

Freedom at sea

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The Amistad case deals with an 1839 slave-ship rebellion seeking to reverse the middle passage. The rebels reimagine freedom in counterpoint to liberal freedom and legal authority—a domain that intertwined emancipation and enslavement, the age of liberty and the Black Atlantic, the distance between continents and tides binding them together, redemption of American humanism and attacks on Black humanity.

In 1839, just off the coast of Cuba, 53 men and women who, in the previous six months, had been captured and transported across the Atlantic, bought and sold in a Havana slave market, and were being taken for work on a sugar plantation, broke free of their chains, killed the captain, and took control of *La Amistad*.¹ They sought to direct the ship back across the Atlantic, heading East to Sierra Leone, reversing the middle passage. However, a series of storms and maritime misadventures thwart their plans, and instead they land on the American coast, are taken into custody by American officials and are to have their fate decided by American courts—courts that plot the denouement to this drama with a grammar of liberty and servitude, dissent and dispossession.² The court's disposition towards the bodies at (and of) law are shaped in its fraught

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1 In addition to the Amistad case record and the extensive secondary literature on the case, I also draw on the Steven Spielberg film on the Amistad rebellion and Robert Hayden's poem the *Middle Passage* as well as his larger oeuvre.

2 The infamous slave ship is, of course, the crucial stage for the drama of the slave trade and rebellion against what WEB DuBois dubbed 'The most magnificent drama in the last thousand years of human history': WEB DuBois, *Black Reconstruction* (Oxford UP, 2014) 727. For more on the slave ship and the Amistad rebellion, see S Smallwood, *Saltwater Slavery* (Harvard UP, 2007); M

navigation of the relationship between the abolition of the international slave trade, maritime law determining property rights to salvage at sea, Spain's claims to the Amistad prisoners and the American constitution. As the case travels through the American court system, the Amistad rebels are declared juridically free, and a significant portion of the ship and its cargo pronounced the property of the Americans who took custody of the ship.³

Coming in the wake of the Atlantic revolutions in America, France and Haiti, this case takes place in an era often referred to as the 'Age of Liberty'. The progeny of these revolutions include the abolition of the Atlantic slave trade but not the abolition of slavery; the jurisdictional issues that follow determine and delineate liberty in the Amistad case.⁴ As the case unfolds, the ocean washes ashore meanings, dispositions and governance mechanisms, intertwining the themes of life and death, emancipation and enslavement, jurisdiction and extra-legality, the distance between continents and the tides that bind them together, the redemption of American humanism and the attack on Black humanity. When we foreground slavery and the slave trade, freedom is at sea.

This paper seeks to unpack the domain of liberty authorised by 'the law' in the Amistad case, to better map its costs and exclusions including the lives and freedoms that can never be adequately reimagined or redressed. Grappling with the scale of those costs and exclusions entails grappling with the inevitable failure of redress, not only redress in court but redress within the terms of liberal freedoms.⁵ This jurisprudence of failure is also a project then of interrogating, parochialising, and relativising those registers of liberal freedom and the law's entanglements with it, while attending to the Amistad rebellion as an effort to reimagine freedom in that breach.⁶

Rediker, *The Slave Ship* (Penguin, 2007); M Rediker *The Amistad Rebellion: An Atlantic Odyssey of Slavery and Freedom* (Penguin, 2012).

- 3 For Judge Joseph Story's opinion laying out the resolution of the Amistad case in the US Supreme Court in January 1841, see *The United States, Appellants v. The Libellants and Claimants of the Schooner Amistad, Her Tackle, Apparel, and Furniture, Together with her Cargo, and the Africans Mentioned and Described in the Several Libels and Claims, Appellees* 40 US 518 (1841).
- 4 This is one of two companion pieces foregrounding racial capitalism in analysing the abolition of the international slave trade. The sister article probes contemporary international criminal legal historians' depiction of the tribunals 'implementing' the abolition as the origin story of international courts, and as heralding ICL's colour-blind humanist future. See V Nesiah 'Crimes Against Humanity: Racialized Subjects and Deracialized Histories', in I Tallgren & T Skouteris (eds), *The New Histories of International Criminal Law: Retrials* (Oxford UP, 2019) 167.
- 5 As Saidiya Hartman puts it: 'The failure of full recovery or recompense, the inability to fully occupy an imagined prior condition or to bridge the divide of the split subject, is what drives redress and deems it inadequate.' S Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (Oxford UP, 1997) 75.
- 6 This paper foregrounds the plural conceptions of freedoms that jostle against each other in the context of a rebellion that exceeds and contests the liberal humanist investments of the 'age of

The leader of the insurrection was a young man named Senge Pieh⁷ who was born in 1813 in the town of Mani in Upper Mende country, part of Sierra Leone—then a British colony.⁸ 40 years later Senge would find himself in Farmington Connecticut. Farmington: today, a dreary suburban enclave; then, host to radical Amistad rebels, the *cause celebre* of American abolitionists.⁹

In 1839 Senge was captured for servitude and forcefully transported across the Atlantic. Three years later, having been declared a free man, Senge would climb aboard a ship named *The Gentleman*, and return to West Africa with American missionaries under sponsorship of the American Missionary Association. For 400 years, the middle passage was, for the majority of Africans, a one-way trip from Africa to the Americas—their status shifting, in the process, from freedom to servitude, from personhood to commodity. Senge's return voyage was thus rare and hard fought; the result of a remarkable legal victory that followed an even more astoundingly victorious slave rebellion.¹⁰

In listening to the negotiation of freedoms in the Amistad case, the poet Robert Hayden becomes my travel companion—training my ear to better heed the plurality of freedoms imagined and reimaged in this journey.¹¹ Hayden's

liberty', including the dominant voice of abolitionism. This paper learns from and thinks alongside the work of Hartman who listens for the insurgent notes in juba, popular dance and song traditions in North American slave communities as 'coded texts of protest' through the white noise of minstrelsy and constructions of black musicality. Ibid 70. In the domain of law, liberal freedoms become a kind of overwhelming static that crowds out the sound of 'other' freedoms.

- 7 Senge Pieh would come to be known as Joseph Cinqué in the US as the drama of the Amistad unfolded. For more on the debates over his biography and post-Amistad trajectory, see J Yannielli, 'Cinqué the Slave Trader: Some New Evidence on an Old Controversy' 10(1) *Common-place* (2009), available at <http://www.common-place-archives.org/vol-10/no-01/yannielli/> (last visited 23 June 2019).
- 8 A Abraham, *The Amistad Revolt: An Historical Legacy of Sierra Leone and the United States* (US Information Agency, 1987) 4.
- 9 In the early 19th century, both sides of the Atlantic saw legal initiatives for the abolition of the slave trade. While slavery was still technically legal in Connecticut it was not a big slave holding state and the abolitionists in Connecticut quickly mobilised with abolitionists in New York and elsewhere to form a support group for the Amistad rebels.
- 10 Senge's rebellion was motivated by a desire for freedom, not the agenda of Christian missionaries; thus when he returned to Africa he came to have a tense relationship with the Missionary Society and was negatively portrayed by some in the mission. As Iyunolu Osagie notes: 'The Africans were good if they were receptive to Christianity and bad if they opposed it. Thus Senge was a bad n*** because he didn't cooperate with the missionary agenda.' IF Osagie, *The Amistad Revolt: Memory, Slavery, and the Politics of Identity in the United States and Sierra Leone* (University of Georgia Press, 2000) 63. On some accounts, Senge is said to have crossed the Atlantic yet again to move to Jamaica. G Thompson, *Thompson in Africa, Or, An Account of the Missionary Labors, Sufferings, Travels, and Observations, of George Thompson in Western Africa, at the Mendi Mission* (Forgotten Books, 2017) [1852] 23.
- 11 R Hayden, *The Angle of Ascent: New and Selected Poems* (Liveright, 1975). With the exception of *The Prisoners*, all the Hayden poems referenced in this article are from this collection. These were originally published with a collection titled *Ballad of Remembrance* in 1962 to much acclaim,

Middle Passage opens up the history of the Amistad in ways that make alternative futures imaginable. He begins *Middle Passage* alerting us to the terrors that lay ahead:

Sails flashing to the wind like weapons,
sharks following the moans the fever and the dying;
horror the compass and compass rose.

Middle Passage:
voyage through death
to life upon these shores.¹²

Hayden makes the compass that rises from being forged in those terrors hover in that indented line 'to life upon these shores'. Thus *Middle Passage*¹³ as well as three of his other poems, including *The Prisoners*,¹⁴ *Frederick Douglass*,¹⁵ and *O Daedalus, Fly Away Home*¹⁶ serve for me as both compass and anchor in following the extraordinary ambitions of Senge, the *Amistad* and the different visions of freedom and unfreedom that propel their story forward.

This article too moves forward with cross-currents in the footnotes that may variously interrupt, complement and circumvent the narrative arc of the main text and gesture to alternative crossings.¹⁷ From a discussion of the Amistad rebellion and the court case in the following section, I then move to a discussion of jurisdiction over legality of the slave trade and slavery from

including winning the Grand Prize at the (Langston Hughes chaired) Dakar World Festival. R Pool, 'Robert Hayden: Poet Laureate' 15(8) *Negro Digest* (1966) 39. The poems I lean on in this article to help me think with the Amistad case are in the last section of *Ballad of Remembrance* and linger with the experience of slavery, beginning with *Middle Passage* where Hayden is also writing about the Amistad.

