *Africans and the Industrial Revolution in England: A Study in International Trade and Development* (Cambridge, Cambridge University Press, 2002), pp. 314-361; A.B. Leonard, 'Reassessing the Atlantic Contribution to British Marine Insurance' in D'Mariss Coffman et. al. (eds.), *The Atlantic World* (London, Routledge, 2015), pp. 531-545.

⁷ Eric Williams, *Capitalism & Slavery*, (Chapel Hill, NC, 1994) p. 38.

⁸ Marcus Rediker, *The Slave Ship: A Human History* (London, John Murray, 2007), pp. 9-10.

⁹ Stephanie Smallwood, *Saltwater Slavery: A Middle Passage from Africa to American Diaspora* (Cambridge, Mass., Harvard University Press, 2007), pp. 33-64.

¹⁰ For the historical consolidation of the Law Merchant see, Lucy Sutherland, *Politics and Finance in the eighteenth century*, (London, The Hambledon Press, 1984), pp. 26-31; For the relative silence about transatlantic slaving within legal development more generally see Jonathan A. Bush, 'Free to Enslave: The Foundations of Colonial American Slave Law', *Yale Journal of Law and the Humanities*, (5, 1993), p. 443.

¹¹ Howard Bennett, *The Law of Marine Insurance* (Oxford, Oxford University Press, 2006), p. 231.

¹² Nikolaus Magens, *An Essay on Insurances*, Vol. 1 (London, 1750), p.10.

¹³ John Weskett, *A Complete Digest of the Theory, Laws and Practice of Insurance*, (London, 1781), p. 525.

¹⁴ Hugh Thomas, *The Slave Trade: The Story of the Atlantic Slave Trade, 1440-1870* (New York, Simon & Schuster, 1997), p. 401; Ana Maria Galdini Raimundo, 'Escravidão e nostalgia no Brasil: o banzo', *Revista Latinoamericana de Psicopatologia Fundamental*, (11, 4, 2008) pp. 735-61; Isaac Wilson in *Observations on the Evidence Given Before the Committee of the Privy Council and House of Commons in Support of the Bill for Abolishing the Slave Trade* (London, John Stockdale, 1791), p. 290.

¹⁵ Stephen D. Behrendt, David Eltis and David Richardson, 'The Costs of Coercion: African Agency in the Pre-Modern Atlantic World', *The Economic History Review* (54, 3, 2001), pp. 454-476.

¹⁶ Christopher Miller, *The French Atlantic Triangle: Literature and Culture of the Slave Trade* (Durham, Duke University Press, 2008), p. 52.

¹⁷ Under the heading, 'Africa' rather than 'Slaves', Weskett records the following stipulation: 'Ships and merchandizes from England to the coast of Africa, and at and from thence to our colonies in the West Indies, &c. are usually insured with the following clause in the policy, viz. 'free from loss or average, by trading in boats; and also from *average* occasioned by *insurrection*, if under 10 *per cent*'. Weskett, p. 11.

¹⁸ The financial records of the Bristol slave-merchant, James Roger, show that the 'excess clause' was standard in the early 1790s. National Archives (London), C107/3, 107/13, 107/15.

¹⁹ Balthazard Marie Emérigon, *Traité des Assurances et des contrats a la grosse* (Marseille, 1783). The text was highly influential in English, French, and American insurance practice, although it was not translated into English until 1850. See Samuel Meredith, *A Treatise on Insurances by Balthazard Marie Emérigon* (London, Henry Butterworth, 1850). This event was celebrated in the American law journal, *The Monthly Law Reporter*, where it was stated that 'no foreign treatise has ever engaged half the influence upon American law, which has been enjoyed and exerted by the *Treatise on Insurance* of Balthazard-Marie Emérigon.' *13 Monthly L. Rep. 325* (1850-1851) *Notes*, p. 1.

²⁰ Emérigon, p. 394. [my translation]

²¹ Emérigon, pp. 394-5. [my translation]

²² Jean-Julien Estrangin, *Traité du Contrat D'Assurance de Pothier avec un Discours Préliminaire, des Notes, et un Supplément* (Marseille, 1810), pp. 106-7. [my translation]

²³ P.S. Boulay-Paty (ed.), *Traité des Assurances et des contents à la grosse d'Emérigon* (Charles Beché: Paris, 1827), p. 394. [my translation]

²⁴ Boulay-Paty, p. 395.

²⁵ For analyses of the revolt aboard the *Creole*, see Howard Jones, 'The Peculiar Institution and National Honor: The Case of the *Creole* Slave Revolt', *Civil War History* (21, 1975), pp. 28-33; Edward D. Jervy and C. Harold Huber, 'The *Creole* Affair', *Journal of Negro History* (65, 1980), pp. 196-211; Walter Johnson, 'White Lies: Human Property and Domestic Slavery aboard the Slave Ship, *Creole*', *Atlantic Studies* (5, 2, 2007), pp. 237-263; Anita Rupprecht, "'All We Have Done, We Have Done For Freedom": The *Creole* Slave Ship Revolt (1841) and the Revolutionary Atlantic', *International Review of Social History* (58, 21, 2013), pp. 253-277.

²⁶ For the only sustained analysis of the *Creole* insurances cases to date see Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, Mass., Harvard University Press, 2012), pp. 21-59.

²⁷ 'Thomas McCargo v The New Orleans Insurance Company' in Merritt M. Robinson, *Reports of the Cases Argued and Determined in the Supreme Court of Louisiana*, (New Orleans, 1845), X, p. 277.

²⁸ Robinson, *Reports*, p.260. Despite the Judge's efforts to police the parameters of the case, lawyers on both sides sought to confuse maritime commercial law with land-based slave law. Although they were not registered in the courtroom directly, the debate about 'inherent vice' may well have reminded listeners of another, well used, set of Louisiana laws governing slave sales. The redhibition laws allowed a buyer to cancel a sale, within one year, if a slave was deemed to have certain 'redhibitory vices'. Absolute redhibitory vices included leprosy, madness and epilepsy. Redhibitory vices of character included committing a capital crime, addiction, theft and running away. For a discussion of Louisiana redhibition see Judith Kelleher Schaffer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, (Baton Rouge and London: Louisiana State University Press, 1994), pp. 127-148. For the ways in which these laws were debated in the courts see Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Courtroom*, (Princeton: University of Princeton Press, 2000).

²⁹ *ibid.*, p. 332.

³⁰ *ibid.*, p. 338.

³¹ *ibid.*, p. 338.

³² *ibid.*, p. 354.

³³ *Ibid.*, p. 354.

³⁴ *Lansa Fruit Co. v Universal Ins. Co.* 303 U.S. 556 (1938). See

<http://www.supremeobserver.com/case-opinion/?id=18865&doc=O#t1> (accessed October 5 2012).

³⁵ *Tatham v. Hodgson* (1796) 6 T. R. 656. For a discussion of the case, see F.O. Shyllon, *Black Slaves in Britain*, (Oxford, Oxford University Press, 1974), pp. 207-8.