ODIOUS DEBTS AND GLOBAL JUSTICE

By

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Abstract

In this dissertation, I attempt to clarify the concept of odious debts and its relationship with global justice theory. Odious debts are debts that are not binding for the citizens of a country, as they were incurred by an illegitimate government in their name but were used for private purposes. I approach the problem of odious debts from two different perspectives. First, I explore the possible connections between odious debts and the contemporary debate on global justice. I argue that current debates on global justice have focused on the extremely important question of whether the international order is harmful or coercive, but have sometimes reached wrong conclusions about this issue. While some scholars have argued that the international order is not coercive at all, others have argued that it is, but did not find a persuasive way of making the point. Odious debts become relevant in this context, because they show a different way in which the global order could be said to be coercive. Second, I develop an account of odious debts from a moral point of view. I argue that a big portion of the debts of the poorest countries are not binding and therefore countries are morally entitled to repudiate them. An implication of this is that lenders have no moral right to demand repayment of odious debts. The reason why some debts are not binding is that citizens should only be held liable for debts incurred in their name when the money that is the basis of that debt is used for legitimate public purposes, not private ones. Whenever ruler acts in accordance to private purposes, states are no longer collectively responsible for the acts incurred in their name. This follows from a proper understanding of social contract theories but also, I argue, from a utilitarian perspective.
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Introduction

In recent years, global justice scholars have attempted to understand the nature of the obligations of wealthy individuals to poor ones across the world. This comes at no surprise, given the appalling fact that a portion of the humanity lives a very comfortable, secure and long life; while billions of people are literally struggling to survive. The approach they have taken, however, is not completely novel. The global justice tradition should be understood as an extension of the same set of questions (and sometimes of the same way of approaching them) that political philosophers have been concerned about in the last forty years or so, with respect to the domestic justice domain.

While political philosophers have been trying to understand, among other things, what the appropriate justification of domestic principles of distributive justice is or, in other words, how should goods be distributed within societies; global justice debates have been centered around the question of what the appropriate *global* distributive justice principles are (if any) and around the question of how to justify them. Other topics, such as the moral justification of intervention in cases of violent civil wars, just war theory, immigration and the moral relevance of national borders, the obligation of establishing mechanisms of financial aid, democratic reforms of international bodies such as the WTO, the IMF and others can also be classified as legitimate global justice issues. All of them, however, are secondary with respect to the issue of global *distributive* justice, either because not so much attention has been given to them or because they can be
understood as a subset of the broader problem of distributive justice mentioned above.

Three main approaches to the issue of global distributive justice have been adopted so far. On the one hand, *cosmopolitans* such as Thomas Pogge\(^1\) and Kok Chor\(^2\) Tan claim that world poverty is a moral problem for humanity as a whole. Given that state boundaries are merely instrumental, distributive justice can be applied globally. All individuals in the world are equally entitled to the opportunities, resources and goods produced globally. The claim of equality is further justified by the fact that all individuals have an innate human right to the same things. The immorality of world poverty lies then in the fact that there are unjust distributive inequalities worldwide.

On the other hand, *associativists* claim that distributive duties are linked to the existence of a nation, state or political unit to which citizens belong. On this view, citizens within states have duties of distributive justice to each other, but not to foreigners in other countries. The most we could say is that there are humanitarian duties of assistance to foreigners in cases of natural disasters, famines, violent political conflicts and others, but not duties of justice. John Rawls\(^3\), Thomas Nagel\(^4\), Michael Blake\(^5\) are among the main scholars in this tradition.

In addition to these two positions, we could include a third one—the *utilitarian approach*—according to which the existence of domestic or international institutions as such is not really relevant to assess the morality or immorality of the global justice order, for the main

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reason for moral concern is that wealthy individuals are failing to assist those in dire need, or are doing it insufficiently; and not that there is something particularly wrong with international institutions. The representative scholar of this approach is Peter Singer, who explicitly says that he is agnostic with respect to whether the global order is moral or immoral (that is basically because it is empirically difficult to assess its impact), but is at the same time morally outraged for the lack of concern that the better off show to the world destitute. The most we can say about the global order, in any case, is that its immorality lies in the fact that it is not doing enough to contribute to extreme suffering such as famine relief. But the main focus on individual—as opposed to institutional—charity still stands.

As we can see, these three accounts focus on the morality of the global order as it is, and set aside the question of what exactly causes such huge economic disparities among individuals in the world. It is usually implied by philosophers that such questions are relevant to economists, political scientists or economists; but not to them. The claim that something is—an empirical issue is usually the best way for a philosopher to end a conversation, or to confess that he has no way of solving the issue at hand. This is perhaps a healthy attitude if we want to elucidate certain conceptual philosophical problems, but certainly not an appropriate one to approach global justice puzzles. In fact, both implicitly and explicitly, political philosophers always end up endorsing some sort of empirical version to the question of what causes economic disparities worldwide, which is usually important to reinforce his or her own philosophical view of the issue under consideration. Rawls, for example, in the *Law of Peoples*, famously said that—the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social

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6 Peter Singer, *The Life you can Save* (New York:Random House, 2009)
institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues...the crucial elements that make the difference are the political culture, the political virtues and civic society of the country, its members probity and industriousness, their capacity for innovation, and much else 7. What he claims, in other words is that the empirical cause of countries’ failure almost never lies in external factors, or in how the global institutions are structured, but almost exclusively on how citizens govern themselves. This empirical assumption, however, is never carefully discussed; Rawls simply assumes it and derives part of his theory of global justice from it.

The attitude that global justice theorists have taken with respect to the empirical aspect of their arguments is in stark contrast with the view on global justice that most of the intellectuals of the third world countries have adopted. In fact, the question of what duties are owed to those in need are is unnecessary, if not boring, to them. It is commonly assumed that worldwide poverty is almost exclusively the consequence of the fact that wealthy countries have become rich by exploiting poor ones, and therefore the obvious response to the question of what the duties to those in need are would obviously be, on their view, to simply stop exploiting them. This position, which has been known as dependency theory, has been well represented in one of the most famous books among Latin American theorists and intellectuals, The open veins of Latin America 8. In the opening paragraphs of this book, Galeano writes one of the most popular phrases of the last decades, at least among those who have tried to understand the origins of wealth between the rich north and the poor south. In his words, "our defeat was always implicit in the victory of others; our wealth has always generated our poverty by nourishing the prosperity of others", and, later on, with respect to international trade, that "the division of

labour among nations is that some specialize in winning and others in losing.”

For Galeano, as for many others, the picture is clear: the wealth of wealthy countries entails the poverty of poor ones. His almost 400 pages book is an attempt to prove this empirical thesis.

The dialogue between the global justice tradition and the dependency tradition or, more specifically, a confrontation of the different empirical assumptions they make, is virtually nonexistent. Each of them relies on the empirical premises they find most plausible, and derives their normative claims from them, and they both assume that these premises are factually accurate.

The aim of my dissertation is to make a contribution to the debate between associativists and cosmopolitans and, also, to bridge the gap between the empirical and non-empirical approaches to global justice. I do this by introducing the problem of odious debts. Odious debts, as some legal scholars have defined them, are debts that have been incurred by illegitimate rulers, that did not benefit the populations, and that involved lender's knowledge of the circumstances surrounding the loan. When these conditions are met, debts are not binding and citizens are entitled to repudiate them. One of the biggest obstacles for economic growth that developing countries face is that they are under pressure to repay debts that are basically not theirs. The problem is not a small one, as the debts of several countries in the world (or at least a big portion of these debts) should be classified as odious.

The way in which my dissertation will contribute to the global justice debate is, specifically, the following. In the first place, I explain why coercion has been a central notion for the two main traditions in global justice mentioned above, associativism and cosmopolitanism;

\[\text{\textsuperscript{9}Galeano, The open veins of Latin America,}\ 1\]

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and I explain why the main arguments that cosmopolitans have used to show that there is coercion at the international level are misleading.

Second, I offer a philosophical argument in support of the odious debt doctrine. To this end, it becomes necessary to analyze the moral issues that underlie the doctrine. In particular, I aim to explain the set of sufficient and necessary conditions that a debt needs to satisfy in order for it to be non-binding, and the possible implications that this would have at the institutional level. Although I do not develop a case by case study of each individual debt in the world I argue that, given these conditions, a huge portion of the third world debt is odious. A secondary but not unimportant consequence of developing these conditions is that the odious debt doctrine, as it has been developed by legal scholars, will have to be modified, as some of its central assumptions are not compatible with the moral claims that I put forward.

Third, I discuss the implications that the philosophical approach on odious debts has on cosmopolitanism and associativism. In more specific terms, I offer a different way of approaching the issue of coercion. I argue that the strategy that cosmopolitans have used to show that there is coercion at the international level could be made in a more plausible way if they rely on the case of odious debt to back their point.

In order to develop the first point, I divide the discussion into two different chapters. In the first chapter, I explain the notion of coercion that the two main positions in global justice have relied on in support or against the claim that the international order is coercive. The account of coercion that most plausibly reflects their notion of coercion, I claim, is the one that Wertheimer has put forward, in his well known book Coercion. In the second chapter, I argue that two of the most important strategies that cosmopolitans have used to show that the international order is coercive fail. The first one is trade. On the cosmopolitans view, trade is
coercive because it fails to realize a prior distributional outcome that poor societies are entitled to: human rights. I argue that this view is misleading, because it is not coercive to fail to engage in an advantageous arrangement with another party. The second one is colonialism. Cosmopolitans seem to have made too much of the claim that colonialism is an example of how developed countries have been harming developing countries in recent years. I argue that this way of arguing for coercion is also misleading, mainly because the fact that one particular country has colonized another in the past does not entail that the —global order, as a block, is responsible for such past wrong.

In the third, fourth, fifth chapter, I introduce the notion of odious debts, and explain the conditions under which a debt is odious.

In the third chapter I survey the main arguments developed so far in favour or in support of the odious debts doctrine—mainly in the legal literature—and a description of the central premises of the doctrine. I also argue that the public/private distinction lies at the center of the doctrine. The main problem—i.e. what makes a debt odious—is that funds borrowed by a public authority end up being used for private purposes. In order to explain the main premise of the theory, we need a philosophical account of public versus private purposes. This takes us to the fourth chapter.

In the fourth chapter, I explain in more detail what public and private is, and how this distinction is relevant to the doctrine. Public interest, in line with the social contract tradition, could be defined as a political decision that citizens consented or could have consented to. Given the fact that debts incurred to oppress the population, to benefit private companies or to line the pockets of officials are not ends citizens could explicitly or potentially consent to, we should conclude that those debts were not in their interest and therefore they should not be held liable.
for them. I will rely on the versions of public interest that Locke, Rawls, Nozick and Mill have
developed, in order to back my claim. There are important differences between these thinkers,
but the common ground between them is enough to show why and how some debts are odious.
One of the consequences of my view is that the way legal scholars have interpreted the central
premises of the doctrine should be modified.

In the fifth and sixth chapter, I tackle the possible objections one could raise against the
claim that some debts are odious. It seems at first glance obvious that whenever someone
borrows in the name of a third party, the third party (unless he has authorized the transaction),
should not have the obligation to repay the loan. There are however several sources of
scepticism. In the chapter I discuss four of these sources. The four of them are, on my view, the
most important ones that have been raised against the claim that there are non-binding debts.

In the fifth chapter I discuss the following two objections. First, some scholars argue that
promises made by countries ought to be kept across generations, either because these kinds of
commitments are no different from the kinds of commitments that take place whenever an individual
passes on a debt to the heirs\(^1\); or because countries should abide by the well known principle of
pacta sunt servanda (—agreements must be kept), if they do not want to fall in the logical
contradiction that would result from universalizing the maxim of not keeping up with promises\(^1\). I
argue that these two approaches already assume that states are moral persons, in the same way that
individuals who make promises are. Such assumption, however, is misleading in the case of odious
debts. Odious debts, one could argue\(^1\), are exceptions to the general principle that promises ought to
be kept, precisely because states are not analogous to individuals when

\(^{11}\) Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Justice*
there are odious debts involved. The key point here is that in order to make sense of the claim that states are like blocks that can be collectively responsible for a decision made by authorities in the past, we should show that these authorities acted in accordance with public—as opposed to their own private—interests when they made promises and engaged in commitments in the name of the citizens. Odious debts are, by definition, cases of authorities who acted in accordance with their own private interests.

The second source of scepticism is based on concerns about scope. Although some legal scholars and economists admit that certain debts are not binding, they suggest that only a small fraction of the currently existing debts in the world are odious. This is because, on their view, the only kinds of debts that are odious are the ones incurred by authoritarian dictatorships in the past, and only in cases in which these dictatorships used the loans to enlarge their personal bank accounts. In opposition to these commentators, I argue that the nature of the regime that incurs in debts is not essential in order to assess whether or not a debt is odious. This follows from the point that I made in response to the first source of scepticism. If citizens are not liable for decisions made in accordance to private interests, we can conclude that also democratic governments that incur in debts that are not for the public interest of their citizens can be odious. This would lead to a discussion about the difference between a legitimate and a non-legitimate government, which I develop in this section.

In the sixth chapter I discuss the two remaining possible objections. First, it is possible to argue that lenders were not aware of the fact that there would be an odious debt involved. It is usually the case that international creditor agencies claim that they have no idea what was going to happen with the loans and that the loans were made in good faith. Therefore, the argument goes, they should not incur in any loss whenever there is a fraud involved.
I call this objection the —I did not know objection. I argue against it that the main issue at stake here is risk. Lenders, before borrowing, can and should check whether the agent that incurs in debt in the name of someone else is acting within his legitimate mandate. In the legal terminology, this requirement has been called due diligence. If it turns out that those who ask for a loan in the name of a third party do not have the proper authorization to do so, the debt will not be binding for the third party. Therefore, it will not be an obligation from the third party to pay off the loan. International law places a too heavy burden on borrowing countries, as it always considers them liable for debts incurred by authorities, whether or not they are entitled to borrow in the name of citizens.

Finally, I consider one of the most popular responses to the odious debt challenge. This response has been mainly raised by economists and is usually the first one that the common reader appeals to when confronted to the issue of non-binding debts. The problem, on this view, is that repudiating some debts on the ground that they are not binding would be wrong for prudential reasons. We can call this the consequentialist objection. If all countries repudiated their debts, then lenders would be very cautious about lending in the future, and the whole international system would collapse, as no more lending would take place between investors and countries. The objection, in other words, states that the consequences of repudiating some of the debts are far worse than not repudiating any debt at all. I tackle this objection in my dissertation by showing the difference between a moral and a prudential argument. What’s at stake here is not whether it is convenient or not for countries to invoke the doctrine, but rather whether these debts are binding. The —bindingness of the debt depends on other considerations (e.g. the fact that the government was not entitled to borrow) but not on consequentialist premises. If I am successful at showing that a portion of debts are odious, the consequentialist sceptic will face
two different problems. In the first place, he will have to rephrase his claim and say that it is convenient for countries to repay debts that are not binding (or, alternatively, that it is correct to force countries to repay debts that are not binding). It is hard to imagine, however, that a consequentialist would accept such a claim. Second, it seems clear that the consequentialist strategy would not have any kind of empirical support, as countries have declared defaults in the past and this did not put the financial system at risk. The case of Ecuador is probably appropriate in this context.

Finally, in the **seventh and final chapter**, I discuss the importance of introducing the odious debt debate in the discussion between associativists and cosmopolitans. Odious debts, I claim, are not only an important issue per se, but also because they have interesting implications. In particular, odious debts become relevant to make an argument that cosmopolitans have attempted, unsuccessfully, to make. As I said earlier, cosmopolitans could not show that international trade is unfair by appealing to distributional outcomes such as human rights. By introducing the notion of odious debt, we are now able to show, in a different way, a different reason why international trade is unfair. The crucial point here is that one of the conditions that financial institutions attach to new loans is unilateral trade liberalization. Attaching a condition to a loan seems like a completely normal thing to do, especially if it is meant to ensure repayment. However, if the need to borrow money has been unfairly created precisely by those who impose these conditions—which is what commonly happens with odious debts—things look different. The claim of coercion would make more sense in that context.

The view I am putting forward in my dissertation has several implications on the broader debate of global justice. In opposition to the radical attitude that Latin American intellectuals have taken, and that cosmopolitans have (sometimes), at least implicitly, assumed; I do not want
to take the overly ambitious path of showing that the —global order, as has been commonly referred, is harming—the global poor. The claim seems too general extensive as it is, and it is empirically too difficult to prove it. Instead, a more modest approach is needed. I offer here a localized and limited, but concrete and tangible, kind of injustice that has been hindering poor countries for decades. This specific way of injustice shows that Rawls’s conviction that the reasons of the failure of countries are always internal to these countries; and Nagel’s excessively thin, and sometimes ingenuous, view that the international order is simply an arena where countries voluntarily pursue their self-interest; are clearly on the wrong track. It also shows that both cosmopolitans and associativists share a misconception. While the former think that the internal institutional structure of a country is irrelevant for the purposes of justifying principles of distributive justice, the latter believe that precisely because such institutional structure exists there are no justified claims of global justice to be made. What I want to show (in opposition to both cosmopolitans and associativists) is that the internal structure of a society does matter for the purposes of showing that there are issues of global justice. In fact, the odious debt doctrine becomes central as a global justice issue precisely because of the private versus public distinction as it figures in the internal structure of a society. In other words, if we do not show that there is an injustice at the domestic level, the claim of unfair global interactions could not be made.

A global justice account that does not address the fact that the poorest citizens of the world are forced to repay a debt that is not theirs, every day, cannot and should not be overlooked by any global justice account, if it really considers itself a plausible account of the kinds of injustice that the destitute are subject to. I hope my dissertation will be a contribution in that direction.
Chapter I – Coercion and Global Justice

The current debate on global justice has been centered on many different concepts, such as human rights, global equality, duties of assistance, multiculturalism and others. ‚Coercion‘ is one of such concepts and the one I would like to focus on. There is a wide range of assumptions in regards to the notion of coercion. Some scholars claim that global justice cannot be achieved if coercive institutions are not created. Others believe that coercive institutions already exist and should be shaped according to some sort of distributive justice principle, usually equality. A different group of scholars assumes that the main difference between domestic states and international institutions is that the former are coercive while the latter are not, and conclude from that that there is not even an issue of global distributive justice. Finally, a group of scholars, that we could refer to as ‚libertarians‘, would say that elimination of poverty aspirations and general improvement of life standards would come about precisely if coercive institutions are eliminated. There are, also, many different variations and intermediate positions within each of these views.

The most important positions with respect to the issue of coercion can be better understood if we classify them into three different groups. According to the first one, world poverty is a moral problem for humanity as a whole. All individuals in the world are equally entitled to the same amount of resources, rights and opportunities, regardless of where they are situated in the world. The claim of equality is further justified by the fact that all individuals have an innate human right to the same things. On this view, national states, international bodies and
other coercive institutions should be shaped in order to realize the pre-existing value of equality. Where these institutions do not exist, they should be created.

According to the second one, which reacts against the first approach, egalitarian demands are tied to nations, states or political units to which citizens belong. Therefore, distributive duties of justice do not exist beyond borders. What generates distributive justice duties, they say, is state coercion. Since coercion is absent at the international level, there are not international distributive justice duties either. On this view, wealthy countries have *humanitarian* duties to foreigners in need (financial aid in times of starvation, medical assistance in extreme circumstances, etc.) but not *egalitarian* distributive duties.

Third, some accept the premise that coercion generates distributive duties of justice but believe that, since the international order is coercive on an ongoing basis, duties of distributive justice should also be extended at the international level. This position shares with the first position the view that there are global distributive principles of justice; but for different reasons. On the first view, global distributive principles of justice exist regardless of whether there are international coercive institutions. On this view, in contrast, there are global distributive principles *precisely* because international institutions are coercive.

It seems necessary to carefully separate and explain each of these approaches and the assumptions they rely on, and see in more detail what role the notion of coercion plays within each of them. I will argue that both the second and third approaches should reconsider their position with respect to the notion of coercion. In light of the analysis of coercion I will offer, the claim that there is no coercion at the international level, as the second position claims, will prove to be misleading; and the justification of the claim that there is *ongoing* coercion at the international level will also prove to be misleading—either because the strategies used to show
that coercion takes place are misleading, or because some of the typical agreements that are usually considered coercive are not coercive at all.

In the first section of this chapter, I will explain in some detail the central ideas of each of these accounts and why the notion of coercion has become central in the debate on global justice. In the second section, I will focus on the second version of coercion described above (i.e. those who believe that distributive justice is tied to national states because coercion exists only within states). The main authors discussed in relation to this approach are Blake and Nagel. Third, I will discuss the challenges that the third account raises to Nagel’s and Blake’s positions. The central idea on this approach is that international institutions are already coercive. Thus, an unwanted consequence of Blake’s and Nagel’s view would be that duties of distributive justice are also global. Finally, after a careful analysis of the notion of coercion both parties in the debate rely on, I will show that the claim of coercion fails. Other possible strategies should be pursued; these will be discussed in chapter II.

Coercion and Global Justice

The first useful distinction we can make, following Sangiovanni, Julius, Beitz and others is between relational and non-relational conceptions of distributive justice. Those who defend a relational view of global justice think that what determines the content, scope and justification of distributive justice principles is the fact that individuals participate in practice-
mediated relations. To share certain social and political institutions affects the way in which individuals relate to each other and, therefore, the principles of justice that are appropriate to them. Relationalists believe, in other words, that principles of justice cannot be justified independently of the practices in which individuals participate. Rawls, Blake and Nagel are examples of relationalists. On their view, the fact that we are related with others through a set of institutions (e.g. a state) entails that there will be principles that regulate our lives which will be different from the principles that regulate our interaction with citizens that are not part of this set of institutions. This does not mean that we do not have duties to the individuals that do not have institutions in common with us, but rather that these duties are moral instead of social. We should not harm others; we should assist them in times of famine, starvation, diseases or other extreme circumstances, but they do not have—precisely because they do not share distributive institutions with us—a claim to equal treatment against us. This point becomes a bit clearer when we see that individuals that do not share a set of institutions with us do not have an actual place or institution to which they could demand socioeconomic rights against us. A taxi driver in Egypt might want to earn as much as a taxi driver in New York, but he cannot make such demand to the local authorities, or to the authorities that represent the taxi driver in New York. The most he can aim at is equal treatment and salary with respect to his colleagues in the same neighborhood, city, country or any other political unit to which he belongs.

Non-relationalists, on the other hand, believe that principles of distributive justice are not derived from practice-mediated relations but that they are rather pre-existing or independent from them. This does not mean that principles of justice do not apply to a certain institutional framework, but rather that this framework is completely irrelevant to justify the content and scope of these principles. If the citizens of two cultures have never interacted with each other and
are not connected in any way, a non-relationalist believes that principles of justice still apply to them. The underlying intuition of this view is luck egalitarianism. On this view, roughly, it is unjust for some people to be worse off than others through no fault of their own. A luck egalitarian is therefore non-relationalist because whether or not people share a framework of institutions is irrelevant to make claims of justice. The source of claims of justice is prior to the institutional structure in which individuals participate in and is rather based on the fact that some peoples’ circumstances are undeserved. Since the core distributive principle that is normally accepted is the principle of equality, a non-relationalist usually believes that individuals across the world are entitled to the same amount of resources and goods across the world, regardless of where they are geographically situated. Domestic states, on this picture, are only instrumentally valuable. They should realize the pre-existing value of equality and, in circumstances in which distributive institutions are absent, distributive institutions ought to be created.

The debate between relationalists and non-relationalists will probably hinge around a clarification of the notion of “relation”. Relationalists, for example, would not deny that citizens in the world at large are connected or related in one way or the other. A coffee buyer in New York, for example, is connected in some way with a coffee picker in Brazil. But they would deny that this relationship is dense enough to justify global distributive duties of justice. A non-relationalist, in contrast, would claim that “relations” with others are completely irrelevant in order to justify global distributive justice duties, as these duties are prior to any kind of relation that exists with others.

But there is a second distinction that is worth considering. Again, I follow Sangiovanni’s classification at this point. This distinction cuts across the distinction between relationalism and non-relationalism. Conceptions of global justice could also be considered globalist or
For a *globalist*, equality as a demand of justice has global scope; for an *internationalist* equality as a demand applies only among members of a state. This does not mean that an internationalist is completely skeptic about principles of distributive justice at the global level; it simply means that the internationalist is committed to the view that these principles would be different from the principles that apply at the domestic level, precisely because the context and circumstances are different at both levels. An internationalist could claim, for example, that there are humanitarian duties of assistance in case of famine or natural disasters, duties of intervention in times of radical conflicts within foreign nations, or issues of fairness between countries when, for example, trading. But internationalists deny, in principle, that there are distributive duties of justice like the ones that exist at the domestic level. Citizens of a state might claim that they are all equally entitled to the same share of resources from the state. But not all citizens in the world would be entitled to the same share at a global scale, basically because claims of equality exist against other fellow citizens and not against individuals in the world.

It seems at first glance that a globalist will necessarily be a non-relationalist, but this is misleading. One might endorse a globalist position because there are principles of justice that apply to all (in which case globalism would follow from a non-relational view), but *also* because the same conditions that justify distributive duties of justice at the domestic level exist at the international level. If international institutions are analogous in all relevant senses to domestic states, and the existence of domestic states triggers demands of distributive justice, there will be legitimate international demands as well. This means that a relationalist could be a globalist as well.
The first of the positions described above—the one that holds that international bodies and other coercive institutions should be shaped in order to realize the pre-existing value of equality—is basically non-relationalist, and the third of the positions described above—the one that holds that since the international order is coercive on an ongoing basis, duties of distributive should also be extended at the international level—is basically a globalist version of relationalism.

Internationalists, on the other hand, hold a relational view, in the sense that they believe that principles of justice are derived from certain practices and institutions, and are consequently not pre-existing to them, but they believe that these practices and institutions only exist within boundaries and not globally, as a globalist would think.

In order to show that their position is the correct one, internationalists should not only prove that the non-relational approach is misleading, but also that globalism is misleading. In other words, internationalists should show that principles of distributive justice are derived from practices and institutions instead of being previous to them—as a non-relationalist believes—but also that the kinds of practices and institutions that exist at the domestic level are different from the kinds of practices and institutions that exist at the international level and that, precisely because of this, principles of justice should be different in both levels.

Why is the notion of coercion so important in this classification? Internationalists believe that egalitarian principles of distributive justice apply domestically and not globally because these two domains are not analogous. At the domestic level state institutions are coercive, and coercive institutions trigger egalitarian demands. This is because coercive institutions need to be able to justify themselves in order to be legitimately coercive, and they do so only when they implement policies that are potentially acceptable to all. There is not, however, coercion at the
global level, the internationalist holds. Thus, there are no global principles of distributive justice either.