12 Hayden (1975) 118-23.

13 Ibid.

14 R Hayden, *American Journal* (Liveright, 1982) 18. *The Prisoners* is written towards the end of Hayden's life.

15 Hayden (1975) 131.

16 Ibid 124.

17 As indicated in footnotes above, the methodologies adopted by this essay seek to hone a mode of listening to failure, including to the failures that haunt legal struggles that are ostensibly 'about' liberal freedoms. I may describe this as listening to 'law' in a minor key to indicate its affinity to what Peter Goodrich describes as 'the textual record' of 'minor jurisprudences'—'mixed in genre, being variously in the form of poems, narratives, plays, treatises and judicial decisions. . . . minor jurisprudences or alternative forms of legal knowledge that escape the phantom of a sovereign or unitary law. . . . Within such a history or pantheon of radical sources and practices of law would be included the rebels, critics, marginals, aliens, women and outsiders who over time repeatedly challenged the dominance of any singular system of legal norms.' P Goodrich, *Law in the Courts of Love* (Routledge, 2013) 2.

ocean to land, from state to state and port to port. I conclude with the different currents of resistance that haunt the Atlantic.

Hayden was a poet of Atlantic crossings—Poet Laureate in Senegal ten years before he became the first Black Poet Laureate in America—who looked both east and west when speaking of the shores of the Atlantic. This is double consciousness, doubled still further by the alternative horizons of freedom that are invoked in the cross-currents of the Amistad rebellion—the story of juridical freedom born from the marriage of liberty, trade and property on the high seas, and the story of freedom that is entangled in the ambition and risk of rebellion, of the project of return, of reversing the trip across the Black Atlantic . . . it is a project, one may say, to make freedom a question.

THE AMISTAD REBELLION¹⁸

In early 1839 Senge was captured and sold to Pedro Blanco, a Spanish slave trader.¹⁹ Blanco purchased Senge Pieh and other men and women from across Sierra Leone, Liberia and Guinea until he had a profitable number for the trip across the Atlantic.²⁰ In April of that year, they sailed from Fort Lomboko, a slave-trading ‘factory’ in Sierra Leone on the *Tecora*, a Spanish slave ship. The *Tecora* took them from the Galinas coast across the Atlantic to Havana, Cuba. Put on sale in a Havana slave market, Senge Pieh and 48 others were purchased by Jose Ruiz, a Spanish sugar plantation owner, for \$450 each to work in Puerto Principe, another port city in Cuba.²¹ Pedro Montez, another Spaniard bound

18 One could say that the story of Senge Pieh began almost four centuries earlier when Pope Nicholas V issued *Dum Diversas* in 1452 a papal bull authorising Portugal’s Alfonso V’s conquest and enslavement of ‘Sarcans and Pagans’ (i.e. Muslims and Africans) in the name of human civilization. See *Papal Encyclicals Online*, available at <http://www.papalencyclicals.net/Alex06/alex06inter.htm> (last visited 23 July 2019). This was followed by the 1454 *Romanus Pontifex*, the 1493 *Inter Cetera* and a range of other papal edicts authorising slave trading rights and colonisation to the profit of purse and soul, as allied with humanity, not against it. Almost 400 years later, the terms of this alignment were re-negotiated on board the Amistad.

19 Slavery was abolished across the British Empire in 1838 so the enslavement of Senge was illegal even at the time of capture.

20 The abolition meant that slave trading became both more risky and more lucrative. Merchants like Pedro Blanco were economic beneficiaries; they also became politically powerful through alliances with the Spanish crown and African leaders who fed the slave trade, such as King Siaka who aspired (not without being challenged) for control over the home regions of Senge. See Rediker (2012) 36–37, 46–47.

21 With the decline of sugar production in post-revolution Haiti, Cuba emerged as the world’s largest sugar producer and exploitative sugar production continued in different forms until Cuba’s 1953 revolution. When the Amistad Africans were traded in the Havana slave market, enslaved people of African descent made up 45 per cent of the Cuban population. *Ibid.* 20. The Amistad case and the

for the same port with four African children whom he had purchased, joined him. Chartering *La Amistad*, a Spanish Schooner with a crew of five, Ruiz, Montez and their 53 newly purchased men, women and children, set sail for what was expected to be a three-day trip to Puerto Principe in June 1839.

En route to Puerto Principe, Senge managed to unshackle himself and find the knives that were being transported for sugar plantation work. Using this stash of weaponry he and three other men led the other captured men and women in a revolt against their slavers.²² They killed part of the crew but spared the lives of Ruiz and Montez on condition that they navigate them back across the Atlantic to Sierra Leone. Yet a combination of navigational subversion by their Spanish captives and stormy winds threw the Schooner, battered and bruised, up the American coast. Sighted off Montauk Point, near Long Island by an American brig, *The Washington*²³ captained by Thomas Gedney, the formerly enslaved soon became the newly captured as Gedney and his crew commandeered the ship and towed her back to New London, Connecticut and contacted the US Marshall. At the request of the Marshall, US District Judge Andrew Judson held a preliminary hearing and with a judgment reflecting the racially-calibrated ordering of the free and unfree, Judson ordered the release of Ruiz and Montez and ensured Senge and others were taken into custody for trial by the Federal District Court.

The Amistad Africans were imprisoned pending trial under colour of two warrants—a warrant of seizure that treated them alongside the ship’s cargo as objects capable of being forfeited as salvage (to the benefit of Gedney and his crew), and a warrant of arrest that treated them as subjects named in a criminal complaint, legal persons capable of criminal offence and liability for mutiny aboard the Amistad. The maritime law of salvage rewarded the salvor of an imperilled ship the economic value of the property saved.²⁴ Gedney filed suit

abolitionists’ call for a sugar boycott went to the heart of the crisscrossing Atlantic trade of sugar and slaves.

- 22 The other three were Faquorna, Moru and Kimbo; yet it is Senge who becomes most identified with the rebellion and, extraordinarily, after Harriet Tubman and Frederick Douglass has become ‘the third most recognizable person of African descent associated with histories of slavery and resistance’. Ibid 1.
- 23 The life and work of *The Washington* map American colonial and slave history. After the Amistad capture it went on to play a role in the Mexican-American war and the annexation of Texas; in the last phase of its life it was commandeered by confederate forces in the American civil war. See ‘Coast and Geodetic Survey Ships: Peter G. Washington’, *NOAA History*, 8 June 2006, available at <https://www.history.noaa.gov/ships/washington.html> (last visited 23 June 2019).
- 24 Admiralty law seeks to incentivise rescue at sea by rewarding persons who assist ships in peril and recover endangered cargo. Assistance and recovery can be treacherous ventures given the risks from piracy and bad weather so the law allows the rescuers to be compensated with a value commensurate to the property saved. The rules regarding salvage were consolidated in an international treaty in

listing his salvage dues for ‘fifty-four slaves, to wit, fifty-one male slaves, and three young female slaves, who were worth twenty-five thousand dollars’.²⁵ The economic value of slaves and would-be-slaves see-sawed between property and personhood in ways that were reflected in the ledgers of salvage awards and insurance claims. Slave owners took out individual life insurance for slaves they deemed to have skills they particularly valued; in other cases they might rely on general property insurance bundling slaves with machinery and other plantation property.²⁶ Gedney likely calculated his salvage dues for the Africans on the *Amistad* on the basis of the \$21,300 insurance taken out by Ruiz and Montez for the men, women and children they had on board; they had also insured their accompanying cargo for approximately double that amount.²⁷ These confounding entanglements of insurance markets and slave markets, object and subject, bondage and freedom, offer a window into the complicated political economy of racial capitalism in the US in the mid-19th Century. The legal geography reflected these economic and political complexities; slavery was legal in some states and illegal in others with varied laws and practices about cross-state enforcement, and varied levels of social mobilisation regarding abolition. While the Federal government had deferred to the states to define their own regimes regarding the legality of chattel slavery, an increasingly vocal movement for federal abolition was gaining momentum. In some cases, these movements worked in solidarity with Black freedom struggles; in others, they crowded them out or ignored them and saw white abolitionists as the face of freedom struggles. These movements with all their diverse strands had strong roots in the North-East and quickly organised to provide legal counsel for the *Amistad* rebels.

1910 titled the *Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea*, which was adopted in September 1810 and entered into force in March 1813, available at <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0780.pdf> (last visited 2 July, 2019). The basic principles of this instrument are extended in a new treaty *The International Convention on Salvage* (1989) 1953 UNTS 165.

- 25 See NOAA Office of Coast Survey, ‘Coast Survey’s Little Known Role in the Case of the *Amistad*’, *NOAA Office of Coast Survey Blog*, 12 November 2014, available at <https://noaacoastsurvey.wordpress.com/2014/11/12/coast-survey-amistad/>. See also ‘*Libel of Lt. Thomas R. Gedney*’, 29 August 1839, National Archives, available at <https://www.docstoc.org/documents/document/gedney-libel> (last visited 6 July 2019).
- 26 For an online ledger of insurance policies taken out by slave owners to protect their commercial interest in slave labour see the *Treasury of Weary Souls* website, available at <https://www.treasuryofwearysouls.com> (last visited 6 July 2019) compiled by Michael Ralph on the basis of an archive of 1300 policies. The website also contains data on the financial firms (many still in business) who profited from the slave insurance market.
- 27 ‘The cargo was insured for \$40,000. Ruiz insured his forty-nine slaves for \$20,000, while Montez insured the four children for \$1,300.’ Abraham (1987) 2.

The story of the Amistad rebellion sparked immediate public interest and became capital for entrepreneurs of various stripes. Within a week of the ship coming into port, the New York Bowery Theater staged a play about the rebellion; a market for artistic depictions of Senge and the other Amistad rebels ensured that Amistad swag spread up and down the East Coast; travelling exhibits carried similar purchase; and finally, the prisoners themselves were exhibited by the jail for daily admission fees.²⁸ As with Steven Spielberg's filmic version of Amistad, the commercial ventures of the time also claimed to be both emancipatory history and enlightened commerce, with goals that entwined pedagogy and profit.

In the Hollywood version of the Amistad story, Senge is the noble savage claiming his humanity through an impassioned interjection into court proceedings. Even while the formal court proceedings are unfolding, Senge stands up and declares:

Give us, us free!