Internationalists believe that it might be true that global institutions can be coercive at times, but they are skeptical with respect to the idea that there is coercion on an ongoing basis. The kind of coercion that may exist, in any case, is not the kind of coercion that would generate duties of distributive justice.

Coercion is important, then, because we can show the difference or asymmetry between the two levels—domestic and international—by appealing to this notion, and because coercion is what justifies principles of distributive justice at the domestic level. Blake and Nagel are both internationalists.

There are two different reactions to this approach. On the one hand, non-relationalists claim that the fact that there is no coercion is completely irrelevant, for what matters to them is not how the currently existing institutions are but rather how they should be. Non-relationalists believe that institutions are just insofar as they realize a previously existing value of equality and, consequently, they believe that coercive institutions should be created for this purpose if they do not exist. In this vein, some scholars are exploring the possibility of a world state, or others have imagined enforcing mechanisms for certain redistributive taxes. On the other hand, relational-globalists believe that equality should have a global scope, precisely because coercion is global. Globalists—more specifically relational globalists—admit that coercion triggers egalitarian demands, but they try to show to the internationalists that the natural (and unwanted consequence) of their view is that demands of equality should also apply at the global level, precisely because there is ongoing coercion at the global level as well. Globalists, in other words, claim that the international and domestic domains are analogous, for there is ongoing coercion
on both levels. Domestic states coerce their citizens to collect taxes, regulate transactions and others; the international institutions coerce countries through trade agreements, intellectual property rights, conditions attached to financial aid and others.

So it seems that to determine whether or not there is coercion at the global level becomes crucial in global justice debates. If there is not coercion at the global scale, the position of relationalists-globalists will be proven false, as they rely on the assumption that coercion is global. But if there is coercion at the global scale, the position of relationalists-internationalists will be proven false, for they rely on the idea that coercion only exists at the domestic level. The issue of coercion is not relevant from the perspective of non-relationalists, for they believe that regardless of whether or not the international order is coercive, there are global duties of distributive justice. In order to fully understand the terms of the debate, however, it seems important to understand what their stance on the issue is. Moreover, non-relationalists, although unnecessarily, have developed several lines of argument along the lines of globalist-relationalists which are worth incorporating into the analysis.

If internationalists are right that coercion is a necessary condition for distributive justice, the position of non-relationalists would be proven false for, as I have said, non-relationalists believe that these duties are pre-existing and independent from the fact of coercion. But if globalists are right, internationalists should admit that duties of distributive justice should be extended beyond national borders. We should discuss, then, each of these views and whether their stance on coercion is on the right track.
Blake and Nagel on coercion

As I said earlier, both Blake and Nagel are typical examples of relationalists. In order to understand what role the notion of coercion has, we can briefly discuss their accounts.

Blake puts forward an internationalist view. Blake is not concerned with what institutions ought to exist but with what currently existing institutions ought to do to be justifiable to all. This approach distinguishes between duties that we have to strangers and duties that we have to our fellow citizens; not because we care more about them but because there is an impartial principle that will give rise to distinct burdens of justification between individuals who share liability to the coercive power of a single state. Blake starts his analysis with the assumption that states exist and that they coerce us in order to exist. Since coercion is a fact, we have to seek principles by which coercion could be justified. Only in the search for this justification, he argues, does egalitarian distributive justice become relevant. The connection between coercion and equality becomes clear through the notion of autonomy. Blake postulates that all individuals, regardless of institutional context, ought to have access to those goods and circumstances under which they are able to live as rational autonomous agents, capable of selecting and pursuing plans of life in accordance with individual conceptions of the good. People can face a denial of autonomy for several reasons. Coercion is one of them. When somebody is being coerced, his or her will is being violated and replaced with the will of another person. Coercion, in other words, expresses a relation of domination in which our own agency is subdued by the agency of another. Sometimes, however, coercion could be justified. The law, Blake says, is a web of coercion in which private and criminal law are understandable as prima facie in violation of the principle of autonomy and, therefore stand in need of justification to all those who are subjects of these laws.
This justification demands that we be given reasons for our coercion that we could not reasonably reject. In criminal law, we might accept the states’ violation of someone’s autonomy if there is a serious offense involved. Private law defines what sorts of entitlements will exist collectively, what shall count as property, how we may hold, transfer and enjoy property, etc. Coercion is justified in private law, then, when we consent to the reasons that we are given by the state to justify certain ways of allocating and protecting entitlements. Our consent is given or withheld when we approve or disapprove the principles under which the state sanctions private law. Blake further claims that the worst off could reasonably reject any departure from equality that does not make them better off.\textsuperscript{16} The state, in other words, cannot be eliminated, given the paradoxical importance of government for the protection of autonomy. What we do, instead, is seek a means by which the content of the legal system that we share with others might be justified through hypothetical consent to all those who live within that legal system. This legal system must be justifiable to each and every one of those who could potentially be coerced, and not just to the segment of the population that is actually being coerced.

Coercion to individuals and private law, however, does not exist at the international level, Blake says. Although there could be coercion between nations, only the kind of coercion that exists within states can be justified through an appeal to distributive shares.\textsuperscript{17} Moreover, only the state is both coercive for individuals and required for individuals to live autonomous lives. As he puts it,\textsuperscript{18}

International legal institutions […] do not engage in coercive practices against individual human agents. Other forms of coercion in the international arena, by contrast, are generally indefensible—or, if they are defensible, do not find their justification in a

\begin{footnotes}
\item[16] Blake, —Distributive Justice , 282-83
\item[17] Blake, —Distributive Justice , 280
\item[18] Blake, —Distributive Justice , 280
\end{footnotes}
consideration of their distributive consequences. At present, I want only to point out the difference between domestic and international legal institutions; only the former engage in direct coercion against individuals, of the sort discussed above in connection with the criminal and civil law. There is no ongoing coercion of the sort observed in the domestic arena in the international legal arena.

In short, what triggers egalitarian demands is the fact of coercion and, since coercion is absent at the international level, there should not be egalitarian demands at the international level. Blake seems to provide, then, a powerful argument to show the connection between coercion and equality. But we should conclude, he says, that this kind of connection does not exist among states.

Nagel has a different approach, but along the same lines. Since his account is complicated, it may be worth quoting one of its central arguments. On his view,

[equality] comes from a special involvement of agency or the will that is inseparable from membership in a political society. Not the will to become or remain a member, for most people have no choice in that regard, but the engagement of the will…in the dual role each member plays both as one of the society's subjects and as one of those in whose name its authority is exercised. One might even say that we are all participants in the general will. A sovereign state is not just a cooperative enterprise for mutual advantage. The societal rules determining its basic structure are coercively imposed: it is not a voluntary association. I submit that it is this complex fact--that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preferences--that creates the special presumption against arbitrary inequalities in our treatment by the system.

Without being given a choice, we are assigned a role in the collective life of a particular society. The society makes us responsible for its acts, which are taken in our name and on which, in a democracy, we may even have some influence; and it holds us
responsible for obeying its laws and conforming to its norms, thereby supporting the institutions through which advantages and disadvantages are created and distributed. Insofar as those institutions admit arbitrary inequalities, we are, even though the responsibility has been simply handed to us, responsible for them, and we therefore have standing to ask why we should accept them.  

There are many different relevant aspects in this argument. But one of the things we can infer from it is that three basic conditions have to be in order for demands of justice to arise. First, individuals have to be subjects of ongoing coercion. Second, coercion has to be carried out in their name. This means, in Nagel's terms, that individuals have to be both the joint authors of the coercively imposed rules, but also the subjects of these rules. Third, membership to a society has to be non-voluntary; in the sense that we are born in it and that it would be excessively burdensome to leave it.

In more specific terms, Nagel believes that states trigger egalitarian demands because states implicates the will of individuals subject to coercive authority by making decisions in the name of all of them and with which they are expected to comply. These decisions are authorized by all (this is the second condition mentioned above) through payment of taxes, voting, participating in the military service and so on and, precisely for this reason, the regulations of a state must have the potential consent of all. The decisions made by the state, on the other hand, must be made in such a way that they satisfy standards that can be justified to all. Every single individual that is being coerced and on whom the laws impose obligations must approve these standards. And the only possible or acceptable justification that is potentially acceptable by all is to treat each person as an *equal*. So the state's claim to speak in the name of individuals who in

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19 Nagel, "Global Justice", 128-129
turn give their authorization generates the normative standards that the states are supposed to comply with.

So, to sum up, the three conditions that have to be (jointly) met in order for egalitarian demands to arise are (i) coercion on an ongoing basis, (ii) that the state or any other authority speaks in our names (together with the claim that we authorize the rules and laws we are subject to) (iii) and non-voluntary membership.

A case of war or military intervention could be a perfect example of coercion. However, since the other two conditions do not apply in military conflicts, there will not be a normative requirement to treat war prisoners equally. Some minimum conditions, such as preserving their lives and avoid violent means of interrogation, have to be respected in those cases; but there certainly is not an obligation to give the prisoners the same opportunities, wages or political rights as the soldiers who won the war (salary, benefits, etc). The point is that coercion by itself does not trigger egalitarian demands. As Cohen—that for the purposes of this chapter we could classify as a relationalist-globalist—points out, "wars are the ultimate coercive projects, and there is a morality of war, but that morality is not founded on the idea that members of the opposing state are owed equal consideration". On the other hand, the decisions made by authorities of a voluntary association like chess clubs do not trigger egalitarian demands, as the condition of 'speaking in our names' applies but the conditions of coercion on an ongoing basis and non-voluntary association do not. Finally, if there is a situation in which people are non-voluntary members and those who rule upon them have lost control of their means to coerce, demands of equality do not apply, as nobody imposes its authority and therefore there is no need

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21 This is an example that Sangiovanni gives
to justify it. This would happen in the hypothetical case in which people who are born on a ship at sea (i.e. they are non-voluntary members of the crew team), but the captain has lost the means to coerce those on board and therefore does not speak in their name. It would seem odd to claim that demands of equality would apply in that context, for the captain would not have to justify his policies (basically because means to implement them are obsolete).

Since conditions (i), (ii) and (iii) do not apply at the international level, Nagel concludes, we cannot really claim that distributive justice duties exist beyond states. On his view, current international rules and institutions are not coercively imposed in the name of all those individuals whose lives they affect. Instead, they are set up by bargaining among mutually self-interested parties. Traditional institutions such as the UN, the WHO, the IMF and the World Bank are not, with the exception of the Security Council, empowered to exercise coercive enforcement against states and individuals. Other institutions, such as networks of environmental regulators, antitrust regulators, central banks, etc. typically bring together officials of different countries with a common area of expertise and responsibility, who meet and communicate regularly. But these institutions are not obviously coercive in nature. These officials cooperate, operate by consensus and do not have decision-making authority by any treaty. The international order, in sum, is an arena in which independent parties voluntarily associate in order to advance their common interests.

Both Blake and Nagel, as we have seen, locate the notion of coercion at the center of their account, and justify the disanalogy between the domestic and international level by appealing to this notion. States are essentially coercive and government decisions affect individual citizens on an ongoing basis. The international domain, in contrast, is basically a realm in which countries voluntarily interact to pursue their self-interest and to bargain, but no
coercion takes place in it. Countries can coerce each other, of course (by waging war, for example), but not in any relevant sense from the point of view of a theory of international distributive justice.

Non-relationalists react to Blake’s and Nagel’s (or, in other words, to the relationalist strategy) approach. The most important non-relationalists (we could also call them cosmopolitans), as defined so far, are Tan and Pogge 22.

A non-relationalist believes that egalitarian demands are pre-existing to currently existing practices and institutions, rather than derived from them. These egalitarian demands apply to individuals in the world at large. Cosmopolitan non-relationalists defend the following propositions:

[1] Individuals are the ultimate unit of moral concern.
[2] Individuals are entitled to equal consideration regardless of nationality and citizenship.

The first claim is the basic, core principle of cosmopolitanism. The underlying intuition is that to have blue eyes is as random and arbitrary as to be from Angola, and that none of these features, precisely because they exist through no fault of our own, should determine our life prospects. Exactly as we should not discriminate on the basis of eye colors, we should not discriminate on the basis of nationality. All individuals are equally entitled to the same amount of opportunities and resources; regardless of where they are situated in the world, and regardless of the political unit or state they belong to.

22 Pogge, *World Poverty and Human Rights*; Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism*
The second claim is the *egalitarian* component of the cosmopolitan theory. The notion of 'equality' is subject to many different interpretations. The one that cosmopolitans usually defend is that of egalitarian liberalism, which holds that to treat persons with equal respect and concern involves respecting peoples’ liberties and assuring that they have equal access to resources or goods with which to exercise these liberties²³. Since this view is consistent with Rawls's view on equality at the international domain, cosmopolitans propose to extend Rawls's conception to the international level. Tan, in fact, endorses Rawls's egalitarian principle—that resulting social and economic inequalities between persons are acceptable only against a background of equal opportunity and a social arrangement in which the worst-off representative person is best-off—as the distributive principle that shall apply globally. Cosmopolitan egalitarianism is prior and independent from any currently existing institutional framework. Obligations of justice are appropriate even when no interaction has taken place. Individuals, in other words, have obligations of justice to each other (e.g. obligations to ensure that each of them obtains an equal amount of resources) and states, shared institutions or associations are just if they are an effective means to realize these obligations.

Although it is not my intention to fully refute non-relationalism here, there are two things about it that I think are worth mentioning for the purposes of this chapter. The first one is that, after careful examination; we might realize how unintuitive the consequences of non-relationalism are. Consider the following example. When workers demand a salary rise, they do not do it on the basis that they should earn as much as those who have the same job in other countries; when unemployed people demand an unemployment insurance they do not do it on the basis that they are entitled to the same amount as unemployed people in wealthy countries. The

²³ See Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism*, 7
underlying motivations seem rather that they should get whatever amount is considered reasonable for the local standards of equality of that state or community. Real life cases are not much different. Migrant workers in Argentina (who usually come from border countries such as Bolivia, Peru or Paraguay) are in a relatively worse situation than the Mexican migrant workers in the United States. Both might be —illegal, because they do not comply with local immigration laws and procedures, but the migrant workers in Argentina earn three times less than their counterparts in Mexico. When migrants in Argentina complain about their situation, they do not demand to state authorities salaries like the ones that Mexican workers get (that would maybe even put them in a better situation than their own employers!). They rather want to be accepted as legal immigrants and as workers with the same salaries and rights as the rest of the workers in Argentina. So although their situation might be the product of simply bad luck (the same bad luck that individuals of planet B had), they do not claim that they are entitled to the same working conditions as everybody else; they do however make demands against those with whom they share a set of institutions and practices.

Needless to say, this does not imply that workers, and citizens in general, do not claim to be entitled to the same rights as everybody else (e.g. right to a job, decent minimum income, shelter, food, etc.). But this is a claim to the same rights and not to the same shares. Everybody is entitled to a decent job, but this does not imply that everybody is entitled to the same wage (or, at least, that is what people seem to think). These hypothetical and real life examples do not fully refute the non-relational approach, but they show that there is something counterintuitive about it.

Second, even if non-relationalists clarified the exact content of the global distributive principle they endorse, they would not pose any significant challenge to Blake's and Nagel's
views. To claim that distributive justice pre-exists to practices and institutions implies that when egalitarian institutions do not exist, egalitarian institutions ought to be created. This, in other words, means that all we should be concerned about is that not enough egalitarian states and institutions exist in order to accomplish a fully just world. But this is something a relationalist need not deny. Blake, for instance, is concerned about current states and about the legitimate demands they trigger. It follows from his view that if other coercive states were created, they would have exactly the same justificatory burden as the ones that already exist. In this sense, both relationalists and non-relationalists seem to agree.

Admittedly, non-relationalists are at odds with the relationalist idea that fellow citizens have priority over foreigners when distributing goods. If this is true, however, the burden of the proof to show why extended obligations exist is on the side of non-relationalists. In any case, relationalists do not deny that they exist (they seem rather agnostic about this) but they do at least find reasons that justify the priority that fellow citizens have within national boundaries. So either because of its counterintuitive consequences or because they do not seem to be inconsistent with the relationalist view, non-relationalists seem to fall short of their intention to challenge relationalists.

The cosmopolitan-relationalist reply to Blake and Nagel

A different strategy for non-relationalists to challenge the relationalist approach is simply accepting the relational view that coercion triggers egalitarian demands, and show that there are global distributive principles precisely because coercion also exists at the international level. In other words, if coercion implies equality at the domestic level, and coercion also exists at the
international level, the natural conclusion that seems to follow is that egalitarian demands
should apply at both levels. On this strategy, egalitarian principles would be derived from the
fact that we share a set of institutions and practices with others beyond national borders and,
therefore, the non-relational would now become a relational one.

Premises [1] and [2] above (i.e. that individuals are the ultimate unit of moral concern
and that individuals are entitled to equal consideration regardless of nationality and citizenship)
could be complemented with a third claim.

[3] There is a global structure (which we can define as a set of international institutions and
practices such as trade, loans, intellectual property rights, investment, etc) whose impact on
people is profound and pervasive. Since in most of the cases the decisions made at this level are
imposed on people, we can conclude that this global structure is coercive.24

Although some non-relational authors acknowledge that the nature of the institutions
that comprise the global structure is different from the nature of national states, they all seem to
accept some degree of coerciveness in the way they operate. The usual thought is that the global
economic order is in many ways contributing to the persistence and creation of poverty in
developing countries, mainly through trade subsidies, unfair terms of cooperation, enforcement
of intellectual property rights, sponsorship of dictators and authoritarian regimes and others; and
that those who are affected by these policies involuntarily accept them.

24 This claim is defended by Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan
Responsibilities and Reforms* (Cambridge, MA: Polity, 2002), chapter 4. Also see Debra Satz, _Equality of
What among Whom? Thoughts on Cosmopolitanism, Statism and Nationalism_, Ian Shapiro and Lea
be considered here Cohen-Sabel, "Extra Rempublicam Nulla Justicia?".
Is it really accurate to describe the global basic structure as essentially coercive? In order to answer this question, it seems crucial to clearly define the notion of coercion and see whether or not the relevant features of the global order qualify as coercive according to this definition.

Surprisingly, although most of the non-relationist authors mentioned so far discuss or rely on the notion of coercion, none of them carefully defines it. To this end, we can rely on Wertheimer’s account. One might dispute this choice, as there are many possible conceptions on coercion one might possibly consider. But there are many advantages in using this one in particular. The first one, as I will show later on, is that Wertheimer’s account shows very clearly how coercion is basically a normative concept. On a conventional understanding of coercion, a coercive proposal has the typical structure of a threat. When A threatens B, A makes B worse-off. A robbery in the street is a case of coercion. This notion, however, is on the wrong track, because someone can be made better-off and, still, be coerced. This is because there are many different pre-proposal baselines one might take into account, one of which is a —moral baseline.

Therefore, coercion has a normative dimension attached to it. I will explain this point with more detail later on. In the global justice debate, the claim of coercion has been made, sometimes inadvertently, by appealing to moral baselines. For example, it has been commonly argued that the international global order is coercive because it imposes terms and conditions which fail to fulfill human rights obligations. So making the normative dimension explicit seems obviously necessary. The second one, is that Wertheimer’s account is the one both parties in the debate seem to rely on, either explicitly or implicitly. Blake, for example, says that his account of

26 See the entry on Coercion from the Stanford Encyclopedia of Philosophy for a full list of different possible accounts on coercion. http://plato.stanford.edu/entries/coercion/
coercion has been heavily influenced by Wertheimer \(^{27}\). On the other hand, Pogge, although not mentioning Wertheimer, claims that developed countries are currently making developing countries worse off with respect to certain moral baseline, namely that developed countries have the positive duty to implement institutional reforms that would make poor citizens of poor countries better off.

We should therefore discuss the details of Wertheimer's account \(^{28}\). On his view, proposals are coercive when they are threats and not offers. A threatens B by proposing to make B worse off relative to some baseline; while A makes an offer to B by proposing to make B better off relative to some baseline. In more specific terms, there is a threat involved when, if B does not accept A's proposal, B will be worse off than the relevant baseline position; and there is an offer involved when, if B does not accept the proposal, he will be no worse off than in the relevant baseline. If a man proposes money to a beggar in return for a task (say, wash his car), there is an offer involved, because the beggar would not be worse off if he refuses the proposal. However, if the same man proposes to kill the beggar if he does not wash his car, there is a threat involved, because the beggar would be worse off if he refuses the offer. These are clear cases. The baseline against which we evaluate whether the beggar is worse or better off is simply the normal course of events without the man's intervention. In fact, had this person not made any proposal, the beggar's life would have continue unaltered. We should also note, however, that the relevant baseline could be a moral baseline. While an agent that receives the proposal could be better off relative to a non-moralized baseline, he could still be worse-off relative to a moral

\(^{27}\) Blake, "Distributive Justice, State Coercion and Autonomy", fn. 272

\(^{28}\) Wertheimer, Coercion
baseline. A moral baseline is a duty that A has to B, or a right that B has and that A violates when she coerces B. Let us consider the following (well-known) example, provided by Nozick.

The drowning case

A is drowning, and B offers A an agreement according to which B will throw A a life preserver only if A serves B for four hours a day for the rest of his life. It seems that it is rational for the person who is drowning to accept the proposal. It is clear, however, that the proposal is not a just one, if we admit that there was a previous moral duty from A to save B’s life. With respect to that moral baseline (the duty to save B’s life), A is coercing B.

Let us assume that B prefers not to drown. Relative to a non-moral baseline, A is making an offer. In fact, he is proposing the drowning person to improve his situation. However, relative to a moral baseline, B is making a threat. There is a moral requirement according to which A should save B’s life and, with respect to that moral baseline, the drowning person is worse off. Another way to put it is that by failing to fulfill the duty to rescue B, A is reducing the options of B and therefore coercing him. Instead of saving B at no cost, A confronts B with two alternatives: drowning or paying, both of which are worse than the option B is entitled to. In the drowning case, as stipulated, A is not blameworthy for B’s situation. B is simply about to drown, and the details as to what really caused this situation are not really relevant in this context.

But coercion could also take place when A actively makes B worse off, and then improves B’s situation, although not at the point B was before being harmed. Wertheimer, via Nozick, also considers this possibility, by quoting the following example.

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The slave case. A beats B, his slave, each morning for reasons unconnected with B’s behavior. A proposes not to beat B the next morning if and only if B does $X^{30}$. 

Here it seems that A is making B better off, because not being beaten in return for $X$ is better than being beaten one more time. But the proposal is still a coercive one, for A is morally required not to beat B at any time. Therefore, A is making B worse off relative to a moral (not historical) baseline.

To sum up, there are two different possible ways someone can be coerced (apart from the traditional way of making someone worse off by making a plain threat). The first one, as represented in the drowning case, is to make someone better with respect to the pre-proposal baseline, but worse-off with respect to a specific duty to that person; and the second one, as represented in the slave case, is to make someone actively worse off and then offering to improve his situation but not at the point he was before he was made worse off.

On Blake's account, for instance, the moral baseline is the principle of autonomy. States necessarily affect peoples' autonomy—i.e. they render them worse off with respect to the ideal of living fully autonomous lives—and they need to justify that interference in order to be legitimate. Without appealing to a moral baseline Blake's account would not make any sense. Let me further explain. On the one hand, states improve the situation of its members with respect to the situation in which they would presumably be if the state did not exist. Unlike a typical coercive proposal—e.g. the drowning case—there is not a normal pre-transaction baseline that we could appeal to in order to show that states render people better off. States exist as a matter of fact, and that is the starting point of Blake’s article. In this sense, Blake's view is an atypical case

$^{30}$ The example assumes that B prefers doing X than not being beaten
of coercion. However, we can speculate (and that is precisely the reason that justifies and legitimizes the existence of states) that peoples‘ life, in the absence of a state, would be worse off if they were not embedded in a legal web of coercion, as nobody would protect their autonomy. States are then similar to any other offers; not because they make proposals that we can reject, but because our lives are much better when we become members of a state.

On the other hand, states make the lives of citizens worse-off. We have a pre-existing right to lead autonomous lives, and states take away part of our autonomy in order to, paradoxically, protect the autonomy of all their citizens. The state constraints our actions when it tells us how to behave in public spaces, how much taxes to pay, when to participate in the military service, etc; but all these policies are necessary, or so the government would say, to protect everybody's autonomy (this is as if the state said to its citizens —the only way to protect your autonomy is by constraining you in some respects ). States are in that senses similar to coercive proposals, as we are worse-off when we become its members. Blake's argument is similar in some relevant respects to the drowning case. The rescuer offers to save the life of the drowning person, but fails to fulfill his obligation to rescue him at no cost. The main difference, however, seems to be that in the drowning case the proposal seems immoral or unjustified, for obvious reasons; whereas in the case of the state, failing to respect people's autonomy is necessary in order to protect the lives of citizens and, therefore, justified. The moral baseline, in this case, would be the duty that the state has not to interfere in people’s autonomy.

To analyze Blake’s argument in terms of a double baseline may seem an unnecessary complication. If citizens‘ lives were better under the state, one might say, then states are making a plain offer to them (A —forced offer, but an offer in the end). There would be no need, then, to appeal to a moral baseline or even to the notion of coercion. But this argument oversimplifies
Blake’s view and fails to grasp the difference between the domestic and the international case. If states were making a plain offer to their citizens, then there would be no need to justify their policies to each of their citizens. What sense would it make to explain state policies, if citizens will always be better under them? The need to justify policies and to gain (hypothetical) consent from everybody stems precisely from the fact that someone’s autonomy is affected. If my salary is taxed, then a justification is owed to me. My autonomy is affected because I am in principle unable to use my salary as I want. Perhaps the reason why I am taxed is that I earn too much in comparison to others, in which case it could be reasonable to demand more from me (part of the justification will naturally include the argument that my contribution would be the only way to protect my neighbor’s autonomy); or perhaps the reason is that I am black, in which case it might not be justified at all. In any case, what matters is that, even if it were true that both my neighbor and I are better off living under a state than living without it, this would not be enough to show that states are making a plain offer to their citizens. So, in other words, the state might render me worse off in some respects—in which case the state would be coercing me and thus making my life worse—but it might make my situation better off in some other respects. (for example, with respect to the moralized baseline of respecting my autonomy by forcing me to pay taxes I am being made worse off, but with respect to the baseline or situation in which I would be if the state did not exist, I am rendered better-off).

Based on Wertheimer’s approach, we can we legitimately claim that there is coercion at the international level (as there is within states) on an ongoing basis, as cosmopolitans would claim? Domestic states, as we have seen, are plainly coercive, because the state—or any other institution that distributes burdens and benefits—clearly subjects its citizens to coercion on an ongoing basis. When a government creates a new tax for, say, the wealthy, it confronts them with
the options of either paying the tax or going to jail (or something worse than paying the tax). In this case, the state is "threatening" its citizens. What is relevant in this example is that wealthy citizens are worse off if they refuse the proposal. Either paying the taxes or facing the consequences of not doing so would put them in an inferior situation with respect to the situation in which they were before the proposal was made to them. The fact that they would worsen their situation or at least that they would have strong reasons to believe that their situation would worsen if they rejected the offer is precisely what makes the proposal coercive.

The global structure also subjects citizens, states or whatever entity they are comprised of, to proposals on an ongoing basis. Central components of the global basic structure are trade agreements, loans, etc. All these involve proposals to the most vulnerable parties. But skeptics of the idea that the international order is coercive (Nagel and Blake will certainly be in this camp) will challenge the view that these kinds of proposals could be coercive ones. In line with Wertheimer's account, skeptics will argue that trade agreements, intellectual property rights, financial aid, loans and most of the exchanges involve agreements and offers among parties. These agreements are most of the times voluntary, as they can always be refused. If, say, certain aspects of a trade agreement, or the agreement as a whole, are unattractive for a certain country, the country may refuse it or propose a new one under different terms; if a loan is offered under terms that a country finds inconvenient, the country can reject it; if a pharmaceutical company does not accept local regulations for its products, the company can withdraw the offer to sell in that place, etc. None of these agreements are, in other words, imposed on the most vulnerable party, as when somebody is forced to pay taxes involuntarily. To reject them or to opt out from international bodies is always an option.
The common reply to this argument from cosmopolitans is that these kinds of agreements are still coercive, for refusing them or opting out from institutions in which they take place is not a *real* option. Consider trade. Technically, the WTO is a voluntary association to which countries decide to become members in order to pursue their self-interest. One of the central goals of the organization is to improve the welfare of the people of its member countries by lowering trade barriers and providing a platform for negotiation and trade. At the WTO, countries negotiate terms of exchange among them in a way that could benefit all those who participate in the negotiations. In this forum, countries typically agree to reduce trade barriers for specific products so that they can both obtain some benefit for selling their domestically produced goods and, also, from importing a product that they need at a competitive price. If a country is not interested in participating in the negotiation, or if it finds the terms of the agreement inconvenient, it can always reject parts of the proposal, or the proposal altogether. However, a cosmopolitan would say, the economies of many countries depend on the few products they can offer for sale in the international community, so they cannot afford to quit from the WTO if they do not like its rules and procedures. To opt out from the WTO would completely exclude them from the world markets, and would create even worse economic problems in their local economies. So although membership in the WTO is formally voluntary, the hard circumstances in which some countries are actually *force* them, in practical terms, to be part of it. The option of bi-lateral agreements or agreements with neighbor countries is always an option, but the fact that they decide to become members of the WTO suggests that this alternative is not sufficient for them. In fact, there are currently 153 member states in the WTO. To leave the WTO is not, then, like opting out from chess clubs. Opting out from chess clubs do not really expose people to extremely hard conditions (unless there is only one chess club in town and a person desperately needs to play,
which is highly unlikely) while leaving the WTO does. To get on a raft in order to avoid drowning after a shipwreck seems like a more appropriate analogy for some countries than voluntarily registering in a club to enjoy some sort of leisurely activity.

In this vein, Cohen and Sabel\textsuperscript{31} have argued that there is a direct rule-making relationship between the global bodies (they explicitly mention the IMF and the WTO) and the citizens of different states, because the decisions that they make have binding force. The obvious answer to this is, they say, that governments voluntarily decided to join these institutions, and so any complaint against rule-making bodies should really be directed against the state for accepting their directives, or against their fellow members for authorizing the membership. But such answer, they believe, "seems almost facetious. Opting out is not a real option because the WTO is a "take it or leave it arrangement", without even the formal option of picking and choosing the parts to comply with"\textsuperscript{32}.

But this line of argument, the skeptic would say, is not conclusive either. An offer is coercive if someone is made worse-off, either if he refuses the proposal or if he accepts it. Parties at the international level are\textit{ not worse off} if they refuse the proposals they receive; at most, they would remain at the pre-transaction level.

A basic condition for proposals to be threats—namely that B has to choose between two or more options, all of which would render him worse off—is not met and, therefore, we could not claim that there is coercion on an ongoing basis in the international domain. In Blake's terms, individuals' or states' autonomy would not be affected as a result of coercion (again, on an ongoing basis). The most we could say, in any case, is that the global order has been failing to

\textsuperscript{31}Joshua Cohen and Charles Sabel "Extra Rempublicam Nulla Justicia?," \textit{Philosophy and Public Affairs} 34, no. 2, (2006):147-175. Although it is not clear to me if Cohen and Sabel are cosmopolitans, this argument is certainly representative of the cosmopolitan position.

\textsuperscript{32}Cohen and Sabel, —Extra Rempublican Nulla Justicia? , 168
improve their situation or has been failing to make them the best possible offer. Admittedly, opting out from the WTO, trade agreements or any other institutions; or to reject proposals in general, is something some that, as I have said earlier, countries usually cannot afford to do. But their alternative in any case is to either remain in the same (harsh) situation in which they are, or to accept the proposal. In either case, there would not be coercion because the parties would not worsen their situation after refusing the proposal. The most we could say is that the (hard) conditions in which they are would be their pre-transaction baseline. Neither option they are confronted with would be inferior relative to this baseline.

The skeptic argument seems to be effective against Sobel‘s line of thought. In fact, refusing asymmetric trade proposals do not make weaker countries worse off. It seems more appropriate to classify these kinds of situations as exploitative, as they typically satisfy two conditions for a transaction to be exploitative. First, they are mutually advantageous, as both parties benefit from it. Second, one of the parties takes advantage of the vulnerabilities of the other party by obtaining more from the deal that he would have otherwise obtained.

Is the skeptic argument conclusive? Those who defend the idea that current arrangements are coercive do not think so, and have appealed to many different strategies to show that the skeptic position fails. I will discuss these possible strategies in the next chapter. For now it is plausible to say that the skeptic argument offers a conclusive argument against the Cohen-Sabel line and against the standard view of international coercion by showing that proposals can be voluntarily refused or accepted, by showing that refusing them do not make countries worse-off. Possible ways to challenge this argument are showing that proposals are not voluntarily accepted, showing that proposals fail to satisfy some moral standards that apply to that context, or showing that those who make the offers are actively making weaker parties worse-off before
making such offers. I will discuss these possible challenges to the skeptic argument in the next chapter. For now, we can draw some partial conclusions. Coercion is one of the central notions in the global justice debate. The most important difference between the different possible positions in global justice, which I have described as relationalists, non-relationalists and globalists, lies in the position that each of them takes with respect to the notion of coercion. While relationalists justify the disanalogy between the domestic and the international context by appealing to the notion of coercion, relationalist-globalists try to show that both domains are analogous precisely because coercion exists at both levels. Given that both positions rely, either explicitly or implicitly on Wertheimer’s account of coercion, it becomes necessary to explain what its main features are. A first approximation to this account, however, shows that some of the main arguments put forward by non-relationalists are not enough to pose a challenge to relationalists. The disanalogy between the domestic and international level seems therefore valid. Different possible challenges to the skeptic position will be discussed in the next chapter.
Chapter II – Two cosmopolitan arguments for coercion. Trade and Colonialism

As I showed in Chapter I, someone might challenge the claim that there is coercion at the global level by appealing to a standard objection. According to this objection, the international order is basically comprised of offers, and countries are free to accept them or refuse them. If they refuse them, they would not be worse off with respect to the pre-proposal baseline. Therefore, the international order is not coercive (at least on an ongoing basis). If the standard objection succeeds, the internationalist view that there is a radical asymmetry between the domestic and the international domain would succeed, and the relationalist-globalist challenge to internationalists would fail.

Non-relationalists and relationalist-globalists, however, have attempted to challenge the standard objection from three different perspectives. In this chapter I shall argue that these strategies, for different reasons, fail. In Chapter III I propose a different, more promising, way to challenge the standard objection.

There are three possible ways a proposal could be coercive. On the first version, a proposal is coercive when it threatens to make someone worse off with respect to a pre-proposal baseline. This seems to be the typical and most common way of coercion (—your wallet or your life ). This is the version of coercion that what I have called the _standard objection_ typically criticizes. There are, however, two more possibilities. A proposal is coercive if A makes B better off and yet violates B‘s rights; and a proposal is coercive if A actively and wrongfully creates the conditions that leads B to accept the proposal A makes. These two versions of coercion have been explained in the previous chapter. Non-relationalists and relationalist-globalists have
attempted, in different opportunities, to challenge what I have called the standard objection by showing that the international order is coercive according to the second and/or third versions. So, for example, the claim that a proposal is coercive when it makes someone better off but still violates his rights has been instantiated by showing that the global order is currently failing to implement an institutional order by which poor citizens in the world could live above the human rights baseline; and the claim that a proposal is coercive if A actively creates the conditions that lead B to accept the proposal A makes has been instantiated by pointing out the fact that rich and developed countries have actively made poor countries worse off by a process of historical wrongs, basically colonialism.

In this chapter I would like to analyze and discuss each of these strategies. I argue that both are misleading as a way to show that coercion is currently taking place on an ongoing basis at the international level. A more general objection, however, should be taken into account before proceeding. The claim that the international order is or is not coercive is, at it is, too broad and therefore deceptive. There are millions of transactions and proposals every day, some of which might be coercive (under any of the versions of coercion) and some of which may not. It is impossible, therefore, to make a prima facie and discrete claim regarding the coerciveness of the global order (i.e. it is/it is not), as that would depend on a case by case assessment of each proposal and transaction. Sometimes countries coerce others, sometimes they make offers to them and sometimes they do neither. But this objection does not invalidate the kind of analysis I am proposing. It is not really feasible to discuss each single transaction and see whether or not it fits in some or any of the versions of coercion I am proposing. In that respect, the objection seems right. The key point, however, is that proposals that lie at the heart of what has been

traditionally described as the international order are in general structurally similar; and they are the ones that have been traditionally described as coercive. We must determine, however, whether they are in fact coercive and, if they are not, explain why not. Are, for example, conditions imposed by the IMF in return for loans coercive? Are asymmetric trade rules (i.e. that developing countries open their markets more than their developed countries counterparts) sanctioned at the WTO coercive, or simply exploitative? These questions can and have been answered without analyzing each single financial and trade agreement, as the structure of the proposal is basically the same across several transactions. The IMF, for instance, does not attach conditions to loans in some isolated cases; this happens on an ongoing basis. Trade rules sanctioned at the WTO were not asymmetric in one or two remote countries; the asymmetry is ongoing and constant across many different cases. While relationalists-internationalists would claim that these kinds of proposals are not coercive in any interesting sense of the term, mainly because the international arena is a domain where states voluntarily pursue their self interest and are free to accept or reject proposals; globalists would claim that these kinds of proposals are clearly coercive, for they impose financial and trade rules which developing countries are not free to reject (either because they cannot afford to be excluded from the international financial markets or because they cannot afford to opt out from the WTO). The point that the structure of the proposal is the same across several different cases is also made to show that domestic states are coercive. The claim that domestic states coerce their citizens does not need a case by case analysis to prove true. We know, for instance, that the domestic state coerces its citizens to pay taxes or to go to war without making a case by case analysis. If this kind of generalization is acceptable for states, it should also be acceptable for the international order. However, the central point is whether the international order can be said to be analogous to the state in the
relevant sense. We can then discuss how claims of coercion have been made and whether they succeed or not. There are two main strategies that have been used. I will address each of them in turn.

**The international order as human rights violation**

A well-known claim in the existing global justice literature is that the global order is coercive because it fails to secure minimum human rights (basic healthcare, education, basic income) to the population. The argument, in more precise words, holds that an alternative to the already existing world arrangement under which people would have access to a minimal threshold is feasible, and that developed countries—in virtue of the fact that they are rich—have the obligation to secure this minimal standards among the poorest citizens of developing countries. Since the current international order fails to achieve this threshold, it is coercively imposing an unjust order on poor citizens across the world. Additionally, the argument holds that the current international order is not making poor citizens worse off and therefore harming them in a straightforward way. On the contrary, the argument holds that under the current state of affairs, destitute citizens of the world are, in broad terms, better off (than they would otherwise be if the current international system did not exist). The injustice lies, rather, in the fact that the current order is falling short of achieving a minimal standard that is made up by the human rights moral baseline.\(^{34}\) In this vein, Pogge for example has claimed that developed countries are currently violating their duty—not to cooperate in the imposition of a coercive institutional order that avoidably leaves human rights unfulfilled without making reasonable efforts to aid its

\(^{34}\) Thomas Pogge, *Freedom from Poverty as a Human Right: who owes what to the very poor?*, (Oxford:Oxford University Press, 2007); or Thomas Pogge, —*Baselines for Determining Harm*
victims and to promote institutional reform 35 or, in a different context, that —the moral charge before us is that governments, by imposing a global institutional order under which great excess of severe poverty and poverty deaths persist, are violating the human rights of many poor people. The plausibility of this charge is unaffected by whether severe poverty is rising or falling 36

These quotes should be enough as an example of the kind of coercion mentioned above. A common belief that underlies this approach within the global justice debate is that we should focus on distributional outcomes. This means, in other words, that domestic and international institutions should be designed in such a way that could lead us to a world in which some substantive and pre-existing normative ideal is realized (human rights, equality, marginal utility). The fairness or unfairness of the procedures that were involved in bringing about such a state of affairs is not relevant in this context. So on this view, a world in which the desired distributional outcome is not achieved is always unjust, no matter how fair or unfair the relevant institutions involved in it are. The reverse seems also true: a world in which the desired distributional outcome is achieved will be just, even if the relevant institutions that participated in bringing it about are clearly unfair. Thus, for example, Pogge claims that —the standard of social justice I invoke is a human rights standard. Evidently, an institutional order can be minimally fair, in the sense of treating its participants equally, and nonetheless foreseeable reproduce avoidable human rights deficits on a massive scale. That I would consider such an order unjust is clear beyond any reasonable doubt. Pogge claims then that even if the rules that shape the institutional order are fair, this institutional order should be considered unjust if it coexists with a state of affairs in which people are below the human rights baseline. The WTO, for example, could have symmetric rules, all parties could accept its practices, the deliberative process could be

35 Pogge, —World Poverty and Human Rights , 170
36 Thomas Pogge, —Freedom from Poverty as a Human Right. Who Owes What to the Very Poor? , 40
democratic, and yet be unjust. The only possible just international order is, for Pogge, the one that leads to the desired outcome: a world in which poverty is absent.

The idea underlying this approach fits well with one of the versions of the definition of coercion provided by Wertheimer. As I have said earlier, proposals can be coercive if A proposes to make B better off but violates B’s rights. The example used to illustrate this point is the drowning case, where A has the duty to rescue B at no cost but ends up rescuing B for a certain amount of money. On the line of argument we are currently considering, the international order would be analogous to this example. The question that logically comes next is exactly in what way developed nations are coercing developing countries into an order under which human rights are unfulfilled. Pogge gives a few examples, all of which are actions that developed countries are already actively carrying out. The most important one is trade. In WTO negotiations, affluent countries defend asymmetrical protection of their markets through tariffs, quotas, anti-dumping duties, export credits, and huge subsidies to domestic procedures. Wealthy countries, the argument goes, are very effective at managing to invest and sell their own products to developing countries (if the developing countries are in their scope of interest in the first place); but subsidize and protect their own products at home. As a consequence, it becomes harder for non-wealthy countries to benefit from selling the few products they can offer for sale in the international market. The upshot is that poor countries remain poor, while wealthy countries get richer and richer. If these constraints did not exist, Pogge says, “hundred of millions would escape unemployment, wage levels would rise substantially and incoming export revenues would be higher by hundreds of billions of dollars each year.” The analogy with the drowning case

37 Thomas Pogge, —Severe Poverty as a Violation of Negative Duties, *Ethics and International Affairs*, 17, no2 (2005), 6

38 Pogge, —Severe Poverty as a Violation of Negative Duties, 6
should be clear at this point. Richer countries make proposals to poorer countries on an ongoing basis. The proposal is to make countries better off through trade, but the resulting outcome would be suboptimal with respect to the outcome that would have resulted if trade rules would have been symmetrical. Given the fact that the alternative optimal scenario is feasible, and that developed countries have the duty to bring it about, developed countries end up coercively imposing unfair terms of interaction. The underlying assumption of this position is that wealthy countries have the duty to eradicate poverty abroad, and that by proposing asymmetric agreements they basically fail to discharge this duty or do it insufficiently. Human rights—or any other moral threshold that we consider appropriate—are, then, among the most important components of fair background conditions of international trade.

The claim that the international order is imposing unfair terms of trade on developing countries because they do not achieve the desired distributional outcome is, however, misleading. Fulfilling basic human rights cannot and should not be among the conditions that trade agreements have to meet in order to be fair. This can be shown by discussing the notion of responsibility that underlies this approach. If it is true that a trade agreement between (rich) country A and (poor) country B is fair if and only if A renders poor citizens of B better off, then it seems to be the case that A is responsible for the fate of the poor people in B. This, however, places an extra burden on A that A should not have. It is probably true that there is a general responsibility of wealthy countries to alleviate the suffering of the poorest citizens of the world—i.e. a responsibility that all wealthy countries share in virtue of the fact that they are rich. But this does not imply that merely by trading with a poor nation the responsibility for eradicating poverty in that country now falls on A, or that A now has an additional responsibility that it did not have before engaging in a commercial transaction. The difference between a
general responsibility to eradicate poverty and a special responsibility of country A to eradicate poverty in the country with whom it trades is crucial.

A *special* responsibility exists when only an agent or a group of agents has the duty to aid others. As Miller puts it, a special responsibility for something arises —when we have a moral responsibility, either individually or along with others, to remedy the position of the deprived or suffering people, one that is not equally shared with all agents; and to be liable for sanctions if the responsibility is not discharged \(^{39}\). If a group of students unintentionally sets a bus on fire, they may be the cause of it. But the firefighters have a special responsibility to extinguish it, as no one else is expected to act in that circumstance.

A *general* responsibility, on the contrary, exists when everybody has a duty to remedy the situation of others; or, in other words, when the duty to aid others does not fall on a specific agent or group. We may claim, for instance, that every citizen has the duty to aid those in dire need by paying certain taxes. These taxes are a burden for everybody and no one is exempted.

If it is true that there is a general responsibility to eradicate world poverty, and this duty is largely unfulfilled, then country A may be responsible, insofar as it is part of the international community, for B’s poverty. But A’s responsibility in that scenario would be shared with other countries and international organizations and, consequently, A would only be *partially* and *indirectly* responsible for B’s situation—not specially responsible \(^{40}\).

This situation would be analogous in some sense to the case of a wealthy citizen who offers a beggar a modest amount of money in return for a couple of the roses that he sells. It is certainly true that the beggar may have a right to live a decent life, and that as part of the society

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\(^{40}\) Liam Murphy makes a similar point, although he focuses on individuals and their obligation to donate. See Liam Murphy, *Moral Demands in Non-ideal Theory* (New York: Oxford University Press, 2000).
the wealthy citizen may be responsible for creating the conditions that would make that decent life possible. But this responsibility is shared with the rest of the citizens of their society. Being partially and indirectly responsible for B’s poverty in the case of international trade, or for the beggar’s situation in the domestic case, is not enough to render the trade agreement with B or with the beggar unfair. Even if the wealthy party in the transaction has acted in an irresponsible way and has failed to fulfill his partial and indirect duty to take the destitute party out of poverty, we cannot plausibly claim that buying the roses is unfair on the grounds that he did not fulfill this duty by trading. There are two important reasons for this. First, the wealthy party was not expected to render the poor party better off by trading with him, but rather through other means (for example by transferring part of the GDP to United Nations in the case of countries, or by paying taxes and supporting the right candidates in the case of the beggar). Second, and more importantly, to claim that trade is unfair when it fails to render the worse off above some threshold that we consider appropriate leads to the unintuitive and implausible conclusion that those who do not trade with the worse off are even more unfair than those who trade with them, for they do not even slightly improve the bad situation in which they already are.

However, not trading with someone cannot be a reason for moral concern, as nobody has the duty to trade with someone else in the first place. The claim that we do not have the duty to trade with others is intuitively appealing and we do not seem to need a sophisticated normative theory in order to show that it is true. If you have an object that you want to sell, I do not have the duty to buy it. Alternatively, if I have an object that you want, I do not have the duty to sell it to you even if you want it. Since the object belongs to me or to you, I can do with it whatever I want. One might argue that, given the fact that I have the duty to help others when they are in a desperate situation, and given the fact that buying your object would help you get out of this
desperate situation, I do have the duty to buy your object. But the conclusion does not follow, for the duty to alleviate your situation (if any) could be discharged in many different ways and, in any case, I might not be the only one who would be responsible for aiding you. This argument also applies to trade among countries. Buying a certain natural resource from country B might help B get out of poverty, but it does not follow from this that A has the duty to buy this natural resource. The burden to discharge the duty to aid B, if any, would be shared with other countries, and it could be discharged in many different ways. Another way to put is that states have the right to set their trade policies on the basis of their national interest.

A possible objection to this claim is that the only way in which a country can discharge its duty to another nation is by means of trade. This is not implausible. In fact, many people think that aid doesn't do any good and so trade is the only way to help develop a country. This objection seems to be on the right track. If in fact country A has a duty to country B, and there is only one way to discharge this duty, country A should discharge this duty through the only means available to it. But this objection depends on the empirical assumption that it is not possible to aid countries through other means which, it seems to me, is false. In fact, there are currently many different international organizations that are in charge of aiding other countries, and many of them seem efficient enough to carry out this task.

There is a different possible approach on trade, according to which trade among countries should in general be promoted because it renders everybody better off and is therefore an effective means to eradicate poverty in poor countries. This view would in fact accept the premise that there is an independent duty to assist those in need and to render them above the human rights baseline. But, unlike the position that I have been discussing so far, trade would not be unfair if it fails to achieve the desired outcome of improving peoples' lives. Rather, trade
would only be one among many possible resources available that countries could appeal to in order to discharge their duty to help those who are worse off. Trade, in other words, would have an instrumental value. This seems to be the view that Risse\textsuperscript{41} and Teson adopted\textsuperscript{42}. A parallel with the flower-seller case could be useful at this point. One of the ways in which the rich man could help the beggar is by buying the roses that he sells; since he wants to sell them, it seems safe to assume that this would make him better off. But trading is not the only way to help him. Other options, such as actively contributing to the creation of fair background conditions or donating to charity are also possible. Therefore, not trading with him (or trading, but not substantially improving his life as a result), does not render the trade transaction unfair. It is misleading, then, to claim that the wealthy person acts unfairly when by trading he does not take the worse off party out of poverty. The advantage of the instrumental view of trade is that it does not seem to place such burden on the stronger party of a trade negotiation.

There is a possible reply to the position I have taken so far. This reply may be based on the assumption that the notions of responsibility and causality are strongly connected. If developed countries are casually responsible for the fact that the worse-off countries are poor, then each of them (individually) should be responsible for improving the terms of trade with them. On this line of thought, it is usually claimed that trade subsidies and protectionism generate poverty in developing countries. Many Sub-Saharan countries, for example, could substantially improve their living conditions if cotton were not subsidized in Europe and United


\textsuperscript{42} F. Teson y J. Klick, ―Global Justice and Trade: a surprising omission can be found here. http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=jonathan_klick

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States, as they would literally obtain billions of extra dollars by selling this product. Therefore, developed countries should redress this situation by offering better terms of trade.

The first thing one might say about this objection is that it is not clear that subsidies and protectionist policies should be considered causes of other countries’ failure. Poverty is usually the result of many different factors, such as bad policies, corruption, past historical wrongs, the way in which the international institutions are designed and others; and trade subsidies may not even be among them (or, perhaps, the impact of these policies on poverty may only be negligible). But even if subsidies and protectionist rules do in fact worsen the situation of developing countries, it does not follow that developed countries have the responsibility to redress this situation by offering better terms of trade, or by improving the situation of those who have been harmed as a result of the application of these policies. The reason why this does not follow could be shown by noticing that causing a state of affairs—even a state of affairs in which someone is rendered worse off—does not imply that we should be responsible for remedying it.

Let us consider this argument in more detail. What makes us responsible for others are the underlying duties to them, and not the mere fact that a situation—whether fortunate or unfortunate—results from our action. If A acts in a way that negatively affects B without morally wronging her, he is not responsible for restoring her initial situation or ‘to make him whole’.

This responsibility only arises if a duty that we have to B has been violated in the first place43. What generates responsibilities to others, in other words, is not the mere fact that we have caused a certain state of affairs, but rather that there are duties that we owe to each other. If by making others worse off we are infringing some duty (say, the duty not to steal what they rightfully own, or the duty not to interfere with their right to have a life plan), we may be specially responsible to

compensate them. But if we are not infringing any duty by making others worse off, no special responsibility arises. This conclusion might be surprising for some, as making others worse off seems always wrong. We can consider, however, the following example. As Ripstein points out, if I open a competing business and as a consequence lure away your customers I am harming you but not wronging you, as the new store is not infringing any duty not to start a new business in that context. Your store may have to close and your employees may have to lose their jobs; but I would not be morally responsible for them, even if the employees end up living below the subsistence level as a consequence of the success of my new business. The only way in which it might make sense to claim that I am responsible for them is by appealing to the fact that I have a duty to contribute to general fair background conditions. But this, again, is not a burden that falls solely on me. Needless to say, if for some special reason a society discourages competition and forbids new stores—say, they need to maintain some products at a certain price—then in that case my new store would not only be harming you but also wronging you, for I would not only negatively affect your profits but also infringe the duty not to sell what I want to sell.

The above mentioned example is useful to understand how harm and wrong are distinct and independent notions. We should discuss trade in light of this distinction. If at some point a developed country decides that it is better for the functioning of its economy to keep the price of cotton at a certain minimum price by obtaining it from local producers at a subsidized price, a developing country might suffer as a consequence. But it is not clear that the developing country is being wronged. Similarly, a developed country may decide to stop importing a product from a developing country and start importing the same product from another developing country, at a

lower price. We can imagine that something like that could happen with cotton. If France decides to start importing cotton from Egypt rather than Sudan (assuming that it had been importing cotton from Sudan in the past), this would make Sudan worse off. But, again, it is not clear that France would be wronging Sudan by doing so. In general, adopting such policies does not seem to violate any duty not to adopt them. On the contrary, states have special responsibilities to their citizens and it is expected from them to organize the economy in such a way that the interests of their citizens are given priority. Therefore, it is not true that a special responsibility to redress the consequences of this policy arises in these cases.