(Opposing Counsel: If we are to have any semblance of order in court ...).

Give us, us free! Give us, us free!

(Opposing Counsel: He cannot keep crying out ...)

Give us free ... Give us, us free! ...

(Opposing Counsel: ... While I am questioning this witness!)

GIVE US, US FREE!

GIVE US, US FREE!

The syntax of Senge Pieh's speech is significant—the linguistic transgression marks a racial one; he should not be here; he is from elsewhere, he is at 'home in Africa'. It is a transgression that marks him as outsider, a foreigner, speaking a language that is alien to him—not just English but the language of a law that is not his, the language of a legal system that renders his freedom contingent rather than axiomatic. The syntax conveys, then, a related ambiguity—is he asking the court to recognise a pre-existing freedom, giving juridical echo to an existential fact? Is that the correct order of recognition? The opposing lawyer invokes order in the court but what is the correct sequence for freedom and its recognition? What would be out of order? Is Senge asking the court to give him and his Sierra Leonean compatriots freedom where it is only the judicial pronouncement that makes it a fact? Or perhaps, he is saying give us to Freetown—transport us back to the capital of Sierra Leone, whose territory

itself is named 'Free' as promise and prefix for jurisdictional rebuke to the Black Atlantic.

In Spielberg's movie, this intervention by Senge is presented as evidence of his humanity (apparently such evidence is needed in Hollywood).²⁹ It is a pivotal moment in turning judicial opinion in his favour; it is by entering the script of liberty that his humanity becomes legible to the court. Thus, soon after this intervention, the judge delivers his ruling proclaiming the Africans from the Amistad as free. The ruling spoke to a freedom and humanity that was so fragile, and a law so powerful, that it could take men and women who had to prove their humanity by performing their liberty, and then render them free subjects by judicial fiat—legally 'human' and therefore endowed with 'freedom, this liberty, this beautiful and terrible thing'.³⁰

The District Court found in favour of the Amistad rebels and declared that their enslavement and trade were in violation of a range of laws and treaties prohibiting the international slave trade.³¹ The court ruled that as freemen the captured Africans had a legal right to use force for their freedom, and that the Amistad men and women had a legitimate claim to be returned to Sierra Leone at the expense of the US government. Following Maritime law's rules on salvage, it also granted Gedney a third of the cargo aboard the Amistad as salvage property. The case was appealed to the Circuit Court, which affirmed the District Court's holding in full. Unhappy with the ruling, the American President Martin van Buren ordered the Connecticut District Attorney to appeal the Circuit Court's ruling to the US Supreme Court, which meant that the Amistad rebels remained in prison in Connecticut for several more months.

John Quincy Adams, counsel for the Amistad rebels in the Supreme Court, reminded the court that, in 1814, the US and Great Britain declared their opposition to the international slave trade in the Treaty of Ghent, and, in addition,

29 In his famous Fourth of July speech Frederick Douglass would ridicule this notion of proving one's humanity. F Douglass, 'What To the Slave is the Fourth of July?', *The Nation*, 4 July 2012 [5 July 1852], available at <https://www.thenation.com/article/what-slave-fourth-july-frederick-douglass> (last visited 23 June 2019).

30 Hayden (1975) 131.

31 These included: *An Act for the Abolition of the Slave Trade Act* passed by Great Britain in 1807, available at <http://www.esp.org/foundations/freedom/holdings/slave-trade-act-1807.pdf> (last visited 6 July 2019); the 1807 *Act Prohibiting Importation of Slaves* that made the importing and exporting of slaves into America a felony from 1 January 1808, available at http://abolition.nypl.org/essays/us_constitution/5/ (last visited 6 July 2019); and the 1817 *Anglo-Spanish Treaty* with each country agreeing to restrict the slave trade into its colonies, available at <http://liberatedafricans.org/history.php?kid=11-11-922850> (last visited 6 July 2019).

that Spain and Great Britain had done so in treaties in 1814 and 1817.³² Furthermore, he noted, in 1815, that the *Congress of Vienna*, representing almost ‘all the Powers of Christendom’, declared that the age of liberty required that the ‘august Sovereigns’ gathered there should seek to end the trade by employing ‘all the zeal and perseverance which is due to so noble a cause’ and communicating such commitments ‘to Europe, and . . . all civilized countries’.³³ While the Supreme Court declined to find the US responsible for returning the Amistad rebels to Africa at US government expense, the Court affirmed the lower court ruling that they were free men and women. Abolitionists celebrated the outcome of the Amistad case as heralding a new era of liberty on the Atlantic.

This legal victory is framed as a success.³⁴ Yet Adams’s navigation towards ‘success’ in his closing argument draws attention to how he artfully locates success in the fault line between justice and liberty. ‘My final reliance for success in this case’, Adams argued, ‘was on this Court as a court of JUSTICE’ by which he means that it is a court that is committed to fundamental principles of legality, and recognises the role of courts in upholding the highest values embedded in the rule of law.³⁵ To that end, he then distinguishes between two lines of argument that were potentially available to advance the cause of the Amistad rebels. On the one hand, there were the arguments he made in court that highlighted how Ruiz and Montes contravened the laws of ‘all civilized countries’—in this case ‘the laws of Great Britain, of Spain, and of the United States’ and the inadequate legality of the papers submitted by Ruiz and Montes.³⁶ On the other, there were arguments that he says he ‘purposely avoided’ that were premised on the Africans’ claims on the basis of ‘first principles of liberty’ which Adams acknowledges ‘might well have been invoked in the argument of this cause’.³⁷ Adams recognises, however, that liberty was the province of whiteness and in the hands of the Amistad rebels

32 ‘Argument of John Quincy Adams, Before the Supreme Court of the United States, in the *Case of the United States, Appellants v. Cinque, and Others, Africans, Captured in the Schooner Amistad, by Lieut. Gedney*, Delivered on 24 February and 1 March 1841’, available at http://avalon.law.yale.edu/19th_century/amistad_002.asp (last visited 23 June 2019) 118-20. For the Supreme Court decision, see 40 US 518 (1841).

33 ‘Argument of John Quincy Adams’ (1841) 118-19.

34 The ruling declared the Amistad Africans free and opened the door to their return to Africa. The case also mobilised and inspired abolitionist groups in the US; it brought home the ban against the international slave trade. In addition, legal victory proved pivotal for the American Missionary Society’s evangelical ambitions for Africa.

35 ‘Argument of John Quincy Adams’ (1841) 134.

36 Ibid 68-69, 92, 122, 134.

37 Ibid 134.

‘self-emancipation’ would struggle to be seen as ‘something other than lawless violence’.³⁸ Ruiz and Montes (whose voices Hayden ventriloquises in *Middle Passage*) express this sense that the emancipation of slaves was a paradoxical subverting of liberty to mean the opposite of what it was:

We find it paradoxical indeed
that you whose wealth, whose tree of liberty
are rooted in the labour of your slaves
should suffer the august John Quincy Adams
to speak with so much passion of the right
of chattel slaves to kill their lawful masters.³⁹

Ruiz and Montes understood that the ‘labor of slaves’ was the ‘strange seed’ that spawned the ‘tree of liberty’. How can right and law be on two sides of this question? Thus Adams’s reading of how the ‘powers of Christendom’ would filter into the Supreme Court decision-making, correctly assessed that ‘success’ relied on justice being adjudicated to uphold legality, not an axiomatic right to liberty. Adams was not confident that the court would recognise that axiom. He concluded instead that the court would find the Africans’ claim to liberty more compelling if it was dependent on the lawful sovereign interests of ‘all civilized countries’, and their attribution of rights through law to all those involved through deliberations in the Congress of Vienna, their agreements through treaty negotiations, and their decisions in legislative decisions to outlaw the slave trade. Thus he frames his case in ways that defer to the Court’s judicious accounting of this legal landscape in assessing ‘the liberty and the life of a large number of persons’ confident that the court is best equipped to give ‘due consideration of all the rights’ at stake.⁴⁰ In finding success by cleaving justice and liberty in this way, Adams renders life and liberty dependent on legality, the liberty interests of the Amistad prisoners become derivative of the sovereign interests of Great Britain, Spain, and the US.

The ‘success’ of Adams’s legal victory is that he offered the court a path to situating its decision not as an alliance with lawless black self-emancipation, but

38 Adams observes that Gedney and other US officials had a racial sympathy with Ruiz and Montes, and a concomitant racial alienation from Senge, Grabeau and his other collaborators whom they saw as ‘savages, heathen barbarians’ with ‘uncouth and barbarous names’. Adams advocates a redemptive white-washing by renaming Senge and Grabeau, as Harmodius and Aristogiton, the Athenian heroes of democracy, to reframe, by association, the Amistad rebellion from ‘lawless violence’ to an uprising against tyranny. ‘They too resorted to lawless violence, and slew the tyrant to redeem the freedom of their country. . . . Cinque and Grabeau are not slaves. Let them bear in future history the names of Harmodius and Aristogiton.’ Ibid 86-87.

39 Hayden (1975) 123.

40 ‘Argument of John Quincy Adams’ (1841) 134.

as lawful respect for the ‘August sovereigns’ of civilized nations; he could not render the Amistad prisoners human except through this legal recognition. As if she were the ironic co-counsel to Adams in the Amistad court proceeding, Samera Esmeir argues that the law ‘must first identify dehumanized subjects to necessitate the resort to its humanizing redemptive power’ to create room for ‘law’s power of constituting humanity’.⁴¹ In the Amistad case, Adams invited the Supreme Court to take up that power; he builds a case, judicious argument by judicious argument, for the court to see its role as the legal representative of ‘all civilized countries’ having a juridical responsibility to redeem the humanity of the Africans in the dock in the name of justice. This required dehumanised Africans, not subjects who were axiomatically free but subjects awaiting that redemptive juridical intervention.⁴² If this juridification constitutes the building blocks of Adams’s success in court, there is a suggestion here that this juridification also presages the domain of failure giving rise to humanitarianism, and arguably, human rights.