One might argue at this point that even granting that states have special responsibilities to their citizens, they still have the obligation to assist poor people abroad. On this view, implementing subsidies and protectionist rules would count as a wrong (not just as a harm) on the grounds that as a result of these policies people would fall below what they are entitled to. But this argument would, again, confuse the notions of special and general responsibility. If wealthy states have the responsibility to address poverty abroad, that responsibility is a general one. Therefore, any trade policy that brings about more poverty abroad should not be condemned on the basis that a special responsibility to address remedy poverty abroad has been violated, for this special responsibility does not even exist in the first place. As said earlier, nobody has the duty to trade with someone else. It follows from this that no one has an obligation not to interrupt a trade relationship with a partner, even if this created negative consequences for him. To burden specific sectors of the economy, or the economy as a whole, for such consequences would be like claiming that the business that lures away customers from another store should pay an extra tax, or should financially compensate its competitor for the fact that it had to close its doors. But this seems implausible.
One might object the protectionist policies on the grounds that they are inefficient and inconvenient for consumers. It is possible that eliminating protectionist policies would increase the overall benefits by, for example, reducing the price of goods. In fact, if such protectionist policies did not exist, producers from other parts of the world could compete in the market on an equal basis and would probably be able to offer the same product for a lower price (this is something that would definitely happen with cotton). But this is an objection about the inefficiency of protectionism; not about its immorality. It is probably true that eliminating subsidies and protectionist policies will result in an overall benefit for consumers in general and producers and farmers in developing countries; but this does not imply that it is wrong not to eliminate them.

An objection to trade subsidies from a different flank could point to the fact that developed countries usually demand that developing countries open up their borders for trade but do not do the same with their own borders. This argument emphasizes the somewhat hypocritical attitude of defending a double-standard with respect to how principles of free trade are applied. However, although certainly reasonable, this argument is not enough to prove that better terms of trade are owed to developing countries. Not being consistent with one’s principles is certainly a deplorable practice, but this of course does not mean that some sort of special duty to particular others arises as a consequence of it.

It seems at first glance, from what I have said, that wealthy countries never have a special responsibility to address poverty abroad. But this impression is misleading. It is certainly true that trade policies are usually cited as examples of harming policies, and that this may not be so. But there are other cases in which countries may be held specially responsible to address poverty abroad. In this vein, Miller proposes a list of conditions that have to be met in order for an agent
to be specially responsible. The most important one, on his view, is when the agent has displayed moral fault: he must have deprived P deliberately and recklessly, or must have failed to provide for P despite having a pre-existing obligation to do so. This may happen if a country A coerces, invades or steals goods from B. It could also prevent B from trading by enforcing an embargo, or it could oppress their citizens by funding dictators. Special responsibility arises in these cases. However, as I tried to show earlier, there is not any pre-existing obligation to trade in a way that poverty is eradicated.

We can now conclude that a very popular point of view within the global justice debate, according to which the international order is unjust, is weak for it fails to acknowledge the difference between special and general responsibility. Two of the central practices of the international order, the argument holds, are trade proposals and financial transactions. However, I have tried to show that the general responsibility to address poverty abroad should not necessarily be discharged by means of trading. Given that trade itself is not a duty, or so I argue, developed countries are not wrongfully making others worse off by failing to trade. If fair trade demands that those who trade with more vulnerable countries improve their standard of living, some countries would be burdened with a special responsibility that they do not have. And even if they have caused or contributed to their poverty by subsidizing or protecting certain sectors of the economy, this does not imply that they have wronged them by doing so. Therefore, the burden of compensating them for this does not exist either. I conclude that human rights, or the requirement to promote others’ development, should not be among the fair background conditions of international trade.

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Miller, *National Responsibility and Global Justice*. 59
If some readers are not convinced about the argument I have developed so far, we can still appeal to a different reason to show that the claim that the international order violates human rights is not on the right track. My argument presupposes that there is a general responsibility of developed countries to assist developing countries. But this presupposition might also be challenged. So the human rights violation argument can be misleading because individual countries do not have an obligation to fulfill general obligations but, also, because these general obligations do not even exist in the first place.

The claim that there is a general responsibility to address poverty abroad seems in fact far-fetched. Certainly humanitarian duties—such as preventing extreme famine, assistance when there are natural disasters, intervention in violent civil wars, etc—exist and there is wide consensus among philosophers that they should exist (even a strong opponent of cosmopolitans like Nagel seems to be supportive of this approach)\textsuperscript{46}. But this does not mean that there is a direct and extensive ongoing obligation from wealthy countries to raise the standard of living of all those who live below the human rights standard. This position would not only be unrealistic but also conceptually implausible.

We can distinguish between a strong and a weak version of this argument in order to clearly show why. On the strong version, wealthy states have to do as much as they can in order to improve the well being of citizens throughout the world. That is, after all, what they are supposed to do with their own members. There are many reasons why the state has to secure the well being of its citizens. One of them is that states represent citizens or, in Nagel terms, they "speak in their name" and are authorized by them. A government is not expected to act in the interest of its citizens in the same way it is supposed to act in the interest of other states. If a

government does not serve the interests of its citizens properly, it will be exposed to several
different forms of reprisals, such as loss of popularity, disapproval from his own political party,
low chances of being re-elected in the future, and so on. Needless to say, this does not mean that
it has no obligations whatsoever to the people whom he does not represent; but these obligations
would be rather minimal in comparison to the obligation that it has with its own citizens and
there would be constraints within which the government will act. If, say, a hypothetical
government seeks to offer gasoline at the best possible price to its citizens, but harms non-
citizens in order to do so (by stealing their oil), then they would be complying with their
obligation to improve the standards of living of their own population but they would also be
acting immorally with non-citizens by doing so. We could consider Rawls, Blake and Miller
defenders of this line of thought.

A weaker version of the argument is that, rather than doing as much as they can to
improve non-members’ lives, wealthy states have a more modest ongoing obligation to comply
with human rights demands (which is different and probably more demanding than the idea that
wealthy countries have the obligation to assist foreigners in desperate times of need; which
typically arise after natural disasters, famines, ethnic military conflicts and others). I find this
idea unpersuasive for the following reasons. First, it fails to distinguish between causes of
poverty. It could certainly be true that in some occasions a wealthy country may have acted in
such a way that it negatively affected the lives of many people; but it could certainly also be true
that domestic governments could have created that poverty in the first place, either by action or
by omission. Why would then wealthy countries have an obligation to raise the standard of living
of everybody, if they were not responsible for having created it in the first place? Another way to
put it is that human rights entail a correlative duty to fulfill these rights, but wealthy countries
cannot possibly be the only bearers of the obligation to fulfill these rights. Since domestic states have this obligation as well, it does not seem true that wealthy countries should be accountable for every single person that lives below the human rights baseline.

But there is a second reason why this idea is unpersuasive. If it were true that wealthy countries have a general, extensive and ongoing obligation to assist people across the world, then wealthy countries would be morally blameworthy for every single citizen who falls below this baseline. This, however, would put them on a par with a country that actively puts someone below this baseline. So this view may distinguish between acts and omissions, but since every single individual who lives below the poverty line would be the direct consequence of the irresponsible behaviour of rich countries, the distinction turns out to be irrelevant. This, however, seems to be intuitively misleading, as failing to assist someone does not seem as severe as actively harming him.

There is an extensive philosophical debate on this point. Singer, for example, has famously held that action and omission can be equally severe from a moral point of view. The claim that actions and omissions are on a moral par, however, has been commonly applied to individuals and not to states. While it may be acceptable that geographical distance between individuals should not be relevant from a moral point of view in order to determine whether some destitute individual should be assisted, the idea that particular states are equally responsible by failing to assist foreigners as those who actively harmed them seems a bit more farfetched, precisely because states are expected to act in response to their own citizens and therefore the main responsibility for the alleviation of the foreigner’s situation lies on the state which represents him/her. Surprisingly, this argument has been put forward by Pogge himself. In

47 Peter Singer, —Famine, Affluence and Morality, Philosophy and Public Affairs, 1, no. 2, (1972):229-243
Freedom from Poverty as a Human Right, he says that "my intellectual sympathies lie with those who hold that an agent's failure at low cost to protect and to rescue others from extreme deprivation, however morally appalling, is not a human rights violation". His argument relies on the idea of degrees of responsibilities, which resembles the above mentioned action/omission distinction. On his view, those who fail to assist someone are not morally on a par with someone who actively harms him. An affluent person who, in order to save some money, rejects an invitation to help a child in Mali for $80 is not at the same level as a person who kills a child for a $80 benefit. This distinction is so obviously intuitive and compelling, he says, that it leads many to reject the idea that an affluent person, in virtue of disregarding positive duties to feed, save and rescue persons, may be a violator of human rights. Those who hold this very popular view infer—for good reasons, Pogge says—that such ongoing duties do not exist, for they would be overdemanding and therefore implausible. Pogge’s way out to this objection is that rather than focusing on positive duties, we should focus on the more stringent notion of negative duties. If it can be shown, he says, that the negative duties of non-wealthy people are violated, the conclusion that we have a (remedial) duty to assist them would be more plausible. This argument depends, however, on the premise that wealthy countries are actively creating poverty which, even if plausible, does not seem to lead to the wanted conclusion that the obligation is ongoing and extensive to everybody.

I have tried to show in the last few paragraphs that the general claim according to which the international order is coercive because it fails to fulfill a pre-existing duty to raise people above certain baseline is misleading by developing two strategies. On the first one, I explained that trade proposals, which are only an example but lie at the heart of what has been called

48 Pogge, Freedom from Poverty as a Human Right, page 17
—international order, cannot be unjust on the grounds that they fail to render people above this baseline; for trade proposals involve individual countries, and the general responsibility to alleviate poverty—if any—falls on several states. Therefore, the burden of alleviating poverty on only the trading party would be excessive and, in case, that burden does not necessarily have to be discharged by trading exclusively. On the second strategy, I have tried to show that even the idea that there is such general responsibility to address poverty abroad might seem misleading, as that would entail that domestic states would have to treat their citizens exactly as they treat foreigners, and that wealthy states would be massive violators of those who are not their citizens.

The international order as harmful to the poor

In this section, I would like to consider a different approach that globalists have relied on to show that the global order—or at least some of its features—is coercive. The central claim on this line of argument is that the claim of coercion can be made by showing that richer countries have actively made developing countries worse off. The point, in this context, is not that those countries have been made worse off with respect to a moral baseline (we have already discussed that case in the previous section) but rather with respect to a historical baseline. The idea, in other words, is that developed countries have historically inflicted a straightforward harm on developing countries, and they are currently failing to restore their past victims to the initial position by making historical reparations or they are currently taking advantage of this situation by making offers they would not be able to make had these wrongs not existed. The approach I would like to consider is, therefore, analogous to the slave case, in which A beats B on an ongoing basis and one day offers him not to beat him in return for some task.
The reason why the analogy with the slave case does not seem to be valid could be shown by analyzing the responsibility that each of the agents had in the current state of affairs. Perhaps (some or all) developing countries are in a bad situation because their local government were corrupt, they implemented bad policies, or whatever; or perhaps they are in that situation as a consequence of others’ actions. Who exactly is responsible should make a difference in the assessment we make of the situation. In the slave case, the case of coercion can be made precisely because the master put him in that situation in the past, and is still active in maintaining that situation. But suppose the master had not been active in transforming the victim into a slave (had, in fact the master not been a master at all). Suppose further, that A had nothing to do with B’s harsh circumstances. In that hypothetical scenario, offering money in return for a task seems simply a plain offer (or at the most an exploitative proposal, if the agreed price is unfair) but certainly not a coercive proposal. What renders the proposal coercive is rather the fact that B was made worse off by A. Similarly, a country can be made worse off by those who offer them convenient proposals. But when the responsibility of the circumstances in which one of the parties is lies exclusively on him, the claim of coercion can hardly be made.

How can the claim that developed countries are responsible for the failure of non-developed countries be made? There are many possible ways of making this point. A very influential one, which has been put forward not only by Pogge and other cosmopolitans, but also by scholars from other fields, is that rich countries have colonized poor countries in the past (mainly Europe and United States, but there are others) and that colonialism has harmed colonized countries in several different ways. The basic idea is that colonizing countries have

directly benefitted in the past from colonies in places such as India, Africa or Latin America by exploiting the native population, by extracting and stealing natural resources, such as gold, minerals cotton agricultural products or others and by transferring surplus value obtained in local companies to the central capitals; at the same time that political, cultural and psychological influence created the conditions that would thwart local political institutions and progress among the population; and that this process continues up to date. Dependency theorists such as Andre Gunder Frank\textsuperscript{50} argue that colonialism leads to the net transfer of wealth to the coloniser and inhibits successful economic development. In a similar vein, Pogge has pointed out that current trends of inequality and poverty are directly related to colonialism in the past. As he puts it, —existing people have arrived at their present level of social, economic and cultural development through a historical process that was pervaded by enslavement, colonialism and even genocide. Though these monumental crimes are now past, their legacy of great inequalities would be unacceptable even if peoples were now masters of their own development\textsuperscript{51}. Later in the text, he adds the premise that what explains the weaker bargaining power of developing countries in current negotiations is precisely the fact that they were colonies in the past. He says, in more precise terms, that the huge economic gap produced by colonialism —entails inequalities in the competence and bargaining power that Africans and Europeans can bring to bear in negotiations about the terms of their interaction. Relations structured under so unequal conditions are likely to be more beneficial to the stronger party and thus tend to reinforce the initial economic inequality. His view, then, is not only that colonialism in the past has wrongfully made some countries worse off in the present, but also that transactions and proposals that developed

\textsuperscript{50} See for example Andre G. Frank, \textit{World Accumulation, 1492-1789} (London:Macmillan, 1978)

\textsuperscript{51} Pogge, —Freedom from Poverty as a Human Right, 31
countries currently make fail to address this ongoing harm and end up offering terms that are only slightly beneficial to developing countries.

So the answer to the question of how have developed countries caused the failure of developing countries takes the problem back in time. We should identify a moment or a period in history in which country A made country B worse-off through a historical colonial process, show that these things have happened—which is not hard to prove—but, more importantly, show the empirical premise that there is a strong connection between these unfortunate events and the fact that current poverty is a consequence of them.

There are two problems however with this line of thought. First, a complete account would have to not only prove that the past victim countries would have been better had the supposed intervention (coercive proposals, colonialism, etc) not taken place, but also that the poverty and vulnerable situation in which some countries currently are is directly caused not only by some country but also by that country in particular (i.e. the one that is supposedly coercing). Otherwise the claim of coercion would not make any sense, as coercion takes place—at least under the version we are discussing now—only when the supposed coercer is blameworthy for making the coerced party worse off (in other words, the analogy with the slave owner case would not work if a third party beats the slave on an ongoing basis and then a different person comes along and offers money in return for a task. The most we could say about that situation is that it is exploitative). If, say, United States proposes Ecuador a trade agreement that would improve the situation of most of the citizens of that country, but that would nonetheless fail to restore their previous standard of living (previous to the supposed historical harm), then in order to make the case of coercion we would have to prove; first, that this historical harm existed; second, that it was inflicted not, say, by the Spanish colonialists but solely by United States; and third, that all
the currently existing poverty in Ecuador should be exclusively attributed to the interaction between these two countries. But this seems implausible. Of course, one might also point out that the current standard of living in Ecuador is higher than in the 16th and 17th Century, when much of the harm probably took place. It is hard to assess whether this claim is true or not, as what was considered a —high standard of living back then may not be commensurable with current views on what —high standards of living means. However, if it is in fact true that current standards of living are better now (on any account), and that past historical harms have no relationship whatsoever with the present situation of the supposedly coerced country (or, if past harms even benefited that country in the long term—something that, according to some people, happened when the expansion of British markets in Latin America created a stable and prosperous economy a few years after they were established), then the argument of coercion looks even less compelling. In fact, the hypothetical coercer would not only not have the obligation to restore their previous standard of living in that case, as it did not affect it in the first place—this would not mean, of course, that historical reparations should not exist—but it would also have given the coerced party the opportunity to improve his situation, overall. On this line of thought, trade agreements or other kinds of proposals would be plain offers. In any case, either if the (hypothetical) coercer is in part historically responsible for having affected the economic prospects of the (hypothetical) coerced country, or if the coercer had no role at all in creating harsh economic prospects for the coerced country, the argument of coercion seems hard to make.

But there is a second reason why this line of thought fails. Even in the case that the country involved in a current proposal with a developing country has been the colonizer in the past, it is hard to assess whether the argument is true, as we do not know what could have happened had colonialism, slavery etc, not taken place. The claim that this historical process
made—historically—people worse off than they would have been is highly speculative. Perhaps some societies would not have developed certain skills and would not have found the possibility to trade and interact with other cultures had they not been colonized and, therefore, their situation would have been even worse than it is right now. As Risse points out when he develops a similar argument, it is conceivable that without colonialism certain political structures would have emerged that would have allowed them to develop a sophisticated and economically prosperous civilization, but it is equally possible that wars would have caused the opposite effect and that as a consequence of them political structures would have been thwarted. In other words, the problem with the claim that colonialism harmed countries and made them vulnerable and dependent of stronger and richer countries is that it involves a counterfactual claim which is hard to prove or refute. There is complete ignorance about the alternative state of affairs that would have taken place had colonialism never taken place. Researchers in comparative politics do engage in counterfactual reasoning by comparing two or more different scenarios and holding certain variables constant. For example, as Risse points out, they compare countries in the WTO with similarly situated ones outside it; or they compare a country's period of not belonging to the WTO with its period of belonging. But these kinds of comparisons are not possible when we assess the global order, because we have only this one world to work with. So while we can discuss the impact on the economy of certain trade agreement (we can compare a country which joined a trade agreement with a country with similar relevant features which did not join this trade agreement, try to eliminate other non-relevant variables, and see what the impact of the trade agreement in both cases was), we cannot make sense of the claim that the world would have been better/worse had the global order not developed. Sher, from a different context, also

52 Mathias Risse, Do We Owe the Global Poor Assistance or Rectification?, *Ethics & International Affairs*, 19.1 (2005):9-18
emphasizes the problem of indeterminacy of the argument of colonialism. In his own words, we can be skeptic in general about the relevance of historical injustices in cases where we should decide whether historical compensations are justified.

Where the initial wrong was done many hundreds of years ago, almost all of the difference between the victim’s entitlements in the actual world and his entitlements in a rectified world can be expected to stem from the actions of various intervening agents in the two alternative worlds. Little or none of it will be the automatic effect of the initial wrong itself. Since compensation is warranted only for disparities in entitlements which are the automatic effect of the initial wrong act, this means that there will be little or nothing left to compensate for.

The impossibility of calculating counterfactual claims does not of course imply that colonialism did not involve grave moral wrongs, such as slavery, genocide, massive robbery of natural resources and others. The point is rather to show that the current state of affairs cannot be rooted in injustices in the past, or that it is hard to show the connection between them. On the other hand, the impossibility of calculating these moral counterfactuals does not imply that the current international order cannot be harmful in some specific ways to developing countries. My aim is simply to show that this particular way of showing that countries have been made worse off throughout history does not seem to be on the right track.

We can draw some partial conclusions from this analysis. There are a few different ways in which the claim of coercion at the international order can be made. In this chapter I have discussed some of them. The reason why these particular arguments, and not others, have been discussed in this chapter is that they are the ones that most typically cosmopolitans (or what I have called globalists) rely on. The first one is that the international order is currently failing to

implement a just order. This argument relies on two different assumptions. First, proposals are coercive when they fail to fulfill the duty that one of the parties has to the other. The most important example of this claim is trade. Trade is a central feature of the international order and, on the cosmopolitan view, is the most important means through which developed countries coerce and impose their terms to developing countries. I have argued that this normative framework cannot be correct, as trade transactions (and, in general, transactions of all different kinds) take place between two individual parties, and the responsibility to eradicate poverty—or, alternatively, to implement a just order—is a general one and not a special one. Therefore, to claim that one of the parties is coercing the other one on the grounds that it is failing to fulfill this general duty seems to unjustly burden this party. Second, it is not even clear that a general responsibility to address poverty abroad exist. This claim is based on the assumption that states are equally responsible for their own citizens as for foreigners, or that they are responsible for fulfilling human rights abroad on an ongoing basis. I have argued that both claims seem misleading. The former because it seems too demanding for states and the second one because it fails to distinguish causes of poverty and allocates responsibility in a misleading way. The second way in which the claim of coercion has been made is that developed countries have imposed terms by harming developing countries on an ongoing basis. The main example through which this has taken place is colonialism. I have argued that the claim of colonialism is misleading, mainly because there is no baseline which we could use to compare the current state of affairs with the state of affairs that would have arisen had colonialism not taken place.
Chapter III - Odious debts

In the previous chapter, I showed that some of the most popular arguments in favour of the claim that the international order is coercive are misleading. One of the problems with these views is that they rely on arguments that do not clearly show how certain institutional arrangements are —imposed on people. The fact that these arguments are weak, however, should not lead to the conclusion that the international order is not coercive in any way. Other, more specific, arguments can and have been developed. One of these arguments is, in Pogge’s words, the —borrowing privilege. According to this argument, the international community allows autocratic governments exercising power in a country to borrow in that country’s name, and then imposes upon future generations the burden to pay off those loans. Any successor government that refuses to honour debts incurred by a corrupt, brutal, undemocratic, unconstitutional, repressive, unpopular predecessor will be severely punished by the banks and governments of other countries. At minimum, it will lose its own borrowing privilege by being excluded from the international financial markets. The borrowing privilege also has disastrous consequences for indebted countries. For example, it facilitates borrowing by destructive governments, which helps them to stay in power despite the fact that there is nearly universal internal opposition to them. Also, the borrowing privilege creates strong incentives toward coup attempts: whoever succeeds in bringing a preponderance of the means of coercion under his control gets the borrowing privilege as an additional reward. Finally, (and this is something that Pogge does not mention explicitly), the borrowing privilege wrongfully makes the citizens of the country worse-off, as it deprives them the possibility to enjoy public goods that they would otherwise have
enjoyed. This is because the borrowing privilege gives autocratic rulers the privilege of using public funds for private purposes, but imposes upon citizens and future generations the burden of paying off the debts incurred for those private purposes.

The borrowing privilege argument has not been developed in the philosophical global justice literature. Some authors, such as Risse and Cohen, have attempted to show that Pogge has made too much out of this argument, but they do not really explain what its limitations are. Pogge himself, on the other hand, has proposed a few institutional reforms that could be implemented in order to minimize the impact of the effects of these kinds of loans. In —Achieving Democracy, for example, he proposes that new democracies may be able to improve their stability through constitutional amendments that bar future unconstitutional governments from borrowing in the country’s name and from conferring ownership rights in its public property. Such amendments would render ineffective the claims of those who lend to, or buy from, dictators, thus reducing the rewards of coups d’état. This strategy might be resisted by the more affluent societies, Pogge says, but such resistance could perhaps be overcome if many developing countries pursued the proposed strategy together, and if some moral support emerged among the citizenries of affluent societies. However, although the proposal itself seems effective and worth discussing, the problem with it is that it already assumes that we know which loans are illegitimate and which ones are not. Pogge's proposal, in other words, avoids the most crucial and important problem, which is precisely to show the conditions under which loans are illegitimate. Without this account at hand, it would not be possible to know which debts should be barred and which ones should not. Moreover, Pogge assumes that all debts incurred by

autocratic governments are illegitimate. But this, as I will later show, is misleading. So we now have a further reason to clarify the definition of illegitimate debt.

Briefly, the borrowing privilege argument has been mentioned but not developed within the global justice debate and, in cases where it has been discussed, the discussion already assumes what the conditions for a loan to be illegitimate are. In this chapter, I attempt to fill this gap. This, I believe, is important for two different reasons. First, the so-called —borrowing privilege— discussion is relevant in itself, because it shows a possible way in which the current international order is immoral. Second, showing that some debts are illegitimate opens the door to new and different ways of making the claim of coercion at the international level, as the fact that some countries are subject to (wrongful) pressure forcibly narrow these countries’ options.

The problem that I am considering is not a small one. Since the conditions that have to be met for a debt to be considered illegitimate are very specific, it seems at first glance that this problem only exists in a very few specific cases. In fact, according to a view that we could call the —standard view— (we can imagine some economists and legal commentators in this group), the borrowing privilege is a problem that affects only a small group of countries. These countries are, according to this point of view, usually very poor and are ruled by ruthless dictators. Even in those cases only a small fraction of those debts would be suspicious, as one could always potentially argue that a big portion of the loans was used for the purpose of benefitting the citizens. One could imagine that the standard view is held only by economists and legal commentators, but Pogge himself seems to endorse it, as he says, for example, that a necessary condition for a debt to be odious is that the borrower has to be an autocratic government.

But the idea that the problem of the resource privilege exists only narrowly, as I will show later in the paper, is misleading. The following examples show that the resource privilege,
as defined by Pogge, could be a much more extensive phenomenon than one might initially think.

(i) Virtually all of the countries in Latin America were ruled by dictators and corrupt governments in the past—especially in the 1970s and 1980s—and virtually all of them borrowed huge amounts of money from international financial institutions during the years in which they were under authoritarian rule. This had a significant impact on the economic development of the whole region in the following years. In fact, Stiglitz\(^{56}\) says that the most important factor that explains the economic failure of the region during the 1980s (a period which some economists refer to as the ―lost decade‖) is that Latin American countries borrowed heavily during the 1970s. By the end of the 1970s, he says, the region’s foreign debt has exploded and debt service payments reached $33 billion per year—nearly one third of the region’s export earnings. Since it was impossible to repay these loans (mainly as a result of the fact that that the interest rates on them were excessively high) almost all of the countries in the region went into default. The result was that there was no economic growth during the following years, regardless of the economic policies that these countries adopted. This example shows that the problem of the resource privilege, if correct as defined so far, has affected a whole continent for several generations. This presumably entails much broader consequences than the ones that some commentators usually attribute to the effects of debt.

(ii) The situation is not very different in other regions of the world. Africa’s over $200 billion debt burden is the single biggest obstacle to the continent’s development. Most of its debt is illegitimate, having been incurred by despotic/corrupt regimes. The amount of money that African countries have to repay to developed countries in debt services is so high that it does not

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even compensate for the amount of money that they receive from aid. Sub-Saharan Africa,\(^{57}\) for example, receives around U.S. $10 billion dollars per year in aid from developed countries, but spent almost $14 billion annually only on debt services (these are just interest payments; the original debts still need to be repaid in full), consequently diverting resources that could be used for other purposes, such as programs against HIV/AIDS, education, and others. The region therefore has a net negative income of $4 billion in terms of the money that it received and had to repay from developed countries. Considering that Sub-Saharan Africa is among the poorest regions in the world, and that their debt is mostly illegitimate, the fact that the amount of money that flows to developed countries is greater than the amount that goes to the region seems at least a reason for moral concern.