PROHIBITION OF THE INTERNATIONAL SLAVE TRADE: JURISDICTION OVER THE HUMAN

Human rights historian Jenny Martinez argues that the mid-19th century court cases on the prohibition of the slave trade were of pivotal importance in birthing human rights and that their significance has been widely overlooked.⁴³ Indeed she sees these transnational courtrooms positioned on both sides of the Atlantic as offering a salutary prehistory to the work of the International Criminal Court today.⁴⁴ Long before the ICC, the ad-hoc tribunals and even Nuremberg, there

41 S Esmeir, ‘On Making Dehumanization Possible’ 121 *PMLA* (2006) 1544, 1547.

42 They do not exist as free prior to their legal recognition: ‘The Law’s power of constitution when it takes over (and it does not always take over), can result not only in new birth but also in past absence; indeed, it must define a prior absence, for otherwise there will be no occasion for the operation of the law.’ *Ibid* 1547. What would the Amistad rebels be if they were not redeemed by the Abolition laws of 1807, without the Treaty of Ghent or the Congress of Vienna—in other words, if they were not in the jurisdiction of what Adams refers to as ‘Christendom’ or ‘Europe, and of all civilized countries’? Their prior state, prior to coming into these redemptive jurisdictions, was then, by definition, unfree. Thus the redemption of the Amistad rebels’ liberty gets intertwined with the colonial and racial logics of ‘Europe, and of all civilized countries’. ‘Argument of John Quincy Adams’ (1841) 118-19.

43 Martinez (2012). For an illuminating discussion of some of the cases that came before the Commissions, including the complex interplay between the legality of the circumstances in which an alleged slave trading ship was apprehended *v.* the legality of the circumstances in which slaves were apprehended, see E Haslam, ‘International Criminal Law and Legal Memories of Abolition: Intervention, Mixed Commission Courts and “Emancipation”’ 18 *Journal of the History of International Law* (2016) 420.

was a network of admiralty tribunals on both shores of the Atlantic that convened hearings, investigating ships hauled in under allegations of illegal slave trading. If the courts determined that these ships were in fact participating in the illegal slave trade, and had been legally apprehended, the courts awarded some portion of the value of their ships and cargo as prize to those seamen or naval officers who brought them in. The treaties, in effect, adapted a prize law regime designed for the capture of enemy ships to the arena of ships illegally trading slaves.⁴⁵ In such cases, where a ship was apprehended legally according to the terms of treaties between European powers, those captured on board for slavery were freed. Despite the declarations of the Congress of Vienna, the international slave trade was not a violation of the law of nations at this point so the mandate and powers of these courts were based exclusively on the terms of the relevant bilateral treaties. The tribunals began to be convened after passage of the Abolition of the Slave Trade Act in Great Britain in 1807, and operated for diverse terms in a range of locales until 1871. Martinez describes their work ‘as enforcing treaties designed to eliminate the transatlantic slave trade’ and celebrates the officers running these courts as unsung heroes who were driven by ‘genuine moral and humanitarian zeal’ for their contribution to ‘the effective suppression of the transatlantic slave trade’.⁴⁶

These were civil tribunals not criminal ones and their value as precedent for contemporary international law is not in the details of their jurisprudence, but in the fact that they focused on the lofty terrain of ‘the human’; this ‘humanitarian zeal’ was the rationale that expanded their jurisdictional compass beyond the nation state. The slave trade, Britain argued, was a ‘crime against the law of nations’ and warranted adjudication by international tribunals. After Britain abolished the slave trade across the British Empire, it leveraged its imperialist might to conclude bilateral treaties with the other (lesser or soon-to-be-lesser) imperial powers of the period to prohibit slave trading. Accordingly, treaties were negotiated and tribunals were instituted in Freetown, Sierra Leone (a British Colony), Havana, Cuba (a Spanish colony), Rio de Janeiro, Brazil (a Portuguese colony) and Surinam (a Dutch colony). After hearing over 600 cases, the Mixed Commissions employed their transnational jurisdiction to

44 For analysis connecting the dots between the juridification of humanity in the mid-19th century Atlantic, and human rights and humanitarianism in international criminal law today, including an extended engagement with Martinez and the mixed tribunals, see Nesiah (2019).

45 In a 19th-century precursor to the contemporary convergence of international humanitarian law and international criminal law, during the period of the Napoleonic wars, the British Navy invoked a provision of the laws of war that allowed wartime search and seizure of ships to determine if there were signs of slave trading.

46 Martinez (2007).

free over 80,000 slaves. Martinez declares the abolition of the slave trade as ‘perhaps the greatest success story in the history of human rights law’.⁴⁷

Until the eve of Abraham Lincoln’s emancipation proclamation, the US refused to convene a hybrid court that would authorise British naval officers’ jurisdiction over American ships. However, as discussed in the previous section, alongside domestic legislative enactments such as the 1807 Act Prohibiting Importation of Slaves, lawyers in the Amistad case invoked arguments analogous to ‘universal jurisdiction’ by invoking multiple legal regimes and a plethora of laws, treaties and proclamations of ‘Europe, and of all civilized countries’ prohibiting the slave trade.⁴⁸ This was, of course, the era where the ‘universal’ was itself predicated on civilizational discourse; the invocation of ‘universal jurisdiction’ could become its own kind of entrapment.

In *The Prisoners*, Hayden describes being trapped by jurisdiction:

Steel doors—guillotine gates—
of the doorless house closed massively.
We were locked in with loss.⁴⁹

Jurisdiction is law’s name for being ‘locked in with loss’. In antebellum America, the fortunes of the Amistad Africans would be partly determined by which harbour the ship was hauled into and the legal status of slavery in that particular state. While the slave trade was illegal across the Atlantic Ocean, the legal regime on land was a jurisdictional Swiss cheese. Slavery was legal in Connecticut in 1839 when the Amistad was towed in, but illegal since 1827 in the New York harbours to the South, and soon to be abolished (by 1842) in the Rhode Island harbours immediately to the north; it would not be abolished in Connecticut until 1848.⁵⁰ State rights—as embedded in the pro-Slavery constitution drafted by the founding fathers of freedom—were intended as the ‘guillotine gates’ of jurisdiction, that ‘doorless house’.⁵¹ However, all along the Eastern seaboard, jurisdiction gets shaped not only by the legal architecture of the formal boundaries of statehood, but also by the ebb and flow of the

47 Ibid.

48 ‘Argument of John Quincy Adams’ (1841) 118.

49 Hayden (1982) 18.

50 Slavery gets abolished in Connecticut in 1848. See ‘Slavery in Connecticut’, *Slavery in the North*, available at <http://slavenorth.com/connecticut.htm> (last visited 23 June 2019).

51 D Walderstreicher, ‘How the Constitution Was Indeed Pro-Slavery’, *The Atlantic*, 19 September 2015, available at <https://www.theatlantic.com/politics/archive/2015/09/how-the-constitution-was-indeed-pro-slavery/406288> (last visited 23 June 2019).

Atlantic Ocean and the interpretation of maritime law in freedom struggles such as that of the Amistad rebels. Thus jurisdiction proved porous, its walls structured through the dialectic between race on land and race at sea, slavery in the plantation and slavery on the ship, the ambitions of national authority and the ambitions of imperial authority.

As noted earlier, a historical irony of the effort to prohibit the slave trade was that chattel slavery was still legal in much of the US. The division between slave-traders and slave-holders, between transatlantic markets and the domestic ones, did important work in zoning the domain of unfreedom onto the ocean, and sanitising slavery on land. Walter Johnson unpacks this ideological work by tracing ‘an imaginary line of self-justification between “slavery”, where slaves were sold only by happenstance, and the “market” where every slave was always for sale’.⁵² This line delineates jurisdiction as not merely an instantiation of different legal domains, but as also connoting the holding of a line vis a vis the contradictions of political morality in that moment. It allowed the southern plantation to be cloaked in gentility, while the brutality of the slave ship was condemned; the line helped contrast the private sphere of patronage from the filthy lucre of the slave market; it is a line that foregrounds the deathly ‘middle passage’ in contrast to slave society on shore.

Moving out from America to the jurisdiction of the Mixed Commission tribunals that Martinez describes, we see ‘guillotine gates’ forged through colonialism’s cartography. These tribunals are located in the global south⁵³ but their judges are appointed by, and their legal authority is derived from treaties between, Great Britain and the other European colonial powers that controlled the territory—thus the court in Brazil is an Anglo-Portuguese Court, the court in Cuba is an Anglo-Spanish Court, the court in Surinam is an Anglo-Dutch Court and the courts in Sierra Leone were run by all these colonial powers and Britain. Thus Africans who were brought before these courts were to have legally legible political subjectivity shaped by whichever ‘doorless house’ had jurisdictional authority. Were they enslaved or free? Was it the law of the land or the law of the sea? And then which land? These mid-Atlantic courts had been authorised to recognise that these were free men and women—‘human’.

52 W Johnson, *Soul by Soul* (Harvard UP, 1999) 27. Also see W Johnson, ‘To Remake the World: Slavery, Racial Capitalism and Justice’, *Boston Review*, 20 February 2018, available at <http://boston-review.net/forum/walter-johnson-to-remake-the-world> (last visited 23 June 2019).

53 The one potential exception was the proposed New York tribunal after the US eventually signed a treaty with Britain in 1862. That agreement would locate Mixed Commissions in New York, Cape Town and Sierra Leone; however the impact of the 1863 emancipation proclamation soon rendered the legality of the slave trade to the US moot.

Later in *Prisoners*, Hayden says:

... I sensed the plea
of men denied: Believe us human
like yourselves ...⁵⁴

Political subjectivity is dependent on a prayer: for this precarious legal recognition is constituted by the enactment of a 'loss' that accompanies the liberty promised in this jurisdiction. When Hayden places a colon after 'of men denied' he is signalling that dehumanisation is a necessary precursor to the clause that follows: 'Believe us human'. The path to humanisation is itself dependent on the backdrop of denial, a dehumanisation born of the symbiosis of juridical and racial hierarchy. The Amistad rebels were not to get a hearing of their peers. Hayden slips 'like yourselves ...' onto the next line to underscore the false equivalence and convey a break between 'human' and 'like yourselves'; a signal that the entreaty to human camaraderie is mindful of the internal hierarchy in the category 'human' that is an ever-present codicil to that deferential genre of humanist prayer.

The image of the supplicant slave praying 'am I not a man and a brother?' was the logo and caption of the *Committee for the Abolition of the Slave Trade* and gets emblazoned on Wedgwood pottery medallions that were sported by those who wanted to signal their support for the cause.⁵⁵ The medallions used Black jasper for the slave praying with chained hands, and white ceramic for the lettering of the entreaty, reflecting the racial distribution of labour between the supplicants and those with the power to hear the slave's plea and grant recognition. The Wedgwood medallion offers a pictorial register of Cinque's performance of the plea and the racial scripts of European and American jurisdiction over their fate that locks slaves into the status of supplicants. In the spectacle staged by the Amistad case, the Supreme Court delivers the Amistad team's legal success as a denouement to this drama. This division of labour between supplicant and judge calls forth what Frederick Douglass described as the 'ridiculous' arithmetic of what adds up to being human in this jurisdiction; it is an arithmetic that needs that racialised mechanics of juridical humanity and deferential prayer for the computation to work.⁵⁶ The

54 Hayden (1982) 18.

55 A Hochschild, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves* (Houghton Mifflin, 2005) 128. Josiah Wedgwood, the Staffordshire pottery magnate, becomes a financial sponsor of the Committee. Worn as pins and pendants the medallion became a fashionable accessory for abolitionists and an early precursor of swag for a cause. Wedgwood's friend Thomas Clarkson, a founder of the Committee for the Abolition of the Slave Trade, celebrated the medallion noting that 'fashion which usually confines itself to worthless things was seen ... promoting the cause of justice, humanity and freedom.' See the entry on Josiah Wedgwood at *The Abolition Project*, available at http://abolition.e2bn.org/people_33.html (last visited 23 June 2019).

work of jurisdictional authority was not just to clarify the legal status of slavery, but also to call forth racialised identities, and to settle a complex regime of social relations between the ‘races’. The power to confer recognition involved the production of meaning and knowledge regarding ‘the human’, ‘humanity’, ‘crimes against humanity’, and ‘humanitarian purpose’. The courts, and the slaveholding and colonial states authorising them, were empowered to create, compute and adjudicate knowledge about what or who warrants the modifier ‘human’.⁵⁷

If the institutional arrangements for adjudication and enforcement were a central pillar of the liberty at stake in the prohibition of the slave trade, a second pillar was the rise of humanitarian sentiment. As we have begun to explore, humanitarian sentiment entailed an exercise of a particular kind of power to know, define and recognise ‘the human’ within the regime of law and political morality that was both backdrop and purpose for the abolitionists. Even as investment in the slave trade declined, there was a distinct but complementary rise in humanitarian outrage at the brutalities of the middle passage. Rather than a system that strengthened Christendom, the international slave trade was now seen as an embarrassment to be condemned and halted. The backdrop to the bilateral treaties that constituted the Mixed Commission courts was the declaration by the Congress of Vienna that condemned the slave trade as ‘repugnant to the principles of humanity and universal morality’. The principles of humanity and universal morality were translated, in the same clause, as a reference to those of ‘civilized countries’, which it quickly parsed as ‘several European governments’ and finally (still in the same clause) as ‘all the Powers possessing colonies in different parts of the world’.⁵⁸ These tribunals

56 Approximately a decade after the Amistad ruling, Frederick Douglass’s Fourth of July speech of 1852 denounces the notion of proof: ‘Must I undertake to prove that the slave is a man? ... The slave-holders themselves acknowledge it in the enactment of laws for their government. They acknowledge it when they punish disobedience on the part of the slave. How should I look to-day, in the presence of Americans, dividing, and subdividing a discourse, to show that men have a natural right to freedom? speaking of it relatively and positively, negatively and affirmatively. To do so, would be to make myself ridiculous, and to offer an insult to your understanding.’ Douglass (2012).

57 The work of these courts provides an important back history to today’s debates regarding the power and politics of human rights and humanitarianism in global governance. This is one dimension of ‘the dark sides of virtue’ with all kinds of dark arts authorised in the name of human rights or humanitarianism. D Kennedy, *The Dark Sides of Virtue* (Princeton UP, 2004). Or as Jacques Ranciere says: ‘which rights are superfluous here where we have so much, but needed over there where there is nothing but bare life—so we speak in the name of their human rights, sending rights like we may send clothes and medicine we no longer need.’ J Ranciere, ‘Who is the Subject of the Rights of Man’ 103 *The South Atlantic Quarterly* (2004) 297, 307.

58 The Final Act of the Congress of Vienna Act XV, 64 CTS 453, available at https://en.wikisource.org/wiki/Final_Act_of_the_Congress_of_Vienna/Act_XV (last visited 23 July 2019). Some cite the condemnation of the slave trade in this ancillary declaration annexed to the Vienna Congress treaties as the first expression of international humanitarian law and policies. Caroline Shaw links the Vienna Congress to contemporary

were not just releasing men and women from servitude; they were doing so in the name of humanity. If Pope Nicholas had authorised slavery 400 years earlier in the name of Christian civilization, in the mid-19th century, many abolitionists argued against slavery in the name of Christian humanity—and many in the name of humanity as such, itself a product of civilization as it was known in imperial Europe. Ideas, practices and performances of humanism proved to be supple and multi-dexterous. They travelled so strangely and smoothly to defend slavery at one historical moment (defending humanity against the brutal cultures of the uncivilized), and to rescue slaves in the next (upholding humanity against the physical brutality of the transnational trade). This was, after all, the age of liberty. And the late 18th-century revolutions on both sides of the Atlantic already embodied a new sensibility regarding the sanctity of the human body and its secular freedoms—an era, as Lynn Hunt describes it, of ‘new bodies and selves’,⁵⁹ including ‘changes in the reaction to other people’s bodies and selves’.⁶⁰ As Hunt notes, the moral autonomy attributed to being a free human was not only an idea but also entailed an associated set of social practices regarding self-possession and selfhood on the one hand, and empathy and recognition of the equality of selves on the other. This is the liberal humanist vision of individualised ‘freedom’ that was enhanced and advanced by the prohibition of the slave trade.⁶¹

The freedom at play here was buffeted by the shifting winds of racial capitalism. Listen to Hayden (in *Middle Passage*) on the dark jest of the cheerfully named *Amistad* (‘friendship’) murderously transporting cotton-producing labour for the industrial weaving looms of Manchester:

Shuttles in the rocking loom of history,
the dark ships move, the dark ships move,

refugee policy, as does Fabian Klose in relation to policies regarding humanitarian intervention. See C Shaw, *Britannia’s Embrace: Modern Humanitarianism and the Imperial Origins of Refugee Relief* (Oxford UP, 2015); F Klose (ed.), *The Emergence of Humanitarian Intervention: Ideas and Practice from the Nineteenth Century to the Present* (Cambridge UP, 2016). At the Vienna Congress, Britain’s investments in the abolition of the slave trade were intertwined with Britain’s colonial ambitions and, as both Shaw and Klose demonstrate, here too one can connect the dots between the Vienna Congress and contemporary humanitarianism’s entanglements with empire.

59 L Hunt, ‘The Paradoxical Origins of Human Rights’, in JN Wasserstrom et al. (eds), *Human Rights and Revolutions* (Rowman & Littlefield, 2007) 9.

60 L Hunt, *Inventing Human Rights* (WW Norton, 2007) 31–32.

61 This notion of freedom can be situated in relation to the changing economies of slavery. In his magisterial *Capitalism and Slavery*, Eric Williams demonstrates the pivotal role of slavery in enabling the industrial revolution and capitalist expansion, while also showing how advanced industrial capitalism gave rise to forces that contributed to the end of slavery. Thus abolitionist sentiment was fuelled by declining profits in Caribbean slave plantations. See E Williams, *Capitalism and Slavery* (University of North Carolina Press, 1944).

their bright ironical names
 like jests of kindness on a murderer's mouth;
 plough through thrashing glister toward
 fata morgana's lucent melting shore,
 weave toward New World littorals that are
 mirage and myth and actual shore.⁶²

Admiralty law opened the oceans for the 'thrashing glister' of conquest and capital, for the different currents of Euro-American trade interests and property claims, including the transport and security of goods, people and ideas of liberty 'in the rocking loom of history'.⁶³ Walter Johnson notes that the ships that moved across the North Atlantic linked 'the plantations of Mississippi, the counting houses of Manhattan, and the mills of Manchester as differentiated but concomitant components of a single system'.⁶⁴ This movement was the structural foundation of liberty, upholding the 'mirage and myth' propelling the 'fata morgana' of liberal freedom à la Hayden.⁶⁵ As the cycles of capital ploughed forward through the course of the 17th and 18th centuries, 'turning black bodies into currency',⁶⁶ the political economy of slavery and the political economy of the slave trade had diverged. Moreover, the profit of the triangular trade in different commodities had also diverged. Cotton and sugar production were enabled by different geographies and different commercial imperatives. Cuba, the world's largest producer of sugar, continued to depend on an ongoing influx of slave labour; disease was rampant in the Caribbean and slave life-spans were short. In contrast, in the continental US, a system of domestic servitude was emerging as a more cost efficient guarantor of reproducing labour for the cotton fields. Moreover, the British were particularly invested in controlling the seas to consolidate their imperial dominance in this period and were willing to invest considerable naval resources in patrolling the seas and adjudicating compliance with the abolition of the slave trade. The language of

62 Hayden (1975) 121.

63 Ibid.

64 Walter Johnson builds on the work of Eric Williams, DuBois, Cedric Robinson and others with varying investments in traditions of Black Marxism to render questions of trade and political economy central to the story of the Black Atlantic. Johnson (2018). See also Williams (1944); WEB DuBois, *The Suppression of the African Slave Trade to the United States of America* (Oxford UP, 2014); C Robinson, 'The Atlantic Slave Trade and Atlantic Labor', in *Black Marxism* (University of North Carolina Press, 1983); W Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Belknap Press, 2017).