(iii) Iraq’s huge external debt\(^{58}\) could also be considered a relevant example of how the borrowing privilege has a much more pervasive impact than one might think, as virtually all its major debts are purportedly odious. Iraq is, in other words, a case of a country whose leaders have made efforts to use their loans for almost exclusively private purposes. In an article about Iraq’s debts, Patricia Adams discusses some of the details of this case. She writes that although no one really knows precisely how much money Saddam Hussein borrowed, it is possible to know who the main state creditors are, how much they demand from Iraq, and what the money was spent on. Iraq’s major creditors are sovereign nations such as Kuwait, Japan, France, Russia,

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The total amount of debt owed to these countries is between U.S. $80 and U.S. $90 billion. Some sources indicate that a big portion of it was used to buy weapons and instruments of repression. Looney, for example, claims that $50 billion were lent by Kuwait, France, and others to support the war with Iran. Out of these $50 billion, $37 billion were used for the 1980-1988 Iraq-Iran War, $4 billion to pay for F1 firefighters and Exocet missiles, and $9 billion—lent by Russia—for purchases of MiG helicopters. The fact that Saddam used this money to wage wars does not necessarily mean that the debt he incurred is illegitimate, as he could have waged the war, even if mistakenly, in defense of his country. But one can speculate, given the history of Iraq, that at least part of those weapons were used for the private interest of the ruler, such as eliminating internal opposition or maintaining his position in power. It is also clear that a large portion of these loans were used to enhance Saddam's personal wealth. After his capture, Saddam admitted that he seized some $40 billion in state assets during the years he was in power. Even if he did not obtain all of this money from loans from other countries, it is still the case that part of this wealth should count as illegitimate.

(iv) Finally, debts can also be illegitimate when rulers incur debt in order to cover a shortfall caused by the private appropriation of public funds, even if the money obtained from a loan is used for public purposes. This can be called the problem of fungibility. The upshot of the

See also Jay Solomon, Jess Bravin, and Jeanne Whalen, —Iraq’s Creditors Hope to Collect, Wall Street Journal, March 26, 2003.
problem of fungibility is that funds that the standard view is tempted to classify as acceptable—because used for public purposes—are also cases of debts that should not exist. Again, one might think that the problem of the resource privilege becomes much more pervasive under this criterion. Suppose that a dictator steals millions of dollars from the national treasury, and then borrows money to build roads, schools, or any other public good that benefits the population. The reason why he borrows is that he had stolen the tax money that was supposed to be used for those public goods. The goods he invests the money in may benefit the population in several ways but, in practice, the money was used to compensate the prior robbery. So the debt would still be illegitimate because it is used as a backup for the ruler’s illegitimate use of national public funds. This aspect of the problem is normally not taken into account in the literature, for it is normally thought that only funds that are used for the private interest of the ruler or to suppress the population are odious. If we do take it into account, however, then the problem of illegitimate debts would be even more widespread than one might be tempted to think. Billions of dollars that come from public funds are deposited in rulers’ private and secret accounts in foreign and domestic banks. Every dollar of debt that exists in the country where the ruler privately appropriates public funds—if incurred during or after this happened—is potentially illegitimate, for the simple reason that loans may have been used indirectly to cover up this private appropriation of funds. I will discuss the problem of fungibility later in this chapter.

It becomes necessary, then, not only for the conceptual reasons mentioned above but because of the huge impact this problem has on developing countries, to deal with the issue of illegitimate debts and the conditions under which they are illegitimate. This will be the topic of the next section: odious debts.
**Odious debts**

The moral intuition that people should not repay a debt incurred in their name and from which they have not benefited has been articulated in what legal scholars have called, since 1929, *odious debts*. —Odious debts refers to debts that are not binding for citizens because they were incurred by a despotic government in their name for private purposes. For those who claim that some debts are odious, citizens and their successor generations may repudiate those debts. The issue of odious debts could be analyzed from a legal perspective or from a moral one. My main concern is to analyze it from a moral one. There is an important advantage of this approach. Morality is, or should be, the foundation and justification of positive law. If we do not clarify the moral underpinnings of odious debts, we will not be able to establish whether the law—both present and future—related to debts is fair, and whether it should be reformed and in what direction. Legal discussion on odious debts, as I will show, has focused on the practice of law and its possible reforms. But it is not possible to justify legal practice if we exclude its moral aspects.

I will divide my presentation of odious debts into a legal sub-section and a moral one. The legal sub-section will discuss the central tenets of the doctrine, its status in contemporary positive law, the key transitional contexts where the doctrine has been invoked, and the main positions that legal commentators have taken with respect to the doctrine. The moral sub-section will present the key moral issues surrounding the notion of odious debts and the possible objections or sources of scepticism against this notion.

It is important to review the legal aspect of odious debts for the simple reason that the moral discussion examines some of the central assumptions of the legal aspect of odious debts.
Also, an examination of the doctrine will be useful to justify or modify some of the aspects of the notion as it has been developed so far. Both levels of analysis, in other words, are interrelated.

I will argue that the central condition for a debt to be odious is that debts incurred in the name of citizens are used for private purposes instead of public ones. Whenever the money that is the basis of that debt is used for purposes that citizens could not have consented to, the debt is no longer binding for them. A related moral implication of this is that lenders are not entitled to repayment when these conditions apply. The notion of —public purpose is a normative one, as what counts as public purpose depends on a notion of what states are entitled to spend money on. I rely on social contract theories to explain what states are entitled to. The central idea that underlies these theories is that a good is public whenever citizens would potentially consent to their rulers to spending money in that way. I do not discuss in detail what could citizens consent to, but I argue that there is common ground between these theories with respect to what are states not entitled to spend money on. In particular, the personal benefit of rulers under certain circumstances, nationalization of debts and oppressing citizens (as opposed to simply establishing public order) do not even pass the minimal test of legitimacy that social contract theories propose.

There are two important implications of my approach. The first one is that the nature of the regime will not be so central as some legal commentators suppose to determine the odiousness of a debt. Although democratic governments are authorized by their citizens to borrow in their name, often democracies lack the most elementary mechanisms of accountability that any democracy should have. On the other hand, a government may be autocratic but may incur in debts for legitimate purposes, as defined so far. The second one is that a debt does not have to —benefit the population in order to be binding, as legal commentators suggest. What
matters, rather, is that they are incurred for purposes that citizens could consent to. This does not imply an immediate benefit for them. I clarify this point in Chapter 4.

A central assumption of my approach is that states are analogous to the individuals, in the sense that promises made by rulers, when made for public purposes and in the name of the citizens, collectively bind the whole state, as a block. These promises also bind future generations. What gives states unity and existence over time is precisely the fact that officials acted in accordance to public purposes. However, whenever the ruler acts for private purposes, the analogy between states and individuals breaks down. The promises made by rulers are no longer attached to public office and citizens are not binding for them. This is because we can no longer claim that rulers where legitimately acting —in the name of their citizens. Odious debts, I argue, are perfect examples of how states should not be comparable to individuals.

**Odious debts from a legal perspective**

**a. The odious debts doctrine**

The odious debt doctrine is a *doctrine* because it constitutes a set of beliefs and theories that several legal authors have developed, but it is not necessarily part of established international law. The first historical precedent of the doctrine is dated from 1927. At that time, Sack, the legal theorist who first developed the odious debt doctrine held that:

> When a despotic regime contracts a debt, not for the needs or in the interests of the state, but rather to strengthen itself, to suppress a popular insurrection, etc, this debt is odious for the people of the entire state. This debt does not bind the nation; it is a debt of the regime, a

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personal debt contracted by the ruler, and consequently it falls with the demise of the regime. The reason why these odious debts cannot attach to the territory of the state is that they do not fulfill one of the conditions determining the lawfulness of State debts, namely that State debts must be incurred, and the proceeds used, for the needs and in the interests of the State.

Other legal scholars (who I will mention in the next section), apart from Sack, have tried to modify, expand, and build on the central tenets of the doctrine. By synthesizing their accounts, we can ascertain that the central claims of the odious debt doctrine (i.e., what makes a debt odious under the doctrine) are the following.

1. The debt is contracted by a despotic power. It is usually explicitly stated here that the notion of consent is central in this context, as a despotic power is defined as a power that lacks consent from the population.\footnote{Other alternative interpretations of condition (1) give an even more explicit role to the notion of consent. In Khalfan et al., for example, they stipulate that —The population must not have consented to the transaction in question. This is so because it is unlikely that the law would forbid a person from willingly entering into a contract that is detrimental to him or her [Ashfaq Khalfan, Jeff King, and Bryan Thomas, \textit{Advancing the Odious Debt Doctrine}, Centre for International Sustainable Development Law, March 11, 2003, 1, available at: http://www.cisdl.org/pdf/debtentire.pdf]. Note however that neither Sack nor common sense support the view that citizens should consent to each individual transaction, as that is practically impossible, nor is it required by any notion of legitimate government. The correct way to interpret condition (1), therefore, is that debts are odious when incurred by governments to which citizens have not consented. I will show later that this condition is defined too narrowly as it is, and should be expanded so that it includes democratic governments as well.}

2. For a purpose that is not in the general interests and needs of the citizens (for example, cases of oppression or hostile behaviour toward the population, lost wars, corruption, etc.).

3. The lender knows that the proceeds of the debt will not benefit the nation as a whole (i.e., the lender knows in advance that the loans will be misused against the interests of the citizens).
When these three conditions are met, the doctrine holds, the citizens in whose name the debts have been incurred should not be held liable for them. We should notice that the three conditions should be met simultaneously in order to establish that a debt is properly odious. That is, the fact that a debt is contracted by a despotic regime is not by itself enough to declare a debt non-binding. The other two conditions should also be met. In other words, the debt should be incurred by a despotic government in a way that does not benefit the population, and with the creditor’s knowledge that this should happen.

b. Odious debts as part of international law

The issue of what the main tenets of the doctrine are is different from the issue of whether the doctrine is part of international law. A settled theory in international law is not international law. The status of the odious debt doctrine in the international law is not clear. As Howse notes, there is currently no clear and well-defined body of laws in the international domain to which countries could appeal in case they want to repudiate their debts on the grounds that they are odious. There is also no institution that clearly has the role of dealing with these kinds of cases. Howse suggests that potential appropriate venues in which to invoke odious debts involve state-to-state arbitration, or the International Court of Justice, but, in practice, such invocations are much more likely to be voiced in political or diplomatic discussions and negotiations. Neither arbitration venues nor the ICJ have a history of dealing with odious debt cases. The notion of odious debts became relevant in the context of transitional justice, as it was

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clear that when state succession occurs, whether through dismemberment (the case of the Soviet Union), succession, or some other changes that alter the nature of the sovereign itself, international legal obligations are not thought to be automatically transferred to the new state. As a formal matter, the identity of the sovereign itself has changed and the new sovereign has not expressed his will to be bound. However, given that it would be problematic to exempt countries from their obligation to repay their debts in the context of succession—both because it would lead to financial instability in the international financial system and because it could entail unjust enrichment (i.e., successor states might benefit from loans even if they did not request them)—the notion of maintenance of debt obligation in the case of succession arose as an exception to the notion that international obligations of states disappear across generations in the case of state succession. There have been attempts to eliminate maintenance of debts in international treaties but they have not been successful, mainly because they did not have the support of the most developed countries.

What we can say, however, in support of the claim that there is some kind of legal embodiment of the odious debt doctrine is that the doctrine regroups a set of equitable considerations, which constitute part of the content of—the general principles of law of civilized nations, one of the fundamental sources of international law as stipulated in the Statute of the International Court of Justice. By equitable considerations Howse means, mainly, limits to contractual obligations that have included illegality, fraud, fundamentally changed circumstances, knowledge that a party is not acting on behalf of the contracting principal, and duress. The point Howse is trying to make here is crucial. Odious debts, as such, do not exist in current international law, but the basis under which a debt should be declared odious does, and it has, in fact, existed for a long time, as the notion of equity is at the centre of the principles of law
of civilized nations. Local governments, parliaments, and people should consider using the many legal principles and fora at their disposal in order to declare their respective debts odious by invoking notions of equity. Odious debt challenges could have been made, then, for several years, even though establishing the connection between notions of equity and odious debts has not been a common tactic, and it is not clear exactly which institutions should deal with these cases, and, in any case, the exact standards that we should use to define a debt as odious are still unclear (the doctrine has only recently been developed and the philosophical underpinnings are nonexistent in the current philosophical literature).

c. Key transitional contexts where the concept of odious debts has been invoked.

There are key transitional contexts where the odious debt concept has been invoked. Although the notion of equity has not usually been invoked in those cases, other considerations have come into play. When state arbitration was involved, judges directly invoked the odious debt concept as a way of resolving the dispute. State practice shows that there are legal precedents of the concept of odious debts in the recent legal history. These cases are different from mere cases of defaulting on a debt. Defaulting on a debt is the simple act of failing to meet an obligation. If a country defaults on its debt—either because it was unable or unwilling to repay—it is violating an already existing obligation to do so. In the case of the legal precedents of the application of the concept of odious debt, what is disputed is precisely the obligation of repayment. Some of the historical examples include the following. In 1844, the United States annexed the Republic of Texas. Despite provisions to the contrary in the Treaty of Union which the Senate failed to ratify, the United States initially refused to pay all pre-annexation debts, but

See Robert Howse’s (Ibid.) report on odious debts for the United Nations for a detailed description of these historical cases.
paid the majority of the debt on a pro rata basis in 1855. In 1898, after the Spanish-American War, Spain ceded to the United States sovereignty over Cuba, the Philippines, Puerto Rico, and certain territories. The Americans refused to assume certain debts owed by Spain, secured from Cuban revenues. In 1917, Federico Tinoco overthrew the Government of Costa Rica and later held an election to ratify the —revolution. During the summer of 1919, the Banco Internacional de Costa Rica issued several —bills of credit to the Royal Bank of Canada, in respect of which the Royal Bank paid several cheques drawn by the Tinoco Government. The money was used personally by Tinoco and his brother and for no public purpose. By August 1919, Tinoco and his brother had left the country and the Government fell in September. The restored Government of Costa Rica enacted a law which invalidated all transactions between the State and the holders of the —bills issued by the Banco Internacional. Chief Justice William Howard Taft was the sole arbitrator for the dispute. Taft agreed that the Tinoco Government was a de facto Government capable of binding the State to international obligations. Despite this, Taft emphasized the fact that the debt in question was neither a valid public debt, nor in the public interest.

d. Review of the main positions of the legal commentators of the doctrine

Those who have discussed the doctrine from a legal or economic point of view can be divided between sceptics and non-sceptics. While sceptics claim that even if it is true that some debts are odious, the doctrine cannot or should not be invoked; non-sceptics suggest a few possible institutional reforms to avoid the problem of odious debts in the future. The bindingness of (at least certain) debts is usually not disputed.
In the group of sceptics we can find, for example, those who argue against the doctrine from a positivist perspective. This is the position that Cheng\(^{66}\) has adopted. On his view, the odious debt doctrine is not part of international law: it does not exist under any treaties, nor does it exist in practice. Although the idea of forgiving regime debts has existed for millennia, it has not crystallized into a rule of customary international law because of a lack of state practice in support of such a rule. The standard rule in international law is that states, and not governments, are responsible for their international obligations. The legal identity of the state does not change with a change of government or regime. Since states are bound by international treaties until they formally exit them, states ought to pay back their debts. By default, we should follow the *pacta sunt servanda* principle.

Scepticism has also been based on implementation issues. A few scholars who have doubts about the doctrine set aside the question of whether or not debts are odious and claim that, even if they are, the main problem with the doctrine is that it cannot be implemented, or that implementing it would bring about worse consequences than simply ignoring it. Rajan,\(^{67}\) for example, has argued that repudiating debts on the grounds that they are odious would undermine sovereigns’ access to capital, as creditors would be fearful of lending money to *all countries*, because those countries could invoke the doctrine in the future. This seems to be the most popular reply among economists and investors. A related problem from the perspective of debtor countries is that usually successor governments to illegitimate regimes do not invoke the odious

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\(^{67}\) Raghuram Rajan, —Odious or Just Malodorous?: Why the Odious Debt Proposal is Likely to Stay in Cold Storage, *Finance & Development* 41.4 (2004): 54.
debt doctrine out of fear of the consequences of doing so.\footnote{See Seema Jayachandran, Michael Kremer, and Jonathan Shafter, —Applying the Odious Debts Doctrine while Preserving Legitimate Lending (paper presented at the Global Justice workshop, Stanford University, Stanford, California, November 3, 2006): 1-26, available at: http://iisd-db.stanford.edu/events/4930/ApplyingtheOdiousDebtsDoctrine.pdf.} One potential consequence is that they would be deprived of necessary access to global credit-markets; another consequence—one that is relevant to the case of trade—is that countries that owe money usually enter into trade agreements on inferior terms than they would enter into if they were not in debt. In fact, one important reason why countries accept asymmetric trade agreements is that they need foreign investments in order to obtain currency to repay those loans. Since odious debts are not legitimate, it is possible to argue that countries that are conditioned by them are in a position that is inferior to the position in which they ought to negotiate. Countries are in such a position because there is an international legal financial framework that allows financial institutions to lend money to illegitimate governments and that enforces financial agreements and conditions attached to loans, even when the illegitimate government is no longer in power. Stephan\footnote{See Paul B. Stephan, —The Institutionalist Implications of an Odious Debt Doctrine, Law \& Contemporary Problems 70.3 (2007): 213-32.} has similarly based his scepticism on the fact that no satisfactory mechanism exists for instituting an odious debt doctrine. Granting the authority to void sovereign debts to an international organization—the solution favoured by several prominent commentators—would present severe, and probably insoluble, agency problems. Although the policy case for recognizing an odious debt doctrine rests on the assertion that a rule making avoidable loans to bad regimes to do bad things would generate a separating equilibrium that might enhance overall welfare, no individual creditor or sovereign debtor would have an incentive to create these rules. This is because it is a good deal for investors to have more clients, and it is a good deal for clients to be able to borrow.
In a similar vein, Choi and Posner\textsuperscript{70} have argued that invoking the odious debt doctrine does not really solve the main problem (i.e., that tyrannical regimes exist and oppress their citizens), because dictators would still be benefitting from other venues, such as trade. Even if dictators are unable to borrow, they would still be able to trade and to use the proceeds to maintain themselves in power. Finally, Gelpen\textsuperscript{71} has argued that the doctrine has —moral sway— when applied to private lenders, but not when it is applied to state lenders which, currently, comprise the majority of lenders. The reason is that laws apply differently to private and public investors.

Non-sceptics of the odious debt doctrine have raised different kinds of concerns. They all agree that debts as defined by Sack are odious, but they adopt different approaches to deal with this problem. One such approach also deals with issues of implementation. Jayachandran and Kremer,\textsuperscript{72} for example, have argued that one way of addressing odious debt would be to have some international institution declare \textit{ex ante} that a regime is odious. In order to lend to such a regime, a creditor would then have to exercise due diligence to ensure that the funds were applied to legitimate, non-odious purposes, in order to avoid the possibility of a successor regime repudiating the debt as odious. This approach would have the advantage of deterring lending to odious regimes in the first place as well as giving a transitional regime a kind of —cover— for repudiating the debt, since the creditor would have known \textit{ex ante} that it could not be expected to be repaid by that new regime. Similarly, Ginsburg and Ulen\textsuperscript{73} have proposed an economic solution to the problem. They suggest, specifically, that those who decide to invoke the

\begin{itemize}
  \item \textsuperscript{71} Anne Gelpen, —Odious, not Debt, \textit{Law & Contemporary Problems} 70.3 (2007): 81-114.
  \item \textsuperscript{73} Tom Ginsburg and Thomas S. Ulen, —Odious Debt, Odious Credit, Economic Development, and Democratization, \textit{Law & Contemporary Problems} 70.3 (2007): 115-36.
\end{itemize}
doctrine get financial compensation for the reputational harm they would suffer. As they put it, —modest steps can be taken to encourage selected, carefully identified recipient countries to repudiate the debt. The IMF or World Bank could offer insurance on future loans to be extended to the country after repudiation, thus reducing the interest-rate penalty the country will suffer as a consequence of reputational harm. 74 Other non-sceptic scholars 75 have argued that a formal sovereign bankruptcy scheme 76 or a private contractual arrangement would provide a better mechanism for odious debt relief. Finally, some have argued, perhaps more modestly, that sovereigns can challenge enforcement of odious obligations pursuant to doctrines of public international law 77 or private domestic law.78

To sum up, the main source of disagreement among scholars is centered on the issue of implementation. While some think that it is feasible to implement the doctrine at the institutional level, others think that it is not, because of economic reasons, because it is not possible to implement radical institutional changes, or because international law and practices do not support the existence of the doctrine.

74 Ibid., 132.
76 As sovereign-debt restructuring has grown more commonplace and arguably more important, there has been growing interest in developing a sovereign-bankruptcy-type scheme. A number of observers believe that sovereigns could borrow money at better rates if they had the benefits of a bankruptcy or insolvency law. See Noreena Hertz, The Debt Threat: How Debt Is Destroying the Developing World (New York: Harper Collins, 2005),187-94; Steven L. Schwarcz, —Sovereign Debt Restructuring: A Bankruptcy Reorganization Approach, Cornell Law Review 85.4 (2000): 956; Joseph Stiglitz, —Odious Rulers, Odious Debts, Atlantic Monthly, November 2003, 42. A bankruptcy or debt-restructuring scheme could reduce the power of holdout creditors, enable sovereigns to create priorities, and give sovereigns some protection from their creditors. See Patrick Bolton and David A. Skeel, Jr., —Inside the Black Box: How Should a Sovereign Bankruptcy Framework Be Structured?, Emory Law Journal 53 (2004): 763-822. The IMF recently proposed a sovereign-debt-restructuring mechanism. The IMF proposal attracted some significant opposition and appears to be off the table for now.
77 Ashfaq Khalfan et al., Advancing the Odious Debt Doctrine; Patricia Adams, Iraq’s Odious Debts.
However, they do not really discuss the question of whether or not the debts themselves are immoral. In general, scholars have assumed and agreed that whenever a dictator government borrows money, the debt is in fact odious and it therefore becomes odious for future generations. This is because odious regimes behave odiously. What we should do, according to this point of view, is identify the nature of the regime that borrows. Once we know that the regime is autocratic, there will be a strong presumption in favour of the odiousness of the debt. The problem of odious debts is, therefore, a problem that affects autocratic governments only. The debate, so conceived, is centered on the type of regime involved, and not on the moral circumstances surrounding each loan. I will discuss the latter in the next sub-section.

**Odious debts from a moral point of view**

When we discuss the issue of odious debts from a *moral* point of view, the central question we should discuss is the following: are states ever morally entitled to repudiate their debts? The answer to this question, I believe, is —Yes. In particular, I argue that states are morally entitled to repudiate their debts if the money acquired by the loan that created those debts was used by the rulers, directly or indirectly, for private purposes. If a despotic or corrupt government used the money of a loan to repress their people, maintain themselves in power, buy personal luxuries, or any other illegitimate purpose, then why the citizens of the following generations should has the burden to repay what are basically the personal debts of their former captors?

An official in his or her capacity as an official is expected to act in defense of the interest of the people he represents and in accordance to certain public duties. A public official can,
within certain limits, administer funds, incur debts, administer public companies, nationalize or privatize companies, and so on. But an official cannot take advantage of these faculties for private benefit, as this is clearly beyond his capacities. So he may, for example, use public funds to travel to a foreign country, and this would be justified if the trip has a public purpose, such as trying to open up new markets for local producers. But travelling with public funds for the purposes of paying for his daughter's studies abroad is not obviously justified, because no public benefit results from this. The right of the rulers does not rest on their ownership of or mastery over the people, and so their roles cannot include the power to use the national treasury to enrich themselves. Rulers, rather, are supposed to rule for and represent the interests of the citizens. Whenever a ruler uses funds from loans to the state to enrich himself, he is stealing public goods. Since this use of the funds is illegitimate, citizens could not have possibly consented to it.

This is precisely the kind of problem that lies at the heart of the odious debt issue. What makes a debt odious is not the fact that some dictator borrowed money, or the fact that some democratic government borrowed money that it later could not repay, but rather that an official of a government—regardless of the nature of this government (whether democratic or despotic)—used the money incurred by the government for private ends. Often rulers enrich themselves with public goods when they are in power, and that does not count as stealing. A citizen may be able to enjoy a new house, chefs, and personal drivers when he becomes President. But this is not a case where a citizen uses a public good for private ends, mainly for two reasons. First, it is not implausible to imagine that citizens would consent to public officials enjoying these goods for themselves and their families, as there are several reasonable justifications for this. One justification, although not the only one, is that public officials have to be well-protected and they need time to deal with public issues. A chef, a nice house, and a
personal driver are therefore not luxury gifts to the rulers. These are goods that public officials need in order to better serve the interests of their citizens. Second, and more importantly, these goods are enjoyed only temporarily, which means that they have to renounce to them once their mandate is over. Keeping these goods for themselves after their period in their public role has finished is clearly beyond their capacities, not only because that would deprive their successors of the opportunity to use and enjoy these goods—a situation that would conflict with the public role they were supposed to take—but also because no public benefit could result from that.

The example of the chef and personal driver can be used to illustrate a more general point. Often rulers have access to benefits and spend money from the national budget for things to which people do not necessarily give consent, and these goods are not necessarily private. But when money is spent in this way, one might argue that citizens—or at least a majority of them—could potentially consent to the rulers having access to those benefits or to the purchase of those things. Perhaps citizens benefit from this in one way or another (as in the case of the President not having to drive), or perhaps it is necessary to protect the interests of one particular sector of the economy as a means to protect the interests of the whole society. In contrast, there is no scenario in which people could consent to the appropriation of public funds for ends from which they will undoubtedly not benefit. Therefore, such consent would not even be possible. This general point leads to an important conclusion. Occasionally, the odious debts literature has made the point that loans used to finance (supposedly) unjust wars should count as odious, and so it follows that citizens and future generations should not pay off those debts. The war that Iraq waged against Iran is commonly quoted as an example of this, as Saddam borrowed money to buy weapons for this conflict. However, the same argument that we have used to show that having chefs and drivers is not a misappropriation of public funds could be used here to show
that waging war is also not a misappropriation of public funds. Officials can, in good faith, decide to go to war, even if the war ends up being a big mistake. Unlike the case of rulers keeping public goods for themselves after their mandate is over, deciding to go to war is clearly within the capacities of public officials. Citizens may massively oppose a war, but it is still possible to argue that the reasons why a war was waged are at least potentially acceptable for citizens, as the main reason invoked to justify wars is usually security, which is clearly a public good. If, however, the ruler decides to go to war with the purpose of oppressing his own citizens, then there is no possible way of justifying this and debts incurred for that end will therefore be odious.

The central question posed above is philosophically rich because it involves solving the moral issue of what public and private interests are, querying the role of consent, and discussing how —benefit can be measured. Given that these moral issues are the most important ones, the central premise of the doctrine ends up being (2) (the i.e. the condition that refers to the interests and the needs of the citizens). This condition, however, (and despite its central relevance), is relatively undefined in Sack’s doctrine. In fact, he downplays its practical importance, treating it as —too arbitrary and too vague because whether a given use can be considered as being in the public interest is unlikely to give rise to a consensus at the time of the contract’s signing: the borrower is generally free to dispose of the money in the way he finds most appropriate, and it is budgetarily hard to trace an odious spending back to a given source of income. These are all practical issues that I will deal with later on. At this point, the central issue is to define —public interest from a moral/philosophical perspective, not a legal one. Regardless of how we might be able (or unable) to trace an odious spending to a source of income, we need to establish the necessary and sufficient conditions of odious debts in the first place.
One of the consequences of situating the public-private distinction at the center of the discussion is that, in contrast to what legal commentators believe, the despotism of a regime would be neither necessary nor sufficient condition for the odiousness of a debt. In other words, while a debt incurred by a despotic regime could be legitimate (we may think, for example, of cases of unjust enrichment where people do not consent to the loans incurred by their despotic governments and yet benefit from them), a debt incurred by a democratic government could be odious if the government does not have proper authorization to borrow or if the lender knows that the funds will be misused.

A close examination of Sack and of the main tenets of the doctrine would show why commentators have emphasized the nature of the regime. Commentators have usually assumed from the three conditions mentioned above (i.e., the nature of the regime, lack of benefit, and lack of knowledge of creditors) that (1) is a necessary and a sufficient condition for a loan to be odious, and that (1) implies (2), because the debts contracted by despotic powers are always presumably against the interest of the state. As a consequence, scholars have tried to find ways to implement institutional mechanisms that would prevent despotic regimes from having access to loans, but have not questioned whether these three premises are in fact necessary and sufficient conditions for loans to be odious. And yet, the doctrine, so presented, seems to commit Sack to the view that (1), (2), and (3) are necessary and sufficient conditions for a debt to be odious: that is, he seems to be committed to the view that these three conditions are conjunctive (i.e., the three of them have to be simultaneous).

In my discussion I show, however, that the central condition for a debt to be odious is (2). By —central I do not mean that it is strictly a sufficient one, but rather that any plausible account of odious debt cannot ignore a detailed description of this condition and also that one of the main
components in the definition of what an odious debt is is precisely this condition. In contrast, (1) is not a necessary condition, because a debt contracted by a non-despotic government could also be odious, if it is not in the general interest of its citizens. This, as I will show later, seems to be true even if the lender does not know beforehand that the loan will be used against the interest of the citizens. Non-despotic governments, in other words, can also incur odious debts. It (1) is also not a sufficient condition because a despotic government can incur debts that could enrich and benefit the population in one way or another. When this happens, it seems to be the case that countries need to pay off their debts. Finally, (3) is not a necessary condition for a loan to be odious, because a loan can be odious even if the lender does not know that the money will be misused (this is a point that I will show later); it is obviously not a sufficient condition, for knowing that the loan will not benefit citizens is not enough to make that loan odious—the money has to actually be misused.

In the next chapter I will attempt to clarify what a private and public purpose is (i.e. condition 2), and will offer an objective standard to determine when a debt is odious from the point of view of social contract theories. This will be an important step in the understanding of the moral underpinnings of odious debts.
As I claimed in the preceding chapter, the main condition for a loan to be odious is that the money obtained by the government be used for private purposes, instead of public ones (condition 2). In this chapter, I shall attempt to clarify the notion of —public purposes.

Commentators of the doctrine have understood this claim in three different ways, all of which seem to be mistaken. First, some draw the conclusion that all debts incurred by autocratic regimes are automatically odious, because it always the case that an autocratic regime uses public funds for private purposes. Another way to put it, on their view, is that there is not any possible way in which an autocratic regime can benefit citizens. The notions of ‗public purpose‘ and ‗benefit‘ are, therefore, conflated. Second, some claim that the mere fact that the money is misused by a government automatically makes expenditures non-public and therefore not beneficial for citizens. ‗Misuse‘ in this context is simply defined as having been used in a way that does not obviously and immediately benefit the population. Since a simple mistake, ill conceived policy, lost war or bad strategic decision does not bring about benefit, debts incurred for these purposes are illegitimate on this view. Finally, some authors have concluded that whenever there is consent to a government, all loans incurred by that government would be legitimate or, even more specifically, that unless there is explicit consent to a specific loan, the debt would count as odious.

All these statements, however, are misleading. The first one does not seem to be on the right track, because debts incurred by autocratic regimes can also be beneficial for the

population. Take, for instance, the case of the stadium that Pinochet—the Chilean dictator during the 70s—used to imprison and torture political dissenters. If the stadium had not been used as a prison, the expenditure would have counted as a public purpose. One of the negative consequences of defining debts incurred by autocratic regimes as automatically odious is that, if the doctrine were implemented following that criterion, citizens of those regimes would not be able to benefit from the international financial system in any way, as loans would automatically be denied to those governments. Given that citizens are normally not responsible for the fact that their government is an oppressive one, applying this criterion would make them double victims: they would suffer from their own government and from the fact that they would be excluded from the possibility of benefiting from loans. This criterion, in other words, discriminates in favour of citizens of democratic regimes.

Those who hold the second statement—i.e. that misusing the money makes a debt odious—assume that any debt that does not bring about an obvious benefit to the population is odious and needs to be repaid. By _benefit_ it is usually meant that there should be a direct and tangible improvement of the society in some way. So, for example, debts incurred to fund ill-conceived wars with other nations are considered odious, mainly because people end up being taxed for a war their country did not win. Thus, a common claim is that debts incurred by Saddam Hussein to fund the Iran-Iraq war are odious because Iraqis did not obtain any obvious benefit from it, and that debts incurred by the US in the US-led war against Iraq are also odious because citizens are burdened with a debt they did not benefit from. There is no direct and tangible benefit for citizens in that case. In a similar vein, the Tea Party movement, for instance, has recently been claiming that by incurring in debts to fund the fiscal deficit, the current US government is unfairly burdening future generations.
This way of measuring benefit is however misleading, for sometimes public funds are used legitimately without really benefiting the population in any way. The central point is not whether there is a direct and tangible benefit, but rather whether the money has been spent for legitimate public purposes. Things like going to war and asking for money to cover up a shortfall in the national budget are within the state's legitimate purview, even when carried out in a way that ends up being a big mistake. Exactly as we do not think that the money spent by the state to build a bridge is no longer public when trucks stop using it, we should not think that waging a war is no longer a public affair when the country loses that war (whether or not the war is a just one is, of course, a different issue). A few years ago, a bridge was built on the Potomac River to speed up traffic. After a few months, however, the authorities realized that the bridge made traffic even slower. The engineers had not correctly foreseen the effects of the new bridge. In this case the bridge brought about negative effects, as citizens ended up being taxed for something that did not benefit them in any way—and that in fact harmed them. This case has to be different, conceptually, from the case where a bridge in the middle of nowhere is built in return for a bribe (think, for example, in Sarah Palin's —bridge to nowhere).

Something along the same lines could be said if the government uses public funds to wage a war for the purposes of defending the population, but uses that money inefficiently. During the Falklands/Malvinas war, for instance, the Argentinean government borrowed money to buy ammunitions from France, but the ammunition ended up being useless for the army because their weapons were designed for a different kind of bullets. Let us assume, for the sake of the argument, that the government was a legitimate one, and that in good faith decided to borrow money to protect the population from a foreign invasion. Would that debt count as odious? I do not think so. Again, the effects of the political decision are not what are relevant
here. Things look different, however, if a government borrows money to oppress a sector of the population and to maintain itself in power. The debt would in that case be odious, because it is hard to argue that debts incurred to strengthen the personal power of the regimes by oppressing citizens are binding for the citizens who were victims of the regime. The original formulation of

Sack’s doctrine seems to back this point. In his words, a debt is odious when—a despotic government contracts a debt, not for the needs or in the interest of the state, but rather to strengthen itself, to suppress a popular insurrection, etc. this debt is odious for the population of the entire state 80. Although commentators have interpreted this claim as meaning that debts are not odious when they directly benefit the population in certain ways, it seems clear to me that by—needs or—interest of the state, Sack is implying that cases in which governments mistakenly consider a certain policy to be in the interest of the state would not count as odious, basically because these are not cases where the debt is clearly incurred for the personal benefit of the regime officers.

The third point—the point about consent—also seems to be on the wrong track, because the mere fact that citizens in general consent to a government does not mean that they would consent to each specific transaction. This becomes obvious in cases where the government has been democratically elected—and therefore there is some sort of consent—but the loans are used as bribes in return for some other favour creditors are interested in obtaining. Also, the issue of consent is more complicated than what one think at first glance, because it is almost never the case that citizens explicitly consent to each specific policy the government implements, and yet when the government is legitimate those policies are in general legitimate as well.

80 N. Sack, Les effets de transformations des États sur leur dettes publiques et autres obligations financières
This brief discussion shows that the notion of ‘public purposes’ and its relationship with the notions of ‘consent’ and ‘benefit’ need to be clarified. The notion of consent, as I will later show, is especially crucial in order to understand the idea of public interest and has a different meaning from the one that odious debt commentators assign.

A first issue we might want to consider in order to clarify the notion of public purpose is the following. Governments act for public purposes when they spend their money in public goods. But what is a public good? Some economists have provided a plausible response to this question. A good is public, they say, when it is non-rivalrous and non-excludable. The former means that consumption of the good by one individual does not reduce availability of the good for consumption by others and the latter means that no one can be effectively excluded from using the good. For example a beautiful scenic view, national defence, clean air, street lights, and public safety are non-rivalrous goods and non-excludable, because they satisfy these conditions (enjoying the sunlight does not reduce the availability of sunlight for others, and it is difficult to prevent people from enjoying it).

The classification has some limitations. There may not be in real world absolute non-rival and non-excludable goods (some people in prison might not be able to enjoy the sunlight), but economists believe with good reasons that some goods approximate to the definition closely enough for the analysis to be useful. Take for example the case of air. Everybody can breathe and the fact that somebody breathes does not reduce the availability of air to others. There are other intermediate cases, which also qualify as public goods. A public park can be used by everyone without reducing the availability to others, but (unlike air) not everybody can be there at the same time. This example is useful to understand why Chile’s stadium is a public good.

What makes it public is not the fact that everybody actually enjoys it, but rather that people cannot be excluded from it if they want to use it and that using it does not exclude others from using it (of course not everybody can be there at the same time, but that point is not relevant right now). As soon as Pinochet started using the stadium as a prison for political adversaries, the stadium became a private good, for the non-excludable condition was no longer satisfied.

The definition of "public good" provided by the economists (i.e. that the conditions of non-rivalrous and non-excludable be satisfied), however, would not take us very far, if we want to elucidate what would make a debt odious. The reason is that in order to declare a debt odious, we not only need a definition of what counts as public, but also a definition of what *should* be public. The key question, in other words, is whether this or that specific non-excludable good is something that the state is obligated to provide. There might be a variety of non-excludable and non-rivalrous (and therefore public) goods that the state is able to supply, but that is not supposed to. Consider, for example, the case of the modest dress or Sabbath observance. They can both be given a public goods analysis, but it does not mean that the state is supposed to enforce them. If we constrain the discussion to a simple description of what a public good is, somebody might always be able to challenge the application of the doctrine on the grounds that we have not yet established whether those public goods are legitimate. So, for instance, one might argue that a stadium is obviously a public good, but that we do not know whether the debt incurred to build it is legitimate or not, because we need to know if it is justified for the state to build stadiums in the first place. If it is not, the state would be basically engaging in an act of corruption, as it would be using money obtained from taxes to fund goods or activities it is not supposed to fund.
The crucial problem we should worry about, then, is not what a public good *is*, but rather what can governments *legitimately* spend public money on. This is exactly the kind of question that philosophical theories of the state attempt to provide. The odious debt debate needs to rely on these theories, because they demarcate the threshold of legitimate debts. The notion of consent, in this context, becomes relevant for different reasons than the ones provided by commentators of the doctrine. The general tendency on their view is that democratic governments are entitled to borrow money because citizens have consented to them, and that autocratic regimes’ debts are odious because people did not consent to the regime. However, I believe, consent is a central notion because it underlies the notion of public purposes. This becomes clear in the social contract theories that I will discuss next.

Before doing so, however, we should completely reject the view that the private deeds of the rulers impose obligations on citizens. Only a few pre-modern scholars think that way, but none of them are taken seriously today. Consider, for example, the doctrine of the divine right of kings. According to this doctrine, kings are not subject to any earthly authority and they derive their right to rule directly from the will of God. The king is thus not subject to the will of his people, the aristocracy, or any other estate of the realm, including the church. Since only God can judge an unjust king, the king can do no wrong. The doctrine implies that any attempt to depose the king or to restrict his powers runs contrary to the will of God and may constitute heresy. Filmer has famously defended this view. On his view, all legitimate government is based on God’s gift to Adam of absolute sovereignty and private property over the whole world and their transmission by primogeniture. Political rule is analogous to fatherhood, in that any government had to be accepted as legitimate whatever its origin (exactly as fathers have

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authority over their children, regardless of who this father is). This implied, among other things, that since private property is legitimately passed on from the father to their sons; the ruler legitimately inherits property over the world from its predecessor. The implications on odious debts are clear enough. Since rulers own the country as property, they can borrow money for any purpose they want, as debts incurred by him would always count as a debt incurred by the whole state. The public/private distinction disappears, for all purposes would basically be public ones. Also, whenever there is a new ruler, that debt would be passed on to him, in the same way that debts are normally passed on from fathers to children (with the difference, of course, that unlike private law new governments would not have the option to refuse the debts). There is no case to be made, then, for odious debts in the context. The divine doctrine of rights has a marginal place in the contemporary political philosophy debates. The importance of discussing it lies in the fact that it shows the kind of position that an odious debt sceptic would have to deal with if he wanted to show that all debts are binding. It is possible to claim that all debts are binding, but one needs to argue that rulers own the country as a whole. Since such position is hardly tenable, the argument that there are no odious debts because all debts are debts of a nation also becomes implausible. We may now consider the implications of more reasonable conceptions of public purposes on the odious debt doctrine: social contract theories and utilitarianism.

Locke

On Locke’s view, men are naturally free, equal and independent, and they are not under the authority of any other person. Because of the inconveniences of the state of nature, however, human beings consent to come under another person’s authority. By inconveniences of the state of nature, Locke refers mainly to the fact that there is disagreement about how to apply natural
rights to specific disputes, and to the fact that people tend to get carried away in punishing those who they believe have injured themselves. These difficulties increase with the increase in the population. This leads to the introduction of civil government. Someone who claims to be the authority has no right to authority unless individuals have voluntarily consented to put themselves in this position. The problem that Locke faces here is similar to the problem of consent in the odious debt debate. Only a few people have actually consented to their governments, so the natural implication of this for Locke would be that the government authority would not be justified. Consent, however, is not straightforward in social contract theories. If authority depended on an explicit act of consent of each and every citizen of the state, virtually none of the governments in the world would be legitimate (a similar implication follows from the way in which the notion of consent has been incorporated by the odious debt commentators; if the odiousness of the loans depended on an explicit consent to each individual loan, virtually none of the loans in the world would be legitimate.) The way Locke resolves this problem is by appealing to the notion of tacit consent. Simply by walking along the highways of a country a person gives tacit consent to the government and agrees to obey to it while living in its territory. This is basically because by the mere fact of being in my country, I accept the protection from the state and other benefits, and there is a duty to obey the government in return for that. Locke's argument is not without problems. There are many potential weaknesses with this argument (for example that if simply being in a state implies consent, then nothing would count as dissent except leaving to another country). We will not discuss these limitations here. The main point is simply that Locke's doctrine of consent is a solution to the problem of political obligation or, in other words, an answer to the question of why we should obey the state. Regardless of whether the tacit consent idea is on the right track, Locke believes that the reason why a state is legitimate
is precisely that we have consented to it. And we have consented to it, because it is the most efficient means of promoting and defending what we value most, life, security and property. This idea, at the same time, sets the legitimate ends of a state. Locke states in the Two Treatises that the power of the Government is limited to the public good. It is a power that hath —no other end but preservation and therefore cannot justify killing, enslaving, or plundering the citizens. This, as some interpreters claim, could be understood as meaning that the power to promote the common good extends to actions designed to increase population, improve the military, and strengthen the economy and infrastructure, or any other thing that is indirectly useful to the goal of preserving the society. This would explain why Locke, in the Letter, describes government promotion of —arms, riches, and multitude of citizens as the proper remedy for the danger of foreign attack (Works 6: 42). A somewhat less far reaching interpretation of Locke has been provided by Nozick, who deny that Locke would accept that all these are necessary means for the common good to be achieved. In any case, there is agreement among interpreters that, on Locke, citizens remain to be the legitimate owners of their property and therefore their state has no right to use it for the common good, without the consent of the property owner. Taxes exist only insofar as they provide the necessary funds to protect property rights and, ultimately, preservation.

As we can see, there might be some disagreement among interpreters regarding the exact boundaries of legitimate goods, but there is consensus that an official is acting within his mandate when he acts in accordance of the central goal of preserving security. What implication does this have for the discussion on odious debts? Locke is probably silent about the issue of

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83 Locke, Two Treatises of Government, 2.135
goods such as the stadium or, say, hospitals. We can speculate that these would probably be illegitimate expenditures on his view, given the fact that they are not necessary means for preservation. But there are other interesting implications for the odious debt discussion. One of them is that if we rely on Locke’s account, we would have an argument to show that things like going to war, or any expenses incurred for security and preservation (such as funding the police force, or maintaining a legal institutional system) would count as public, as people would consent to be taxed for those purposes (basically because it would be in their self interest). Needless to say, wars are sometimes ill conceived. But the circumstances under which it is justified to disobey the state on Locke are not satisfied by merely waging an ill conceived war (other, more extreme things, would have to occur for rebellion to be justified, such as a consistent policy of killing, enslaving or plundering the citizens). This would rule out the common claim that debts incurred for wars are odious if people did not consent to them, or if the state simply lost the war. Even if explicit consent did not exist, and even if countries lost the war, the incurred debt would not count as odious within Locke’s framework basically because, as I have said, we do not need the actual and explicit consent of each single individual in order for a policy to be legitimate. Also, the decision of waging war has, presumably (unless there is clear evidence to the contrary), the goal of preservation.

Locke’s account is also useful to understand what would definitely not count as a legitimate public purpose. These are the kinds of things that would justify, in extreme circumstances, a revolution. When the government interferes with the private property of their citizens, or when it acts in a tyrannical way by oppressing its citizens (by say building a prison for its political opponents, or by denying them the right to elect authorities in elections), or when they use public funds that are supposed to be used to protect the property, life and liberties of the
citizens to benefit themselves or their family; the government would not be acting in accordance of legitimate public purposes under any plausible interpretation of Locke. This is basically because citizens would not want to live in a society in which the state offers no protection or steals property that rightfully belongs to them.

**Libertarianism**

We can also discuss the odious debt doctrine and the issue of legitimate purposes in light of the conclusions that libertarians have reached. The implication of their view is more radical from the point of view of the odious debt doctrine. Take, for instance, the natural rights libertarian view of Nozick. Its starting point is the idea that each person is the morally rightful owner of his person or powers (e.g. their bodies, talents and abilities, labour, and by extension the fruits or products of their exercise of their talents, abilities and labour)\(^85\). This implies that each person is free to use those powers as she wishes, provided that he does not interfere with the right of others to use their person or powers. On the libertarian view, any non consented interference with someone’s right to self-ownership is a violation of that right. One of the consequences of this view is that if my right to self-ownership cannot be violated by any individual, it cannot be violated by any super-entity such as the state either. On the traditional libertarian view, the state is no more than another private association and, consequently, the powers and duties that the state exercises cannot be different from the powers and duties that individuals already possess.\(^86\) For libertarians, the so called —social contract— is no more than an

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\(^86\) This point is made by Rawls in John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 264.
agreement between individuals and some sort of corporation for the provision of certain specific services. Therefore, the state would not be allowed to tax me without my consent, beyond the level required for the defence of the citizens against each other and foreign aggressors. In particular, the state violates citizen’s rights if it attempts to transfer property from, say, the rich to the poor. Redistribution of wealth is, consequently, immoral on this view. Moreover, the various programs of the modern liberal welfare state are thus immoral, not only because they are inefficient and incompetently administered, but because they violate citizen’s rights to self ownership by forcing them to involuntarily work for the state. Goods such as hospitals, public schools or other public goods which are not necessary to protect the most basic right of citizens would be morally impermissible. Nozick’s ideal state is minimal. It should protect individuals, via police and military forces, from force, fraud, and theft, and administers courts of law, but nothing else. In particular, such a state cannot regulate citizens’ private behaviour, cannot administer mandatory social insurance schemes or public education, and cannot regulate economic life in general via minimum wage and rent control laws and the like.

Libertarianism, so conceived, has stronger implications for the odious debt doctrine than Locke’s account. On Locke, whether or not the state is entitled to preserve security by actively promoting economic growth is a matter of disagreement among interpreters. Nozick, in contrast, denies this possibility and explicitly says that doing it would violate citizen’s rights. The consequence of the libertarian view, thus, is that most of the debts incurred by states would be odious. Unless loans are used to secure citizen’s individual rights, which happens only exceptionally, none of the things governments usually spend their money on would be consented by the citizens and therefore they would not count as expenditures which are within the

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legitimate purview of the state. Again, as in Locke, security related issues and waging war would be among the things the state can spend money on. But if we are consistent with Nozick’s view, debts incurred by the state to build, say, hospitals or schools would not be binding for future generations (assuming that the conditions for a loan to be odious apply, such as lender’s knowledge), as forcing them to repay those debts would be tantamount to enslave them in order to forcefully pay for something they did not consent to or that they could have obtained more efficiently through other means, such as the market.

This does not mean that none of the debts incurred by the state are binding. Nozick’s minimal state is not exactly like a private corporation, despite the fact that some are tempted to identify it that way. A relevant difference between the state and a corporation is that corporations only provide and should provide services to those that paid for them, while the state, in some cases, is obliged to provide the —services it provides (namely security) to those who have been unable to pay for them. Take, for instance, the case of private security. A private security guard is only supposed to deliver his security service to those who paid for it. However, in the case of the state, this may not be so. In times of severe economic crisis, natural disasters or wars, some citizens—if not most of them—will be unable to afford the services that the state provides. However, the state still has the obligation to provide them and asking for loans seems one of the possible resources to do it. Therefore, there are ways in which a legitimate debt could be contracted (i.e. to provide essential services to those who have been unable to afford them). These, however, are the only kinds of legitimate debts that a libertarian would be willing to admit. There rest of them are odious.

Rawls

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A different, but also popular, theory of the public within the social contract tradition has been called by some scholars —liberal egalitarianism. The question of how can free and equal people be governed has, on this view, a similar answer to the one provided by Locke and Nozick. Due to the uncertainties and scarcities of social life, individuals, without giving up their moral equality, would endorse ceding certain powers to the state, but only if the state used these powers in trust to protect individuals from those uncertainties and scarcities. Protection and security is also at the core of the liberal egalitarian account. However, the domain of the public is broader for liberals than for libertarians or Locke. The most popular liberal egalitarian account is Rawls’s. On his view, in order to determine what a legitimate government is; we first need to develop an account of citizens’ fundamental interests, or an account of what citizens need as such. Rawls calls these fundamental interests social primary goods. Primary goods are, on his view, basic rights and liberties, powers of offices and positions of responsibility, income and wealth, and the social bases of self-respect (i.e. the recognition by social institutions that gives citizens a sense of self-worth and the confidence to carry out their plans). A just institutional framework would be for Rawls an institutional framework that distributes these basic goods in accordance with what he calls the first and second principle of justice. The notion of consent, as with Locke and Nozick, also underlies the justification of these principles, but in a different way. For Rawls, these principles should hypothetically be consented by all, if citizens adopted a fair and impartial point of view (which Rawls assumes would exist in what he calls the ‘original position’). The first principle holds that society must assure each citizen —an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all. The second principle addresses instead those aspects of the basic structure

that shape the distribution of opportunities, offices, income, wealth, and in general social advantages. The first part of the second principle holds that the social structures that shape this distribution must satisfy the requirements of —fair equality of opportunity. The second part of the second principle (i.e. the Difference Principle) holds that social and economic inequalities are to be to the greatest benefit of the least advantaged members of society. For the purposes of the present chapter, it is not necessary to discuss the conceptual strategy Rawls develops to derive these principles, or technical aspects related to the principles themselves, such as the lexical priority he assigns to some good over others. The point we should emphasize is that, unlike Locke and Nozick, one of the implications of Rawls’s theory is that states would be entitled to shape the basic structure of society in a way that the worst off maximize their chances to have access to the basic goods, including income and wealth. This would mean that state would assure each citizen the right to participate in the public sphere, something which Nozick and Locke would most likely support; but also, and in contrast with them, that the state would have to make other goods available to them. Among these goods, we should probably include public education and health care —which would be an important means to achieve fair equality of opportunity—or straight forward redistribution which can be achieved by, for example, assuring a minimum income.