65 Hayden (1975) 121.

66 L Porter, 'Life Upon These Shores', *Poetry Foundation*, 11 November 2015, available at <https://www.poetryfoundation.org/articles/70280/life-upon-these-shores> (last visited 23 June 2019).

liberty and humanity were critical vehicles for the production of legitimacy for these endeavours on both sides of the Atlantic. Thus maritime law and its entanglements with liberalism's architecture of freedom remained a critical dimension of this system; oceans were central to the reach of 19th-century colonialism and capitalism and their regulation entailed producing and enforcing distinctions between those deemed the captains of industry and those deemed pirates, the work of missionaries and the work of insurgents.

Great Britain was a particularly significant actor in seeking dominion over the Ocean against other colonial powers as well as pirates and other non-state actors. To this end, Great Britain led the effort in utilising maritime law and its navy to apprehend rogue actors who continued the slave trade—actors like Ruiz and Montez of *Amistad* infamy. Prize law played a particularly interesting role. If the slave trade was driven by the political economy of the triangular trade in the previous century, in the 19th century the micro-political economy of maritime prizes played a consequential quotidian role in arresting the slave trade. The promise of prize law rewards from forfeited ships and cargo was an incentive for naval officers empowered to conduct search and seizure operations on ships suspected of slave trading. This coordinated set of incentives and disincentives, shaped the material imperatives defining how particular cases unfolded. The *Amistad* was apprehended because of storm damage not because of its illegal involvement in slave trading, so the rewards were not governed by prize law but by maritime salvage law. The promise of salvage is likely to have motivated Gedney's boarding of the *Amistad* off the shores of Long Island, and the added profit from the valuing of slaves is likely to have motivated the capture of Senge and his partners. In fact, he may have towed the ship to Connecticut rather than New York because slavery remained legal in Connecticut (while it had been abolished in New York over ten years prior to the *Amistad* rebellion) and Connecticut officials may have calculated the value of slaves into their accounting of the cargo. The fact that the court ruled that Senge and his cohort were free men and women meant that their market value became irrelevant to Gedney's property claims. Nevertheless, their racialised subjectivity remained crucial in the micro distributions of wealth and property. Race rendered their bodies precarious—hovering perilously between being subjects and objects. This precarity meant that in some jurisdictions they could potentially be prize or salvage, but in no jurisdiction would they be beneficiaries of a prize claim—this despite the fact that to the extent that prize money was intended to deter illegal trading on the high seas, Senge and his comrades were the most eligible because they fought Ruiz, Montez and the men who were operating the slave trade on the *Amistad*.

In sum, the model of freedom at stake in the prohibition of the slave trade was shaped first, by the juridical progress narratives embedded in the Mixed Commissions and other institutional arrangements; second, by the discourses

and practices of liberal humanism and the emergent claims of the humanitarian impulse and its diverse strands; and third, by the dynamics of racial capitalism, including their manifestation in the political economy of trade and property as negotiated in maritime salvage law. The contours of freedom forged in the mid-19th century oceanic landscape were constituted in the crucible of these dynamics. As Hayden describes, these historically-located ideological entanglements and structural imperatives rendered the Atlantic shore a glistening *fata morgana*.⁶⁷

REBELLION AND RETURN

I now turn to my final section—a portrait of another view of freedom at sea that was present in the same moment as the prohibition on the slave trade—the view we get of freedom constituted by rebellion and return. The ‘freedom’ of the high seas that is described by Martínez’s account stands at the crossroads of legalism, humanism and racialised capital.

The freedom of the Amistad rebels also emerges at the intersection of different currents—the solidarity forged in the middle passage, the pull of ‘home’ and the fantasy of flight. It is not quite a model of freedom—it is what is viewed in the interstices of the memory of the middle passage as a quest and a question. Freedom has often been posed as a question in the domain of Black America; indeed, ‘freedom dreams’⁶⁸ hover in that middle passage between dreams of freedom and dreams that one may have if one were free.⁶⁹ Indeed the freedom of the Amistad rebels could be seen as a way of historicising and relativising the ‘Prohibition of Slave Trade’ model of freedom through the memory of a prior freedom when we are at sea. Following Walter Benjamin we see that the project of articulating freedom ‘historically’ does not mean recording it ‘as it really was’; rather, ‘[i]t means to seize hold of a memory as it flashes up at a moment of danger’.⁷⁰

67 Hayden (1975) 121.

68 In his book of the same name, Robin Kelley notes that freedom dreams don’t refer to individual acts of rebellion, but to resistance born of collective solidarities: ‘Revolutionary dreams erupt out of political engagement; collective social movements are incubators of new knowledge.’ R Kelley, *Freedom Dreams* (Beacon, 2003) 8.

69 This is evocatively captured in Nina Simone’s words, ‘I wish I knew how it would feel to be free’. As DuBois, Malcolm X and others did before her, in 1974 Simone pursued her question about what it would be like to feel free by travelling to Africa. She went to Liberia thinking ‘maybe it would be like going home’. She ended up staying in Monrovia for three years. KG Thomas, ‘Nina Simone in Liberia’, *Guernica*, 19 June 2017, available at <https://www.guernicamag.com/nina-simone-in-liberia> (last visited 2 July 2019). Fredrick Douglass too posed freedom as a question, interrogating America’s claim to it. See Douglass (2012).

Three gestures flash up . . . the solidarities of collective action, the return and Black Zionism, and the fantasy of flight or, what we might term, mortuary politics.

Solidarity

First then, the audacity of collective action in a domain of ‘social death’.⁷¹ The Amistad insurrection could not have happened without collective action amongst virtual strangers. Before slave trading ships set out west across the Atlantic, men and women would be stored like stacks of grain in various castles across the western coast of Africa until the numbers made the trip profitable—Gold Coast Castle and Elmina Castle in Ghana, Fort James in Gambia, Saint Louis and Goree Island in Senegal. Captured men and women would be brought from different regions and then packed into ships for the crossing.⁷²

In *Prisoners*, Hayden speaks of entering a jailor’s space, doors clanging shut, being frisked, marked and imprisoned but also ‘where the dispossessed awaited us’.⁷³ In the case of the Amistad rebels, the diversity amongst those boarded in West Africa were amplified by the demographics of the Havana slave market; market transactions shuffled the slaves in the hold yet again with different people bought and sold, grouped and ungrouped, according to the needs, desires and profit margins governing the market at any point. Yet collective action required building a congress of the dispossessed amongst strangers—solidarities forged across regional, cultural and linguistic divides to prepare the

70 In Thesis VI, Walter Benjamin troubles a narrowly empiricist notion of historicisation to insist that historicisation is a fundamentally political intervention and needs to be wrestled away from tradition, conformism and the overdetermination of the present by the past. Rather, ‘fanning the spark of hope in the past’ would mean to wake up the dead and excavate the possibility of change; it is an intervention at the limit—at that liminal ‘moment of danger’. W Benjamin, ‘Theses on the Philosophy of History’, in *Illuminations* (Schocken, 1968) 253, 255.

71 In *Slavery and Social Death*, Orlando Patterson argued that the pathologies of slavery undermined community in slave societies. O Patterson, *Slavery and Social Death* (Harvard UP, 1982). Indeed, the forced rupture of community ties was central to the process of turning a human into a commodity: Smallwood (2007). Yet, there were also new kinds of sociality forged in oppressive conditions, including by ‘making a social life out of death itself’. For instance, Vincent Brown describes a defiant funeral for a woman aboard the slave ship *Hudibras* in 1786 by other enslaved women as a claiming of ‘social reconnection’. The horrors and dispossessions of slavery did not snuff out sociality, but conditioned it. Social death was (here Brown is following Smallwood) the threatening horizon against which community and cultural survival are created and recreated such that the shared oppression shaped and gave rise to ‘collective forms of belonging and striving, making connections when confronted with alienation and finding dignity in the face of dishonor.’ V Brown, ‘Social Death and Political Life in the Study of Slavery’ 114 *American Historical Review* (2009) 1231, 1231–36.