The implications of a theory of justice like Rawls—or, in general, for any liberal egalitarian theory—for the odious debt doctrine are less far reaching than for libertarians. Given the fact that the scope of public purposes is broader on their view, less of the money that the government borrows would count as odious. This is basically because more of the money used

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by the government would be used for legitimate purposes and, therefore, the case for repayment would be weaker in more cases than under a libertarian theory of justice. So, for example, incurring debts to ensure security to citizens would be legitimate under any of the three frameworks discussed so far; but incurring debts to fund hospitals, public schools and even perhaps stadiums would be legitimate under the liberal egalitarian framework only. What liberal egalitarians do agree on with Locke and libertarians, however, is that some of the things governments could spend money on count not possibly count as a legitimate public purpose under any circumstance. Citizens consent to be coerced by a state if they protect them against the scarcities and uncertainties of life without states. Using public funds to oppress a part of the population or for exclusive benefit of the rulers are in flat contradiction with these principles. One might argue that oppressing the population is sometimes necessary in order to maintain order and security, and is therefore a public purpose. According to the NAF (National Abortion Federation)\textsuperscript{91}, there have been more than 619 bomb threats from anti-abortion groups in the United States, some of which were effectively carried out by radical groups. It would seem that using public force to oppress these groups, or any other radical group—whatever its final goal is—is legitimate. The objection is on the right track. Using public funds to make people conform to the rules is in these cases a legitimate use of coercion (a kind of coercion that seems necessary to make the liberties of everyone compatible). The objection, however, is not valid in all cases. The kind of oppression we should worry about in this context, and the one which is relevant for the purposes of clarifying the odious debt doctrine, is the kind of oppression that is carried out \textit{by the state}, and \textit{against the interests of the citizens}. Given that preserving their basic liberties is among the most important interests of the citizens, any action by the government that threatens

\footnotetext{91}{http://en.wikipedia.org/wiki/Anti-abortion_violence}
these liberties, regardless of the kind of government that performs this action—whether democratic or autocratic—cannot possibly be a public purpose, even if they do it does it in the name of the citizens. Oppressing pro-life groups who resort to violent means to achieve their goal by taking legal action against radical leaders is not a violation of their liberties. Since the actions of these groups are in conflict with the liberties of others, oppressing them would be, rather, a way to assure that other can fully exercise their liberties in a way they are entitled to. However, oppressing a social group or minority with no plausible justification is a flat violation or their liberties and therefore no public purpose exists in that case. Acts such as suspending the right to vote for an indefinite period of time, forbidding freedom of speech or incarcerating political opponents, as it usually happens during dictatorships are appropriate examples of these kinds of wrongs. Of course, it is not always easy to tell whether the basic liberties of citizens are being violated. Rawls, in a discussion on civil disobedience in a Theory of Justice, realizes that a similar kind of concern arises when we try to clarify the conditions under which it would be appropriate to disobey the law with the aim of bringing about a change in the law or policies of the government. However, he says, it is often clear that these liberties are not being honoured, as they impose certain strict requirements that must be visibly expressed in institutions. Violations of liberties that may be visible to all are the denial of the right to vote or to hold office, or to own property and move from place to place, or when religious groups are repressed and denied various opportunities. Clearly more needs to be said about this. A potential problem is that sometimes a liberty has to be sacrificed in order to defend another one (temporary suspension of the right to vote, for example, has been commonly invoked as a necessary evil to preserve the stability and security of a nation).

92 John Rawls, A Theory of Justice
For now, however, we have a preliminary way of distinguishing legitimate ways of oppression from non legitimate ones. This preliminary criterion is also the one that Rawls used to show the conditions under which civil disobedience is justified. Oppression is not justified when it clearly violates citizen’s liberties, when these violations are visible to all, and when they are in clear opposition of the interests of the citizens. We can now see that the popular claim according to which debts incurred to oppress the population are odious is misleading. We need to rule out first cases of legitimate coercion, and Rawls’s theory of justice provides a plausible way of doing this. Also, for the purposes of clarifying the odious debt doctrine, we can safely assume that some political actions would not count as legitimate under any circumstance, and these are the actions that would render a debt incurred to support these actions odious.

Rawls’s second principle of justice also provides a criterion for how to use public funds. Moreover, public funds are fairly spent only if they are spent in a way that satisfies this principle. In particular, there should be an institutional structure such that the worst-off group does best (in terms of access to primary goods), based on their own choices about how to exercise their abilities, and their own conception of the good. This raises the issue of how exactly do we know whether a particular distribution of goods has really satisfied the principle, or whether it has satisfied it in a suboptimal way. It is also possible to dispute the principle altogether. Given that all these problems exist, one might argue that Rawls is not really providing a satisfactory way of demarcating legitimate public purposes from non legitimate ones. Governments, however, can always provide plausible reasons to justify spending money in certain ways, and can always try to publicly show, even if not convincingly, that the given distribution of goods is the one that best approximates the requirements of the difference principle. The discussion, in that case, would be centered around the empirical question of whether or not the second principle has been
satisfied, or on whether the principle itself is justified. So for instance things like economic development, even in the form of subsidies to privately owned industries, could count as public in some broad sense, as it might be argued that it is a way for states to increase its tax base and therefore maximize income—one of the primary goods—for those who are worse-off. Those who disagree would have to show that the policy is erroneous and that it will not have the intended consequences, but the will hardly argue that this is not a public purpose.

Things look different, however, if government uses the money in a way that does not satisfy the second principle of justice in any plausible way. Take, for instance, the appropriation of tax money for personal benefit of the captors, bribes or straightforward corruption. First of all, these actions are never public, so no public justification is ever offered for them. Once they are suspected, immediate denial of the facts follow. However, even if a public justification would be offered for them, this justification would always be inconsistent with the core idea of the second principle of justice. A public officer might argue, for instance, that keeping tax money for his own personal interest (i.e. money which exceeds his normal salary and benefits) would be satisfy the second principle, because it is a way of maximizing access of primary goods for citizens. However, unlike the case where state subsidizes private companies (which could seem reasonable, given the fact that this would probably create more employment and expand the tax base), appropriation of public funds cannot possibly be justified in this way, because there is no way in which increasing the personal wealth of the ruler could maximize the income of the population (except for the very marginal case in which the ruler spends his money and indirectly benefits a few citizens by doing this).
Utilitarianism

The public/private distinction has been developed from a different perspective by utilitarianism. The fundamental principle of utilitarianism is that the morally correct action in any situation is that which brings about the highest possible total sum of utility. Since governments are in many cases in a better position than citizens to promote the welfare of the citizens than citizens would be on their own, we have the obligation to obey our rulers, as this would be the best way to satisfy the fundamental principle of utilitarianism. In cases where the state is unable (or unwilling) to promote the welfare of citizens, this obligation dissolves. In some, if not most, of the circumstances, individuals can promote each other's happiness without the mediation of institutions or governments. However, sometimes governments are more efficient at promoting general welfare. We might think, for example, in the rule enforcement role that the state has. Unlike individuals, states are in a better position to create rules and to make sure that the citizens abide by them. If following these rules would bring about more general welfare, we have the obligation to follow them. This account of political obligation can be criticized from many different flanks. We will not consider these objections here. The central point, rather, is that the implications this account has on the odious debt doctrine are similar to the ones social contract theories have. The only legitimate public purposes are those that benefit the citizens. Given that incurring debts for the personal benefit of the rulers, or to oppress the population, cannot possibly benefit the citizens in any way, those ends are not legitimate ones.
Public goods, social contract theories and utilitarianism.

We are now in a better position to respond to the question of what a public good is, by relying on the social contract theories and utilitarianism. Locke and Nozick, liberal egalitarians and utilitarians do not completely agree on the scope of the public sphere. Locke’s and Nozick’s approaches seem narrower than Rawls’s. While the former limit in general the public sphere to security and preservation of private property rights, the latter accepts these as valid but expands on them by maximizing access primary goods for the worse off through an institutional arrangement shaped according to the second principle of justice. Liberal egalitarians would tend to agree that states should fund public education, hospitals and other public institutions which are normally the result of redistribution policies. However, some things would not even count as candidates of public purposes for any of these social contract theories. As I have tried to show earlier, oppressing citizens in a way that violates their basic liberties or building citizens for their political opponents cannot be among them, as they would contradict the core principle of preservation and security that governments are supposed to realize. Appropriating private property for the personal benefit of rulers, friends or allies cannot be among the legitimate public purposes of a government either, as governments are in power precisely to prevent this from happening. Finally, nationalizing debts—an economic process that gave origin to the external debt of Argentina and other countries—should also be ruled out as a public purpose, because it is a plain gift that the people, through the state, is making to private corporations in return for no tangible benefit.

Nationalization. The process of nationalization of debts is especially interest, both because it is central to explain the origin of some of the immoral debts that I have been
describing so far and because it is not usually quoted as an example of odious debts (usually only the simple act of stealing or oppressing the population are), so I will make a digression at this point and explain it with a bit more detail.

The way in which nationalization, or the transfer of wealth from public to private funds, happens is more or less simple. An international agency or financial institution lends money to a private corporation. In many cases, the international and the local institution are the same one (e.g. an international bank transfers money to its local branch and this financial operation is publicly presented as private external debt). Afterwards, the local government decides to absorb that debt and makes it public. The private corporation is thus exempted from paying the loans back and regular citizens become responsible for it. The usual excuse is that the corporations needed public support to avoid major losses, but this is rarely true. The benefit is given on an arbitrary basis and without further explanation. This has happened in many countries in Latin America during the 70's (i.e. the years in which governments borrowed heavily from international financial institutions). In Argentina, for example, private corporations incurred debts between 1979 and 1981 for around 25 billion dollars. At that time, mainly due to the fact that the oil crisis of 1973 and the higher prices of oil led to an abundance of dollars in the international financial markets, loans were easily available and international private banks were eager to lend. In the meantime, during 1980, there was a massive capital flight to foreign countries, mainly because external creditors demanded a guarantee for their loans with assets in other countries. However, the general economic circumstances of the country changed the terms of the loans. Given that the local corporations were interested in preserving their assets in foreign countries, and that they were in debt, they decided to transfer their own debt to the state. This

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meant straightforwardly that the state had to take care of the debt incurred by local corporations. An interesting point is that not all the private sector benefitted from the nationalization process. Medium and small sized companies did not have access to loans from foreign institutions, mainly because they could not offer funds as a backup for the loans. Big private corporations, in contrast, had access to these loans because they could offer these kinds of funds. In fact, only 30 of the big corporations incurred debts for 7.3 billion dollars, which was around 33.6% of the total private external debt. This suggests that the nationalization of debts process was not a general public policy intended to benefit the whole private sector, but rather a biased policy intended to benefit a small group of big companies. The policy, therefore, cannot be justified with the argument that there is a public benefit derived from this; unless one wants to put forward the far-fetched argument that using money from the tax payers to pay off the debts of a small group of corporations is in the interest of all. This at least seems to be the general agreement among the citizens, who usually refer to this process as the —plunder of the century.

The real reasons why this happens are usually unknown, but one could speculate that rulers obtained a private benefit in nationalizing private debts; otherwise it seems unclear why they would generate such burden to the public in the first place. One might argue that this could have happened because the government was acting under the false illusion that the policy of nationalizing debts was going to benefit the economy of the country in the long run. But such view is seldom defended and seems somewhat naïve. The result of this process was that, before the dictatorship of 1977 started, the country had an external debt of 7 billion dollars. But when the dictatorship ended, in 1983, the debt went up to 45 billion dollars. As I just showed, and in
coincidence with other reports, half of that amount (approximately 23 billion dollars) was used to pay debts incurred by private corporations. Most of the remaining amount was used for other purposes, some of which are not relevant from the point of view of the odious debt issue.

One might argue that if bailouts are within the legitimate scope of the governments then nationalizing debts should also be; but this objections fails to take into account three crucial points: first, bailouts—such as the one that the US government has given to the three main automobile industries—are loans that governments make to companies (e.g. the US governments demanded that these industries return the full amount of the bailout by 2012); second, bailouts are given in return for some condition, for example that the company implements certain structural reforms that would make it sustainable in the future or that would allow workers to keep working there. Third, the government assumes, when giving the loans, that the company will be able to repay the loans. If there are no realistic reasons to believe that these loans will be repaid, the money is not lent in the first place; and, in the case that the company declares bankruptcy, the debt does not simply dissolve as it happens in the case of debt nationalization, for the state would be entitled to take up some of the assets of the company in compensation for the losses incurred. Also, when companies are in trouble, they are allowed to restructure their debts and the creditors end up settling for less than the full amount of money they have earned.

In contrast, debt nationalization, as it has taken place in Argentina, is a plain gift that the state makes to corporations. There is not any requirement to return that money to the state, at any time; no structural reforms are expected in return for this gift, and the fact that the company eventually fails is irrelevant, for the funds will not be recovered anyway. An interest related contrast is that in the case of debt nationalization, creditors—unlike the case of bailouts—never

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94 See for example the following verdict about the Argentinean external debt. http://www.laeditorialvirtual.com.ar/Pages/Ballesteros_JuicioSobreDeudaExterna/Ballesteros_001.htm
have to settle for less, even if something goes wrong with the debtor. This is basically because, when the state nationalizes a debt, it absorbs the full amount of this debt and not the portion that the private company would have had to pay when it was in problems. A different but related point is that there is usually no public justification offered at the time the nationalization process occurs. In fact, these kinds of political decisions are normally made in secret, by surprise and without really giving citizens the chance to oppose to it at any stage of the process.

Utilitarianism, although for different reasons, would reach similar conclusions to the ones reached by liberal egalitarians and libertarians. There is, however, a possible discrepancy. While under social contract theories the benefit that the government brings to the citizens need not be tangible (e.g. when a government goes to a war, for example), under utilitarianism the only legitimate public purposes are the ones that immediately benefit the citizens (so when wars are ill conceived, the state would be misusing its power and therefore incurring debts for that purpose would not be acceptable).

This point only seems to apply to act-utilitarianism, for under rule-utilitarianism (i.e. the version of utilitarianism that postulates that political decisions are good when they conform to the rules that lead to the greatest good), sometimes incurring in debts for purposes that do not immediately and obviously benefit the population would be acceptable, so long as these debts are consistent with a rule that would bring about a benefit over time. This could happen if, for example, there is a rule that would entail losing a war in some scenarios. Both social contract theories and rule-utilitarianism could in principle find it acceptable, although not act-utilitarianism. A possible (hypothetical) example would be that a country follows the rule of enforcing all the Security Council resolutions of the UN for the purposes of strengthening its
reputation in the international arena. This would probably bring about certain losses in some occasions but, overall, the rule-utilitarian would say, the benefit of conforming to that rule is more beneficial than not conforming at all.

However, despite this disagreement, there is some consensus among these accounts on the kinds of things that would not count as public purposes. Any spending by the state that benefits the rulers while directly harming the population cannot be justified on any of these accounts. On utilitarianism, using money obtained from taxes to benefit the rulers cannot possibly be a public purpose because there is not any possible state of affairs that would justify this. Even in the case of a ruler who is capable of obtaining a lot of enjoyment by taking a little bit from everyone, the overall scenario would be worse than the scenario in which that does not happen, for only one person would be satisfied (i.e. the perverse ruler) and many dissatisfied (i.e. the people). Something similar would happen under rule utilitarianism. A rule according to which rulers are entitled to take a bit from everyone to satisfy themselves can only be a bad rule on rule-utilitarian standards, for such a rule can never bring about beneficial results over the course of time. One needs to identify here, of course, the relevant rule. So for instance there might be a rule that whenever there is fiscal deficit, it is justified to borrow money. That rule would still apply and be a good one in terms of benefits even if the government is a dictatorial one. But the grounds on which rule is justified can never be that the ruler benefits from it; it has to be, rather, that the citizens benefit from it.

Using public funds to oppress the population for the purposes of preserving the rulers in power cannot be justified either, for those who are in power are a means to make citizens better off, and not the other way around. Although for different reasons than the ones put forward by
social contract theories, the conclusion is basically the same. Some actions cannot possibly count as legitimate public purposes. Therefore, using public funds to support them is not justified.

We can draw two partial conclusions from this discussion. The first one is that there is a —grey area with respect to some public purposes. Whether or not some policies are legitimate would depend on the theory of justice that we adopt. Since there is not a clear agreement on what the correct theory of justice is, we cannot claim at this point (i.e. without really solving the dispute) that the purposes that liberal egalitarians claim to be public are really public. Therefore, legal scholars who endorse the odious debt doctrine seem to be conceding too much when they say that debts incurred for say, public schools, hospitals and others are not odious because they benefitted the population. This seems to assume precisely what we need to discuss: the definition of public purposes. International law already takes for granted that the liberal egalitarian account is the valid one, as it is based on the idea that citizens benefit by having certain goods that liberals consider public available to them. This, however, cannot be a valid reason to support liberal egalitarianism. Instead, positive law should be reformed in the way that better realizes the appropriate underlying theory of justice.

The second, possibly more relevant, partial conclusion is that there is an overlapping consensus among social contract theories with respect to the things that definitely do not count as public. Precisely because this agreement exists, the case for odious debt becomes stronger when we claim that governments should not have spent public funds on them. These things include, as I have said earlier, using state funds for the personal benefit of captors, or oppressing political opponents or minorities with no publicly justified reason (such as, for example, preserving power).
An additional, related, point is that social contract theories show us that examples which have traditionally been used as cases of odious debts are not really valid. This seems to be the case, as I have showed earlier, with wars, making people conform to the rules and others, which fall within the legitimate scope of public purposes, under certain conditions. Therefore, cases which have been traditionally described as instances of odious debts are not misleading. This, as I have said, seems to be true of cases like the Iraq-Iran war or the recent US-Iraq war.

The notions of benefit and consent, which are at the core of the odious debt doctrine, should be interpreted in a different way than it has been by recent commentators. First of all, "consent" has been understood as the concept that lies at the heart of the democratic system and that gives it legitimacy. In contrast, autocratic regimes have not been consented by the citizens and therefore these regimes are not authorized to borrow in their name. This idea follows from a traditional liberal view, according to which contracts are legitimate when there is valid consent involved. It is certainly true that what gives governments legitimacy is consent, and that consent is at the basis of democratic governments. But it seems misleading to conclude from that that debts incurred by democratic governments are always legitimate and that debts incurred by autocratic regimes are not. The crucial distinction we should clarify, I believe, is what a public purpose is and what a private purpose is, as this is what determines the illegitimacy of the debt, and not the nature of the government that borrows money. Consent becomes relevant in a different way in light of this distinction. In order to understand what a public purpose is, we need to appeal, as social contract theories show, to the notion of consent. Legitimate public purposes are not necessarily those that democratic governments carry out (in fact it is often the case that democratic governments are corrupt on an ongoing basis). Legitimate public purposes are, rather, those which citizens consent to (explicitly, tacitly, or hypothetically. But that is not something
that we should worry about now). Therefore, a democratic government, although consented, can act corruptly and, more importantly, autocratic regimes—although not legitimate themselves—might occasionally act in accordance with public purposes, as it does when it administers justice correctly. The notion of ‘benefit‘ is secondary in this picture. One of the conditions that are usually mentioned for a debt to be odious is that people do not benefit from it. However, this is not a necessary condition, for sometimes people do not benefit from a loan but, nonetheless, the loan needs to be repaid. ‘Benefit‘, except on a utilitarian account, is not really relevant for our purposes because it is subordinated to the notion of public purposes. A case of a non-beneficial and yet publicly legitimate purposes, as I have tried to show earlier, is failed or mistaken policies; which result from states that are able and honestly willing to implement the correct policies, but fail to do so due to bad luck, lack of information or others. A clear example is the case of lost wars. What determines whether the debt should be repaid is the fact that it was incurred for legitimate public purposes, and the issue of benefit is secondary with respect to that. One might of course understand the notion of benefit in a broad sense: something counts as benefit when it is done for a legitimate public purpose. But we would not gain too much by conflating terms this way, as we would still need to understand what a public purpose is in order to define a debt as odious.

It is necessary to make a clarification at this point. The public-private distinction has recently been criticized from a different flank than the one we have been considering so far. Some scholars argue that certain spheres of society which are typically considered private (such as the family, churches and the school) are not really private, basically because principles of justice also apply to them. In this vein, feminists in general have put forward the thought that ‘the personal is the political‘, and criticized philosophers like Rawls for having failed to account
for injustices found in patriarchal social relations and the gendered division of labour, especially in the household. Susan Moller Okin\textsuperscript{95}, for example, has tried to elucidate whether Rawls’s theory of justice could account for injustices that exist within familiar relations.

These discussions, however, do not seem relevant for the purposes of clarifying the odious debt doctrine. What matters for our purposes is whether rulers are acting within their legitimate mandate. Even if one wants to say that families are public and not private domains, it is clear that the use of public funds specifically to benefit the ruler’s family in particular should be excluded from the list of things that count as legitimate public purposes. Rulers may benefit their families insofar as this is necessary for them to perform their duties (as when they get a nice house, staff and protection), but the kind of actions that count as private and corrupt—which are the ones that matter for the issue of odious debts—clearly go beyond this limit.

\textsuperscript{95} Susan Moller Okin, \textit{Justice, Gender, and the Family} (New York: Basic Books, 1989)
Chapter V – Challenges to the concept of odious debts: *pacta sunt servanda* and the problem of scope

From the previous chapters, we can outline an account of what an odious debt is, from the moral point of view. A debt is odious, I have argued, when rulers borrow money for private rather than public purposes. I have explained in the last chapter what a public vs private purpose is, and why this account presupposes a moral and philosophical analysis.

However, the claim that some debts are odious, as defined so far, has generated scepticism among legal scholars, economists, and philosophers. In this chapter I would like to consider two of the most popular sources of scepticism. In the next chapter (Chapter VI), I would like to consider two more. Some of the possible counterarguments that have been raised against the doctrine are the following. First, one might argue that even if it is true that rulers misused public funds, there is still a general principle that countries should respect, which overrides the fact that a debt could be odious: *pacta sunt servanda*. According to this principle, states ought to honour their commitments across generations. Second, one might admit that certain debts should be considered odious, but minimize their impact on developing countries on the grounds that the set of debts which are in fact odious is minimal in comparison with the set of debts which are legitimate, and on the grounds that citizens consented or could have potentially consented to those loans under different circumstances. On their view, the money involved in odious debts is negligible when we compare it with the total amount of money legitimately owed to financial institutions, states, private investors, and others. And even if it did involve a substantial amount of money, it is normally assumed that it was spent to benefit citizens or for public purposes.

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The idea that the rulers and their friends simply kept the money for themselves is considered a plausible but exceptional phenomenon (it is perhaps for this reason that scholars have not paid much attention to odious debts).

To address each of these concerns, I will try to show in Section (I) why odious debts should not be a burden for future generations or, in other words, why odious debts are exceptions to the generally valid principle of *pacta sunt servanda*. In Section (II), I will lay out the reasons why odious debts are a much more extensive and pervasive phenomenon than it is usually thought to be. In fact, odious debts have a pervasive impact on the development of countries for which they are often not given credit.

(I) Odious debts as limitations to the general principle that international treaties ought to be respected.

That some debts are not binding seems to contradict the most elementary principles of morality and international law. In fact, it is natural to think that if a state incurs a debt through loans, then that debt will be binding for the citizens of that state or—if it is not paid off at the moment it was incurred—for its future generations. If this common sense principle was not respected, an international system of credit would not exist in the first place, as lenders would be reluctant to lend out of fear that they would lose their investments.

But it is not always true that debts have to be repaid and, also, it is not always true that debts should be inherited across generations. In other words, these elementary legal and moral principles do not apply to all cases. Certain debts, I shall argue, do not satisfy the minimum
requirements that debts need to have in order to be binding and to be legitimately passed on to future generations.

In order to show why, we should examine the following question: what links the past and the future together in such a way that responsibilities can be inherited across generations? The answer to this question could, I believe, give us an answer to the question of how societies can have obligations at all, and, consequently, to the question of how there can be exceptions to those obligations. This, in turn, could show us the reasons why certain debts are not binding for future generations, despite the fact that their predecessors incurred those debts.

One possible way to justify inherited responsibilities is put forward by Janna Thompson. On her view, the reason why inheriting responsibilities is justified can be found by analyzing the reasons why treaties ought to be honoured. Thompson’s argument is as follows. When a treaty is made, it is supposed to last indefinitely, and not only until the generation that signed the agreement ceases to exist. The generation that signs the agreement, in other words, intends to bind its successors. By doing this, it participates in a practice of honouring the commitments made by previous generations. A generation that wants to enjoy the benefits of entering into binding intergenerational treaties must also accept the costs in the form of treaty obligations it inherits from the past. Otherwise, this generation would be participating in an unfair (and self-defeating) practice. The reasons why these treaties are binding, then, is that it would be contradictory to expect future generations to comply with the commitments that we pass on to them, if we do not—at the same time—honour the commitments that the previous generations made. So Thompson’s argument seems valid insofar as we accept the claim that the

practice of making promises is a valuable one. Since we keep our promises, we achieve something important: mutual respect among nations.

Miller reacts against this approach. He says that it would, in fact, be hypocritical for contemporary generations to think that the future generation will have the obligation to respect the treaties that the previous generations signed, if they do not think that their generation also has the obligation to respect the treaties that its antecedents signed. But what if we say that it is entirely up to our successors whether they honour the promises we make, and entirely up to us whether we honour the promises made by our ancestors? We would then be neither inconsistent nor hypocritical. The problem with Thompson's argument, then, is that she is assuming what has to be shown—namely that later generations ought to honour the promises made by earlier generations. If we assume that, then we should conclude that our successors ought to keep the promises we make, and that we ought to keep the promises made by our predecessors. But no argument has been given for the assumption itself.

Despite this problem, Miller believes there is something important about Thompson's argument that we should focus on. The kind of question Thompson asks, he believes, is the correct one. If we need to figure out why inheriting responsibilities makes sense, we should explain how the present members of a generation can be held responsible for what previous generations have done. Miller attempts to solve this problem by offering an alternative solution. The reasons why countries inherit responsibilities is analogous to the reason why individuals inherit responsibilities in domestic law. According to Roman law, successors (the heirs) had the right to decide whether to accept or reject the inheritance of the deceased person. But once they accepted it, they had the responsibility not only for paying debts and restoring property, but also

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97 The criticism of Thompson's argument is in Miller, 144

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for other liabilities incurred by the person whose heirs he was, like, for example, breaches of contract committed by the deceased. Roman law also accepts the idea that those who inherit from wrongdoers are potentially liable to make compensations for the wrongs committed by others in the past. There are two main reasons why this is so. First, the balance of the argument counts in favour of those who were victims of the wrongdoer and of their right to claim compensation, even if the wrongdoer has died. The moral case for inheritance is weak: those who have inherited something did nothing to deserve it. So the ground to complain for having to use part of what they inherited to compensate the victims is weak. Second, had the deceased paid his debts, the heir would have inherited less. This suggests that at least part of what the heir inherits is not really his.

In order for this argument to be exactly analogous to the international case, we need to show that there is a legal analogy between individuals and states. This analogy is not implausible. The distinct feature that states share with households governed under Roman law is that they exist across generations. States, in particular, exist across generations because the political powers enjoyed by their officials are attached not to individuals filling particular offices, but to the offices themselves: decisions and commitments made by these officers bind the official successors and the citizens. Laws, for example, are made not simply by people, but by officers in their official capacity. For this reason, laws bind successor governments and citizens in general. Similarly, debts incurred and the commitment to pay them back is a decision made by officials in an official capacity and therefore binds the official successors and the citizens. Of course, politicians are constantly accused of exceeding their powers and, in particular, of borrowing money for purposes that are not in the interest of the nation or in the interest of the citizens. The president of Argentina, for example, has been recently accused of exceeding her powers by
borrowing money from the central bank which, according to her opponents, is not permissible given the fact that the central bank is an autonomous institution. But the mere fact that these accusations exist does not make all borrowing odious. Debts are only odious when borrowing is totally beyond the capacity of officials. Whether or not borrowing exceeds the capacity of an official cannot depend on the perception or mood of particular individuals. There is rather an objective criterion for this, which we can draw from the public and private distinction discussed in Chapter IV.