72 Smallwood (2007).

73 Hayden (1982) 18.

ground for the insurrection, a nascent pan-africanism contingent on the specific historical circumstance that shaped that moment. Even as being boarded on the slave ship tore kin apart, the brutality of that space also made kin out of strangers searching for reprieve.⁷⁴

We shared reprieving Hidden Words
revealed by the Godlike imprisoned
One, whose crime was truth

And I read poems I hoped were true.⁷⁵

This was the poetry of solidarity amongst dispossessed strangers in an age of collective rebellion. In different parts of Africa, there were rebellions against the capture of men and women for slavery. Some historians speculate that Senge may have himself fought against African leaders who collaborated with the Spanish monarch in enabling the slave trade.⁷⁶ Off the shores of Africa, the 19th century was most prominently the age of rebellion against the victors of the rights revolutions in America and France.⁷⁷ It was a century that was born in

74 Gilroy listens to the 'breaks and interruptions' of particular pieces of contemporary Black music and conceptualises their 'syncretic complexity' as a Black Atlantic legacy of contingent yet compelling connections with strangers on the slave ship. P Gilroy, *Black Atlantic* (Verso, 2012) 101, ch. 3. Gilroy is interested in attending to the cultures and communities of strangers assembled by the Black Atlantic in terms of 'strategic alternative(s)' not just loss—not nostalgia but an 'affirmation of blackness as an open signifier.' Ibid 32. In contrast, Hartman's memoir of her 'return' to Ghana, speaks to the legacy of enforced estrangement. For her *obruni*, the Akan word for stranger or foreigner that becomes her resented moniker, symbolised an inheritance of estrangement from those who might have been kin. S Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Route* (Farrar, Straus and Giroux, 2008) 46. In her earlier book, *Scenes of Subjection*, Hartman argues that within the logic of slave society, the intimacies of white kinship entails the patriarchal control of property and its inheritance, while black kinship was, by definition, a transgressive resistance to being property. Hartman (1997) 84. Hartman's explorations of the gendered and racial terms of subjection, from patriarchal kinship to 'enforced kinlessness', is an argument that the possibilities and constraints of kinship were not overdetermined by the contrast between freedom and captivity. See also the review of *Lose Your Mother* that draws attention to 'kin v. strangers' as a register of selfhood for the Black diaspora: R Hossain & G Quintas, 'Lose Your Mother', *After Lives of Slavery*, available at <https://afterlivesofslavery.wordpress.com/literature/lose-your-mother> (last visited 23 June 2019).

75 Hayden (1982) 18.

76 In particular, he is thought to have fought King Siaka, a West African monarch who had expanded his domain through alliance with the Spanish monarchy and slave traders like Pedro Blanco. See Rediker (2012) 36-37. In the *Middle Passage*, Hayden speaks to these opportunistic deals between the Spanish traders and kings like Siaka that forged gold from Black bodies: 'Have seen the n*** kings whose vanity/and greed turned wild black hides of Fellatah/Mandigo, Ibo, Kru to gold for us/ ... for there was wealth aplenty to be harvested/from those black fields'. Hayden (1982) 120-21.

77 A people's history of these rebellions contrasts with the conventional story of the North Atlantic elite-led revolutions. For instance, the latter is the story told by Lynn Hunt regarding the emergence of the notion of the rights-endowed individual in the French and American revolutions (and the

the middle of the Haitian revolution against France with victory in 1804. In 1831, a decade before Amistad, Nat Turner led the largest slave uprising in US history. Those same decades also saw increased momentum on the underground railroad, with hundreds of slaves escaping monthly through a coordinated network of protection created by Harriet Tubman and others; the 1850 Fugitive Slave Act is a draconian symptom of the success of those networks and the threat they posed to the institution of plantation slavery. If this was the age of liberty, it was not liberty in a monumental key; it was not the liberty glittering in celebrated constitutions and declarations of rights. Rather, it was the quotidian rebellions that pushed against what Benjamin referred to as the 'barbarism' of those august 'documents of civilization'.⁷⁸ This freedom, this liberty, Hayden says in *Fredrick Douglass*, is not to be found in the 'gaudy mumbo jumbo of politicians' but in the taken-for-granted earth we walk on, immanent in the air we breathe, in the unnoticed rhythms of every day survival:

When it is finally ours, this freedom, this liberty, this beautiful
and terrible thing, needful to man as air,
usable as earth; when it belongs at last to all,
when it is truly instinct, brain matter, diastole, systole,
reflex action.⁷⁹

In *Middle Passage*, Hayden situates the Amistad rebellion in this air of freedom, in this immanent connective tissue amongst strangers now made kin, yet unexpected and unnoticed by the crew:

Swift as the puma's leap it came. There was
that interval of moonless calm filled only
with the water's and the rigging's usual sounds,
then sudden movement, blows and snarling cries
and they had fallen on us with machete
and marlinspike. It was as though the very
air, the night itself were striking us.⁸⁰

Fredrick Douglass gave his famous Fourth of July Speech interrogating American liberty in 1852, over a decade after that rebellion on board the Amistad. However, the vision that his fight against slavery represented was

intellectual leadership of the likes of Voltaire and Jefferson). In Hunt's story, once these views sedimented, their internal logic propelled their gradual universalisation so that marginalised communities could also make rights claims. Hunt (2007) 212.

78 'There is no document of civilization which is not at the same time a document of barbarism.' Benjamin (1968) 256.

79 Hayden (1975) 131.

80 Ibid 122.

precisely one that made kin out of strangers and forged community in the struggle for emancipation. Hayden describes Douglass's vision of emancipation as one that births communities and nurtures connection:

... visioning a world
 where none is lonely, none hunted, alien,
 this man, superb in love and logic, this man
 shall be remembered.
 ... with the lives grown out of his life.⁸¹

Collective action ranged from projects as ambitious as the underground railroad to more local rebellions that have eluded the history books. Indeed as Saidya Hartman has argued, even quotidian collective action, the creation of alternative publics, can be an 'abrogation of the terms of subjugation. . . . [It can be a] way of redressing the natal alienation or enforced "kinlessness" of the enslaved'.⁸²

Situating the Amistad rebellion in this history of collective action—fleeting and elusive as these episodes may be—is also a way of understanding how the Amistad case resonated with black Americans in America at the time.

Return

A second and equally critical current for the Amistad rebels was the promise of return, to go back to Africa, to go back, as Hartman notes, to the shores where 'lives were destroyed and slaves were born'.⁸³ For the Amistad rebels the prospect of reversing the journey was not a demobilising melancholia but a radical remembering that refused the erasure of belonging to these new shores; it entailed attending to what Hartman has called the 'non-history'.⁸⁴ The promise of return continued to represent an elsewhere that denormalised the present; a space of alternative freedom opened up by the Amistad rebels that remained precarious but continues to beckon. Note Hayden's injunction, both wishful and weary, in another poem, *O, Daedalus, Fly Away Home*:

Do you remember Africa?
O cleave the air fly away home

81 Ibid 131.

82 Hartman (1997) 67.

83 Hartman (2008) 6.

84 Quoted in E Schmidt, 'Erasing Slavery', *New York Times*, 11 February 2007, available at <https://www.nytimes.com/2007/02/11/books/review/Schmidt.t.html> (last visited 23 June 2019).

... night is a laughing, night is a longing.

...

... Night is a mourning juju man
weaving a wish and a weariness together
to make two wings.

*O fly away home fly away*⁸⁵

The return is propelled by both hope and despair, laughing and longing, wishful and weary. Slaves and the formerly colonised have long been captured by the prospect of cleaving the air, reversing history, of imagining a world prior to colonialism and the slave trade. The back to Africa movement—*Black Zionism*—was born in the 19th century and saw many blacks travel east to Africa. Most prominently, just five years after the Amistad case was concluded, the *American Colonization Society* helped found Liberia as a nation of free Blacks from the American diaspora. Sierra Leone also functioned as a haven, including for Blacks who had travelled the underground railroad to escape to Canada but whose quest for freedom continued to pull them east across the Atlantic; thus over 1000 Blacks went from Nova Scotia to Sierra Leone to found Freetown.⁸⁶

It is an irony that when the Amistad rebels did return to Africa they were able to do so only because they were sponsored by the *Amistad Committee* that a few years later, in 1846, evolved into the *American Missionary Association*.⁸⁷ Moreover, when the rebels returned, the missionaries got on the boat and returned with them to Freetown—empowered by humanitarian sympathies with Africans in America, and propelled by their plans for ‘Christian’ humanitarianism in Africa. The missionaries commissioned *The Gentleman*, a ship carrying a name that heralded this new civilizational project of recreating what it meant to be a man in the world. Former prisoners and their champions

85 Hayden (1975) 124.

86 JW St G Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone, 1783-1870* (University of Toronto Press, 1976). Lauren Benton situates abolition more generally in the struggle over legal regimes attendant to ‘consolidating the legal authority of empires’. See L Benton, ‘Abolition and Imperial Law 1790-1820’ 39 *Journal of Imperial and Commonwealth History* (2011) 355.

87 Abraham (1987) 16. The contradictions and complicities of some of the leading abolitionists are typified by one of the men lauded as a hero of the Amistad case, Lewis Tappan. Tappan played a key role in the Amistad case in galvanising public support for the rebels, procuring legal counsel for them, and, after the trial, helping to fundraise for their return. Tappan had both mercantile and evangelical ambitions for Africa, and saw the return of Blacks as central to both ambitions. He was a founding member of the American Missionary Society (AMA) as well as the head (with his brother Arthur Tappan) of a lucrative import business. He founded journals called *Human Rights* and *A Slave’s Friend*; but deeply immersed in the political economy of racial capitalism, he also founded a publication called the *Journal of Commerce* as well as America’s first credit rating agency, The Mercantile Agency.

got on board to Sierra Leone ‘to settle down and commence a new town and then persuade their friends to come and join them, and then to adopt the American dress and manners’.⁸⁸ This call in the abolitionist churches in New England heralded the middle passage as the conduit of different kinds of conversion—conversion to Christianity and capitalist commerce, conversion from older European empires to an expanding American empire, conversion of the slave trade into new economies of colonial appropriation. Hayden again (in *Middle Passage*):

Standing to America, bringing home
black gold, black ivory, black seed.

Deep in the festering hold thy father lies
Of his bones New England pews are made
Those are alter lights that were his eyes.⁸⁹

The new town is what came to be known as the Mende mission. The fervour and commitment that brought the missionaries to abolitionism, also brought them to evangelism and the White man’s burden in Africa. In the courtroom in Connecticut they sought to save Senge and the other defendants from slave traders. In Freetown, they sought to save heathens from false gods.

Black Zionism became a pet project of the *American Colonization Society* which sought to incentivise and encourage free blacks to return to Africa to ensure that America remained more homogenous. It is no coincidence that the American government sees the birthing of the US constitution as intertwined with the original English colonial settlement of Sierra Leone. Blacks were not only disenfranchised by a constitutional liberty that gets forged in America, the state of American exceptionalism also gets mobilised in imperialist expansion in decades and centuries to come. Structural racism was amongst the tides that connected continents across oceans. Sierra Leone was then partially peopled by Africans transported from England and the Americas back to Africa by the *Committee for the Relief of the Black Poor*, *The Sierra Leone Company* and its successor, the *African Institution*, amongst other entities. In Britain, public support for abolition and public support for imperial expansion were parallel and complementary movements that came together not only in the shared interest in greater control over the high seas, but also in the personal fortunes of abolitionists.⁹⁰ The *Committee for the Relief of the Black Poor* campaigned for the establishment of Sierra Leone as the second British colony in Africa. This campaign was successful and the *Sierra Leone Company* became the corporate

88 Ibid 15.

89 Hayden (1975) 118.

body founding the colony under the leadership of famed abolitionists such as Granville Sharp and John Clarkson, and wealthy shareholders like Josiah Wedgewood (who had sponsored the ‘Am I not a man medallion’).⁹¹ Thus colonisation was itself a ‘project’ of humanitarianism and the radical imagination of return sailed into risk and appropriation—thus even when free to return home, ‘home’ was itself not free.

Thus for the Amistad rebels, the end of one saga regarding the slave trade, was already entangled with another saga regarding American colonialism. A baton that has since been taken up by neo-colonialism: in 1987 the US government commissioned a pamphlet on the Amistad case in Sierra Leone for the twinned birthdays marking the bicentenary of the colonial settlement of Sierra Leone, and of the American Constitution. That *US Information Agency* pamphlet celebrates the success of this case to conclude cheerily: ‘The Amistad case gave rise to American missionary activity in Sierra Leone, with all its positive consequences.’⁹² *The Gentleman* had docked.

The Amistad rebels achieved the unthinkable in this passage back home that reversed the cross-Atlantic voyage; a reversal that represents a struggle to remember, restore and reinvent ‘the non-history’. ‘Voyage through death’ Hayden writes (in *Middle Passage*), but ‘life upon these shores’. But to which Atlantic shore is Hayden referring? Where is the land of the free?

Flight

This takes us to the third and final current that animated the Amistad insurrection, namely, the fantasy of flight or what Vincent Brown refers to as ‘mortality politics’—the fact that in the context of Atlantic slavery ‘death structured society and shaped its most consequential struggles’ including the rebel imagination. The generative dimension of mortality politics, this insurrection against humanism’s promissory notes, is what I have called the fantasy of flight. The fantasy of flight is not just a euphemism for suicide but references a different kind of psychic space for imagining otherwise—a magical realist rewriting of myth and rebellion. *All gods chillum had wings*, a much anthologised African American folk tale, speaks of slaves braving great hardship on a particularly

90 For an account of how prize law enhanced British imperial authority, and how abolition and the Mixed Commissions evolved within a thick institutional context of intra-imperial reform and inter-imperial negotiation, see Benton (2011) 369.

91 GE Brooks, Jr., ‘The Providence African Society’s Sierra Leone Emigration Scheme, 1794-1795: Prologue to the African Colonization Movement’ 7 *The International Journal of African Historical Studies* (1974) 183. The resettlement of American Blacks in Sierra Leone was celebrated as having the twin virtues of making America more racially homogenous, while giving America trading partners across the ocean. *Ibid* 191.

92 Abraham (1987) 16.

brutal plantation until one day they flew ‘to somewhere I cannot even imagine’.⁹³ Akin to the Amistad rebels, and as per the title of Hayden’s book of poetry, *the Angle of Ascent*, these men and women of *All gods chillum* endure and resist with grit and imagination, searching and finding an angle of ascent to freedom. Greg Grandin describes an old legend capturing this familiar motif of freedom as flight in the American Black community not on the plantation but on the slave ship:

Descendants of . . . Georgia’s Coastal islands handed down a legend that captive Igbos would fling themselves into the Atlantic rather than submit to slavery, not committing suicide but ‘flying’ or ‘walking’ on the water—or dancing on the waves—home ‘[They] did not’ kill themselves ‘They escaped by flying. They flew through the sky and returned to their own lands.’⁹⁴

This flight is both the imagination of human freedom and subversive of humanist promise.

Rebellion such as that undertaken by the Amistad rebels could be seen as nihilistic suicide. However, its very improbability of success insists that we linger with the generative dimension of risking death. The notion of flight speaks to this animating current of freedom as an invitation to an ontological alterity that would drive one to take on a battle against all odds. Hayden celebrates the radical death defying audacity of ‘the flying African’ in his poem *O Daedalus*: ‘My gran, he flew back to Africa, just spread his wings and flew away home’, he sings with both melancholic ‘longing’ and exultant ‘laughing’.⁹⁵ While slavers did much to keep the captured trapped in the deep hold across the middle passage, there was a long tradition of slaves escaping and jumping

93 ‘All God’s Chillun Had Wings’, *The Moonlit Road*, available at <https://www.themoonlitroad.com/all-gods-chillun-had-wings> (last visited 23 June 2019). In another version of the story the enslaved once had the power of flight and they discover that they have retained this memory of freedom. See ‘All God’s Chillun Had Wings’, *Voices of the People: African-American Literature and Arts*, available at http://www.whittedq.weebly.com/uploads/3/5/4/2/3542765/aa_folktale.pdf (last visited 23 June 2019). *All gods chillum had wings* is also an old spiritual (most famously sung by Paul Robeson) where the wings are used not to ascend to but to explore heaven. See recording at <https://www.youtube.com/watch?v=zEtMhIB9oIg> (last visited 23 June 2019). The title of the folk tale and spiritual also inspired a play by Eugene O’Neil with Paul Robeson starring in the original production, available at <https://www.pbs.org/wgbh/americanexperience/features/oneill-controversial-play> (last visited 23 June 2019).

94 G Grandin, *Empire of Necessity: Slavery, Freedom and Deception in the New World* (Picador, 2015) 50. Grandin notes this invocation of flight in Toni Morrison’s *Song of Solomon* although he describes it as an equation of flight and suicide. *Ibid.* Morrison has women repeatedly singing the lyrics of the old blues song: ‘O Sugarman done fly away/Sugarman done gone/Sugarman cut across the sky/Sugarman gone home.’ T Morrison, *Song of Solomon* (Vintage, 2004) 6, 9, 49.

95 Hayden (1975) 124.

overboard. Jumping overboard was to force dispossession of slave owners; their flying bodies cut profits.⁹⁶ Hayden describes the slave owners lamenting these deaths as slaves leap into the ocean with scornful laughter (in *Middle Passage*):

Blacks rebellious. Crew uneasy. Our linguist says
their moaning is a prayer for death,
ours and their own. Some try to starve themselves.
Lost three this morning leaped with crazy laughter
to the waiting sharks, sang as they went under.⁹⁷

In giving voice to the slave traders in his poem, Hayden juxtaposes the defiant death prayers of the slaves with the slave trader's prayers later in the poem to save the humans on board. Which gods are the intended addressees of these competing prayers? Perhaps we need Hayden's linguist because the slaves' prayer for 'death, ours and their own' invokes the limit category of our inherited grammars for liberal legalist meaning and authority; this translation of freedom troubles the humanitarian impulse to save lives. Death became an important battleground for freedom—a holding onto the otherwise—in a world where life and death were already deeply intertwined.⁹⁸

This is not to romanticise death—as Bonnie Honig and others have warned, the politics of lamentation (what she refers to as the Antigone effect) has had a particular attraction for the left but can be demobilising. Rather than advancing a vision for the future we focus on grieving for the past; celebrating suicide as the ultimate critical stance deters strategic political engagement.⁹⁹ However, to think of the generative dimension of mortuary politics is not to think of suicide so much as to think about risk, or rebellion that risks everything because life is so hard and there is little left to lose. As Toni Morrison's Sethe says famously of Baby Suggs—'she didn't die hard'. Rather, for her, death was

96 Even death overboard carries an undecidability regarding the adjudication of value; in some cases, slaves were thrown overboard by ship owners calculating that their financial value on the insurance ledger was greater than the price they would command on the auction block. See J Krikler, 'A Chain of Murder in the Slave Trade: A Wider Context of the *Zong* Massacre' 57 *International Review of Social History* (2012) 393. See also *Gregson v. Gilbert* (1783) 3 Doug. KB 232. For a poignant poetic record of this case, see MN Philip, *Zong!* (Wesleyan UP, 2011). My thanks to Ruth Buchanan for introducing me to this book.

97 Hayden (1975) 118.

98 A holding onto that is captured by a well-known song from the Underground Railroad, *Song of the Free*: 'My soul is vexed within me more/To think that I'm a slave/I'm now resolved to strike the blow/For freedom, or the grave.' An original monograph of the full lyrics to this song is available at the Library and Archives Canada, Ottawa, Ontario.

99 B Honig, *Antigone Interrupted* (Cambridge UP, 2013).

‘soft as cream. It was living that was the hard part’.¹⁰⁰ It is precisely the intimacy of life and death, the necropolitical ocean of the middle passage, that can encourage trying for the long shot—where the question of what is due the dead is, as much as ever, intimately tied to what is due the living.¹⁰¹ This is what I take from that dialogue with himself in Aimé Césaire’s *Notebook of a Return to the Native Land* where he says:

‘One must begin somewhere ...’

‘Begin what?’ he then asks.

And then, answering his own question: ‘The only thing in the world worth beginning. The End of the world of course.’¹⁰²

100 T Morrison, *Beloved* (Knopf, 1987) 3.

101 V Nesiiah, ‘Counter-sovereignty, Lamentation and Transgressive Publics’ 59 *Philosophy Today* (2015) 3.

102 A Césaire, *Notebook of a Return to the Native Land*, trans. C Eshleman & A Smith (Wesleyan UP, 2011) 27.