So in the case of individual inheritance, both ethics and the law support the general principle that individual inheritance is analogous to national inheritance. Assets are inherited among private individuals just as they are inherited by future generations. These could include territory, institutions, natural resources, etc. One difference between the individual case and the case of countries is that while individuals, according to Roman law, can refuse their inheritance, citizens cannot. If the heirs will inherit more in debts than in money, then he is allowed to refuse the whole inheritance. In fact, it is predictable that he will do so. Citizens of countries, however, do not have that option. Neither the countries’ assets nor the duty to compensate for past wrongs can be refused. In practical terms, it is sometimes possible that the heir does not inherit anything, if his predecessor’s debts were equal to the value of the estate itself. It is even possible that the heir inherits a negative amount of money if his predecessor’s debts are higher than the value of his estate (although it does not seem plausible to imagine that the heir will accept such a burden if he is free to reject it, it is not impossible to imagine that he would accept it if, say, he wants to restore the reputation of the deceased predecessor by honouring his debts). But it is not possible for countries to refuse a past debt, even if the debt itself is worth more than the —estate or the accumulated wealth of that country.
If we carefully examine the argument, however we should see that it does not entirely vitiate the analogy between states and individuals. There are two reasons for this. In the first place, the fact that individuals can decide not to accept the inheritance of their predecessors suggests that the heirs will never inherit a *negative* asset if they do not want to, as it is always an option for them to refuse the —whole package (i.e., both the debts and assets) if it is not convenient for them to accept it. However, and despite the fact that citizens can never decide not to inherit debts and —assets, states are not so different in that respect. There is also a sense in which they will never inherit a *negative* asset. Unlike corporations or individuals, states do not die, and never declare bankruptcy. So even if they inherit a negative asset from past generations (say, an extremely inept government borrows much more money than the value of the whole country), citizens will not inherit a *negative* asset, as they can always decide through their governments to pay back the portion of the debt that they decide is convenient, while still maintaining the country’s operational capacities. In the second place, what states and individuals have in common is that none of them can enjoy their inherited assets without at the same time paying off their inherited debts. In the case of individuals, Roman law stipulates that if the heirs want to accept their inheritance they can only do it after they have cancelled out pre-existing debts. In the case of states, citizens cannot enjoy the benefits of living in their country without at the same time repaying inherited debts. It is always, at least in theory, possible for them to opt out from the country, but if they decide to remain in it they are required to accept the —whole package, so to speak.

External debts are clear examples of international treaties that ought to be respected by present and future generations. Both Thompson’s and Miller’s arguments give powerful reasons for why this is so. If Thompson is right in arguing that nations should respect treaties because the
practice of keeping promises is a valuable one, then debts ought to be repaid for the mere reasons that a nation has committed itself (and its future generations) to do it. Not to pay them would be inconsistent with the common practice of borrowing money and, therefore, with the existence of the international credit system itself. If, in other words, none of the countries that borrowed money honoured their commitments to repay them, a normally functioning financial market would not exist in the first place. If, on the other hand, Miller is right in arguing that nations should respect their agreements because the international legal system is analogous to the domestic legal system, then debts ought to be repaid because debts are also inherited in the domestic case.

The positions of Thompson and Miller are also reflected in international positive law. As Howse points out, the obligation to pay external debts has usually been articulated in terms of the requirement that states honour their agreements with one another. The rationale behind this international obligation is, again, that without such international laws, the whole international financial system could not work.

But odious debts could precisely be understood as *limitations or exceptions* to the general and legitimate obligations that states have to honour their agreements. Regardless of who is right in the dispute about what exactly justifies the fact that responsibilities can be inherited (whether Miller or Thompson), what is clear is that the strongest reasons that we could find in favour of

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98 We should emphasize at this point that not *all* promises made by a generation ought to be honoured by the next one. The principle of *pacta sunt servanda*, in other words, does not necessarily mean that if a commitment is valid for one generation it will also be valid *across* generations. Whether commitments are and should be inherited across generations depends on their exact content. A treaty could possibly affect only one generation (e.g., a country might bind itself for only a short period). The case of debts we are discussing already assumes that the kinds of commitments that borrowing countries engage in are commitments that exist across generations, if the debts are not completely paid off by the government that incurred them.

99 Howse, United Nations Document
the general obligation of states to honour their commitments are based on an analogy between states and individuals: in other words, they are based on the idea that we should treat states exactly as we treat individuals in domestic private law. This is also clear if we look at how international positive law is written. As Thompson puts it, —legal conventions treat states like individuals and assign them the same responsibilities for their commitments as individual persons are supposed to have for theirs. The state is responsible for honouring its agreements and for any of the breaches that its officials commit. Since the state consists of its citizens, past, present and future, this responsibility devolves on whoever is in the position to accept it. Most citizens accept this. 100 By assuming that states are analogous to individuals it is also assumed that states should be held responsible for what they do, and for inheriting the burdens and benefits of what a state did in the past; exactly as individuals are.

It is clear to me, however, that states should be treated as individuals in some respects but not in others. As mentioned earlier, states act only through their officials and these officials are legally constrained. That is the reason why states' legal commitments are passed on across generations in the first place. The existence of states across generations is in fact analogous to individuals in the case where their officials act within the legal constraints that are attached to their office. However, when officials act beyond their capacities and beyond what they are entitled to—say, if an official uses part of the national budget to build a tennis court in his private garden—the analogy between states and individuals breaks down. Indeed, when officials act for their private benefit, it no longer seems to be the case that citizens and successor officials will be obligated by their decisions. The legal continuity of the state would have disappeared. 101

101 An analogy with private law here is instructive. Some scholars suggest that the doctrine of odious debt may be understood by drawing an analogy with common-law and civilian agency law. Agency
None of the arguments that establish the legal continuity of the state across generations (whether Thompson's or Miller's) seem to back the claim that commitments should be honoured when the analogy between individuals and states breaks down. In fact, they both assume that the reason why these commitments are passed on across generations is precisely that this analogy exists. Thompson's argument that governments ought to accept the commitments incurred by previous generations because they also want their own commitments to be honoured by the next generations does not seem to apply to the case of odious debts, as it is clearly not the case that citizens of the generation that asked for the loans made such a commitment. In fact, they could not have made such a commitment because the loans were used for private—not public—purposes. This is analogous to what happens in corporations. A corporation acts through its officers. Usually, if an officer makes purchases on the corporation's credit card, the corporation has the obligation to pay that debt off. This is true even in cases where it is not clear that the company benefitted from that transaction, or in cases where the decision to use the card in such a way is the correct one in terms of the interests of the corporation. This is because the officer is the representative of the corporation, and his acts are considered the corporation’s acts. Things look different, however, in cases where the official makes those purchases in a way that it is clearly not in the interests of the corporation. Let us consider a hypothetical example. We might think that a CEO’s decision to borrow money to buy land with the idea of opening up a shoe

relationships are those in which someone—the principal—consents to being represented by another—her agent, their agreement typically specifying the circumstances under which the agent’s actions carry legal consequences for the principal. The principal’s legal duties are mediated by the agent. When the agent acts on the basis of that agreement between agent and principal, her actions carry legal consequences for the latter. This does not mean that the legal identities of agent and principal are merged: the agreement usually specifies the scope of the agency relationship so that the principal is not bound by whatever the agent does in name of the former. The analogy would show that, in the odious debt scenario, the people—the agent—should not be bound by agreements concluded by a dictator—the principal—without the authority to bind them.
factory might be a bad idea, because, say, the CEO bought the land at a moment in which the property’s value was too high or at a moment in which the interest rates were too high. The accusation of imprudence, in that case, does not exempt the corporation from paying off the debts incurred by the CEO. However, if someone who pretends (i.e. he is not authorized) to be the CEO uses the corporation’s credit card to buy land for his daughter so that she can have a nice place to play with her friends, there is fraud and the corporation is not on the hook.

Similarly, the ruler of a country may incur debts for questionable purposes, but these are not enough to qualify this debt as odious. The debt is odious only when the ruler spends the money in goods that are not compatible with the interests of the nation in any relevant sense. Thompson’s point about countries honouring debts when these debts belong to whole nations is right, just as it is right that corporations ought to honour their debts when those debts belong to the whole corporation. The analogy, however, does not hold if the debts do not belong to the whole country (or to the whole corporation).

On the other hand, Miller’s argument that international treaties are analogous to private domestic law—in the sense that the same ethical and legal principles apply to both domains—does not seem to apply to odious debts either. If it did, we should conclude that individuals should be held responsible for the debts incurred by someone who borrowed money in the name of our predecessors. But if A borrowed money in B’s name (if, say, A said to the bank that B was going to act as a backup or guarantor for the loan) and then C inherited debts and benefits from B, it would be unfair for C to be held responsible for the money that A borrowed from the bank. It is clearly the case that the bank should be held responsible for A’s debts (after A dies) in that case, for it should have taken reasonable precautions to avoid lending money to someone who
was not actually able to return the money in the future, or who was using someone’s name as a guarantor without his consent.

The position on odious debts that I have taken so far seems to imply that in cases where citizens are not directly responsible for historical wrongs, they should not be held responsible for them. So, for example, one might argue that following my line of thought, the payments that have been made by the German government to Jews as reparations for the Nazi Holocaust are wrong, because it burdens taxpayers who are not blameworthy for the harms inflicted by the Nazi regime—something which, obviously, seems hard to accept; or that payments made to current First Nations communities as compensation for past historical harms are also wrong, for they are a burden to current taxpayers who are not implicated in what their ancestors did (and, of course, sometimes not even ancestors are implicated, because many Canadians are descendants of people who arrived after 1945). But these cases do not seem to be counterexamples to the argument that debts incurred by past dictatorial regimes should not be passed on to future generations.

The main reason why the German government’s compensations to Jews or Canada’s reparations to First Nations communities are not analogous to the odious debt case is that the former were acts of a nation, whereas odious debts are all the acts of individuals acting on their own initiative to steal from the nation. In the reparation cases the nation was the perpetrator, whereas in the debt cases the nation was the victim. In the case of the Nazi Holocaust, it was Germany as a nation that acted aggressively against one particular group within their society, and it is now Germany as a nation that owes compensation for such atrocities. Similarly, in the case of wrongs committed against native populations, it was a nation that acted against them and it is now a nation that is compensating them. In the case of the U.S. v. the Sioux mentioned
above, for example, there was a Congress decision in 1876\textsuperscript{102} that violated a previous treaty between the U.S. and the Sioux, which means that the U.S. government was legitimately representing the people (at the least in the minimal sense of legitimacy that Wenar mentions). Commitments to pay debts are similarly inherited across generations when these debts are incurred by the nation. But this commitment dissolves when the debt is incurred by one particular group within that nation.

An additional, although secondary, element that shows that the German and First Nations cases are not analogous to the odious debt cases is the way in which ordinary citizens react in each of these cases. In the case of the Nazi Holocaust, it seems that current citizens feel that they are, in a way, collectively responsible for having inflicted harm to a group of people that belong to their own community, and decide to act accordingly by compensating the victims in different ways. Much of the money that the German government is currently spending is for restitution of property, which in German law still belongs to the previous owners, and for compensation for slave labour. The reason why the feeling of collective guilt exists is not clear. Perhaps people believe that, either by action or by omission, they have contributed as a society to the creation of circumstances which made the Nazi regime possible. Similarly, a growing number of people believe that First Nations communities are owed compensation for historical wrongs against them, and support policies that benefit them in one way or another. The fact that these feelings exist is not necessary to support the claim that responsibilities are inherited across generations. These responsibilities would still exist, even in the absence of these feelings (Austria, for example, had to return the Klimt paintings, even if people do not think that way). But the central point is that if someone appealed to the strategy of evoking feelings as a way of showing that

responsibilities are inherited across generations, we could respond to him that it simply would not work in the case of odious debts, because people never feel that they are responsible for having created the burden of having to pay off those debts. In most of the cases they feel, rather, that they are the victims. And this happens precisely because, by definition, odious debts are acts of a private party and not acts of a nation. The decision to incur a debt was made by someone else on their behalf and without their consent.

Odious debts, then, are an exception to the generally valid principle that international treaties ought to be respected by future generations. International treaties ought to be honoured by future generations insofar as countries legitimately represent their citizens when they sign them. Treaties are valid, in other words, when countries are analogous to individuals in the domestic domain, in the sense that we could consider them responsible—as a collective body in the case of countries, and as individuals in the domestic case—for the decisions they make, and the terms under which they negotiate. Both Thompson’s and Miller’s explorations of why certain obligations are passed on to future generations seem to back this claim. On Thompson’s view, international treaties are valid because societies consider promises to be valuable, and societies expect future generations to comply with their commitments. Her conception depends, then, on the idea that societies as a whole make commitments that affect future generations. Similarly, Miller’s view—although different from Thompson’s—suggests that the reason why current generations have to accept the burdens of compensating for past injustices is similar to the reason why individuals in the domestic context inherit goods and debts from their predecessors. If we consider as valid the old Roman law according to which heirs inherit debts and goods then, he says, we should also consider as valid the moral principle according to which nations inherit responsibilities from the past: the underlying principle is, after all, the same one in both cases.
But this, again, suggests that responsibilities are inherited when countries are treated as individuals. Since countries that ask for odious debts could not be treated as individuals (mainly because the decisions made by governments are not legitimately representative and those societies are therefore not acting as a collective body), they do not meet the criteria that societies should have in order to validly pass on obligations to future generations.

(II) Scope and impact of the odious debt doctrine

Although several scholars and the general public acknowledge that certain debts are odious, they tend to think of this as a marginal problem within the international financial system. In this section, I will discuss three arguments that can be used to play down the impact and scope of the odious debt doctrine. This analysis will show that the problem of odious debts is much more extensive than is usually thought.

Only non-democratic countries’ debts are odious

One possible strategy is to claim that the problem of odious debts exists only in countries that are or have been ruled by despotic and tyrannical rulers, such as Suharto in Indonesia or Charles Taylor in Liberia, in which case it is true that a portion of debts are odious. But since most borrowing countries are currently governed by officials who have been elected through democratic processes, this portion would be quite small.

This strategy is, however, misleading. The distinction between legitimate and illegitimate governments is not really relevant, mainly because a debt can be odious regardless of the nature
of the government. In other words, debts incurred by democratic governments can be odious, and debts incurred by autocratic governments can be perfectly legitimate. This is because what determines whether or not debts are binding is not the nature of the government, but rather the fact that its officials used the money for private purposes rather than public ones. If this claim is true, then although we would probably need to exclude some of the debts incurred by illegitimate governments from the list of odious debts, we would have to add to that list all those that have been incurred by democratic but corrupt governments. As a consequence, and given the fact that most of the current borrowing countries pass the minimal test of democracy (i.e., their governments are elected by the population), we can conclude that the portion of debts that are odious would be bigger than the portion of debts that would be odious if only debts incurred by illegitimate governments are illegitimate.

The idea that debts incurred by autocratic governments can also be legitimate can be shown in the following way. The fact that a government is not legitimate should not lead to the conclusion that all of its decisions or policies are against the interests of its citizens. It is possible that a government is ruled by a cruel regime and that at least some of its policies can be consented to by the population, if they benefit from them. Public funds can be used to buy weapons or big houses for the rulers of the regime, but they can also be used to build roads, bridges, dams, or schools. Although rare in practice, this could happen and has in fact happened in the past. In order to show what the legitimate expenses of a dictator’s government could be, we need to rely on a different authorization mechanism than the one we use for legitimate democratic governments. While in a democracy citizens voluntarily decide that their government protects their interest, and the voluntariness of this decision makes the decision of the government binding, we could claim that some specific decisions of a dictator’s government are
binding if they were made in accordance to specific *ends* that citizens would consent to, such as, for example, preserving their security or promoting education. I will now consider this argument a bit more carefully.

(i) *Loans incurred by illegitimate governments that are used for public ends*. A debt incurred by a government may be used for public purposes, regardless of whether this government is legitimate or illegitimate. By —public I mean goods or services that are of special interest for the citizens and that might benefit them collectively in the short or long term. Schools, roads, bridges, and hospitals are public goods when funded by the state, as people have an interest in them and benefit from them. Could funds used for public goods also be odious? This question is relevant, as the amount of money owed that should be considered illegitimate may be smaller if the answer is negative. In order to respond this question, an analogy with private law could once again be especially illuminating.

As Birks explains[^103], you might benefit at my expense without making a choice. This is called, in legal terms, —incontrovertible benefits. In order to classify a benefit as incontrovertible we must show that, despite the fact that you have not explicitly accepted the benefit that you have received from me, you were actually enriched by it. We know that you have enriched yourself by using what Birks calls the —no reasonable man test. According to this test, we could safely determine that you have enriched yourself if —no reasonable man could deny that you have enriched yourself as a consequence of my action. In more precise terms, when I have conferred a benefit which was necessary for you, in the sense that you would have had to seek it yourself, or would have sought it if you had not been deprived of the opportunity, no reasonable

man would deny that you have been enriched at my expense. There are many possible examples of incontrovertible benefits. One can imagine the case of a person who has fainted and is about to drown, but is rescued by a noble neighbour. Assuming that he has an interest in preserving his life—an interest that no reasonable man would deny he has, the rescued person is responsible for paying the expenses incurred by the noble neighbour for saving his life. In fact, although he did not explicitly accept spending the money for that purpose, it seems plausible to assume that he would have spent it if he had the opportunity to do it. One might not find this example intuitive at all. Perhaps the rescued person could say that he does not owe any money on the grounds that the rescuer had the duty to save him anyway, or that he did not consent to being rescued. But there is an additional reason why we might say that he benefitted. If, after the rescue takes place, he willingly pays for the expenses incurred, we can reasonably infer that he is implicitly accepting the value of the benefit he obtained. The fact that he makes himself responsible for the expenses incurred, in other words, shows that even though he did not initially consent to being rescued, he is accepting that he has benefitted at the rescuer’s expense and, consequently, possible objections that he does not owe any money to the rescuer would be ruled out. So either because the benefit that the rescued person receives is incontrovertible for any reasonable man, or because he is with his actions showing that he has obtained a benefit at the rescuer’s expense, we might safely say that he has benefitted at someone else’s expense.

Butt offers a similar example of incontrovertible benefit. While I am away on vacation, my neighbour contracts for $500 with a construction company to repair his driveway. He instructs the workers to come to his address, where they will find the note describing the driveway to be repaired. The construction crew, having been paid in advance, shows up on the

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appointed date while my neighbour is at work: they find the letter and, faithfully following the instructions, they pave my driveway.\textsuperscript{105} In this case, I have benefitted from an action to which I have not consented. Should I pay for the driveway? Butt presents a strong argument in support of the claim that I should. Fullinwider,\textsuperscript{106} the scholar he discusses with, says that having to pay back $500 to my neighbour is probably a supererogatory action but not a mandatory one, because the benefit I have obtained is involuntary. But, as Butt shows, it is a mistake to treat this as an —all or nothing— case. It is probably true that paying the full amount ($500) is excessive, because it does not necessarily follow that I would have been able to pay that amount for the driveway. But I might still prefer my new driveway over the old one, and it might be the case that I would not have rejected the offer if they had offered to make a new surface for, say, $200 instead of $500. If that is true, then it seems that paying back the full amount is excessive, but there are still grounds for restitution, as we can reasonably conclude that I have benefitted for at least $200. After all, although probably not for a value of $500, I am better off than before. In Birks’ terminology, —no reasonable man would deny that I have benefitted from this action.

Loans used for public purposes could also be considered —incontrovertible benefits, as they generally benefit citizens without requiring them to give their explicit support. The notion of —incontrovertible might be clearer for dealing with individuals than with public goods, as we have better ways of determining when an individual has benefitted as a consequence of another’s action than we do with public goods. The reason is that there is not much area for dispute in the case of individual benefits as there is in the case of public benefits (we can be fairly confident that the victim wanted to save his life in the drowning case and that the value of the driveway has

\textsuperscript{105} The example that Butt proposes is slightly different; I have adapted it in order to make the point.  

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increased in the driveway case), as there is always at least a sector of the population which disputes the value or usefulness of a certain public good. The Argentinean dictatorship built a soccer stadium with part of the money that the illegitimate government borrowed, and this soccer stadium has been used for many years and it still being used for the benefit of the people (to host, for example, soccer games with neighbouring countries). Since no —reasonable man would deny that the general public has enriched itself by having this stadium available to them, we can conclude that the debt incurred to build it is not odious and therefore needs to be repaid. This seems true even if it would have been better, at the time when the soccer stadium was built, to spend the money on something else. Probably public parks or local libraries were really needed. The point is simply that we cannot reasonably deny that people enriched themselves with the stadium. However, unlike private law cases, in which there is only one person who benefits (the drowning person and the driveway owner), those who supposedly benefitted from the stadium are a large number of people, if not the society as a whole. So someone might argue that those who do not go regularly to the soccer stadium to enjoy its benefits did not enrich themselves to the same extent as those who do actually go on a regular basis, and therefore the burden of paying the debt back should not fall on them. To claim that they have this burden, the objection goes, would be like claiming that my uncle in the above mentioned case should also be held responsible for paying the debt back, for he sometimes uses my driveway. But we can see that this objection is misleading by noting that there is a crucial difference between somebody from the public not enjoying the benefits of the stadium and someone not paying back the debt because it was used for private purposes. The difference lies in the fact that when a debt is public, the public enriches itself regardless of the fact that some of its members decide not to take advantage of it, whereas in the case of private debts no one can reasonably allege that the
public benefitted from them, for they cannot enjoy the benefits of the loans even if they want to. In fact, the soccer stadium could be considered a public good that benefits the people because its facilities are available to its members, not because it is used by each and every member. It is also public because cheering for the national sports team is part of the public political culture of the society, even if not everyone enjoys watching soccer and even though the stadium does not have seating for all those who would like to attend. It seems, in other words, that the people’s involvement with the fate of the national team is what makes the benefit incontrovertible.

But if the soccer stadium was built in the governor's garden, or if they had built a huge hockey arena in that country, it would be less incontrovertible and the stadium could not be considered public, not because it is not used by each and every member, but because it is simply not available or of no interest to them. Another possible example: even if most people do not go to a museum, the museum is still public—provided that the facilities are available to them.

Again, we can use the—no reasonable man test. No reasonable man would accept that the society is richer if its autocratic rulers bought goods for themselves with the loans: on the contrary, it seems fairly obvious that there are almost no circumstances under which the society can enjoy the benefits of these goods. Similarly, no reasonable man would accept that a soccer stadium that was not available to them could have enriched the public.

There are of course many different problems associated with the—reasonable man test. For example, it is not clear that there would be a consensus on what a person wants or could have wanted—i.e., even reasonable people may disagree with each other about whether a person has actually benefitted. Also, some benefits are not measurable or quantifiable, so it is not, of course, an easy task to determine exactly to what extent you may have benefitted at my expense. Fixed amounts of money, like in the driveway example, seem to be easy cases, but others in which
subjective value is involved may be harder to settle. This becomes especially evident in a legal context, in which a jury—and not just one person—needs to find an agreement about the case they are considering. When the test is applied to the odious debt doctrine, some cases also become hard to settle. In 1973, the Chilean dictatorial government used a national stadium to detain and execute thousands of political opponents. The stadium had been built with money obtained from loans, in 1937\textsuperscript{107}. So on the one hand, the stadium was initially used for purposes that obviously did not benefit the population; on the other, the stadium has been used as a public good ever since the dictatorship ended. Is this a case of odious debts? The case seems even harder to settle if we take into account that there are many possible variations of it. For instance, the stadium may have already been there before Pinochet took over—say, built by Allende’s democratic government with money obtained from loans—and was later used as a prison, or the stadium was built by Pinochet himself with money obtained from loans for the sole purpose of using it a prison, but was later used as a soccer stadium available to the public. The assessment of the debt’s legitimacy would seem to be different in each of these cases. There does not seem to be an obvious answer to the question of whether the debt is odious in this case and to what extent (although I am inclined to say that in the case where the government asked for the loan with the sole intention of building a jail that the case for odious debt is stronger, one might also argue that during the period in which the stadium was used as a jail a public good became private and therefore odious—at least for that period).

However, these kinds of objections against the test should not be an obstacle to the analogy with private law that I am proposing. The strategy we can use to respond to them is similar to the one we can use to show the appropriate threshold of the illegitimacy

\textsuperscript{107} http://en.wikipedia.org/wiki/Estadio_Nacional_de_Chile
of governments. As I will show later, we do not need to develop a sophisticated theory of legitimacy in order to determine that some governments are illegitimate: by simply proposing a very minimal threshold of legitimacy that any account could accept would be enough to show that many real governments are below this threshold. Similarly, the reasonable man test could only refer to cases in which there would be a general consensus that people did not benefit from the loan, rather than to cases in which some controversy could possibly arise. In the Chilean stadium case, it is at least clear that people did not benefit by having a stadium that was being used as a concentration camp. Therefore, it seems excessive for creditors to demand the full amount of money that was lent for the purposes of building the stadium. Why would the people have to pay for their own concentration camp? It does not follow in this case, however, that there is no debt at all. People, in general, and with the exception of this dark period of their history in which they had to suffer the dictatorship, have been benefitting from this loan. Therefore, part of this loan should be paid off. It is certainly an almost impractical task to decide exactly how much is odious and how much is not. If the construction cost of the stadium was five billion dollars, and the period in which it was used as a concentration camp is, say, ninety days, then how much should be discounted out of the total amount? An additional problem (which I will deal with later in this chapter) is fungibility. It is probably impossible to trace the origins of the loan, to find out what exactly it was spent on and, of course, to know beforehand that it was going to be used as a concentration camp a few years after the stadium was built. Perhaps the external investor did not even know that the money was going to be used in a stadium at all, and he simply assumed in good faith that the government of Chile was going to use it for the general benefit of the population. More will be said about this problem elsewhere in this paper. For now we can say that the odious debt issue, as discussed here, is a moral problem and not an economic one, and
therefore implementation issues or its interpretation in terms of exact dollar amounts is well beyond our concern.

From the previous analysis we can conclude that loans incurred by illegitimate governments (and also, of course, democratic governments, but that is not the point here) that are used for public purposes are not odious, and therefore should be repaid. In order to show that the nature of the government is not really relevant to determine the bindingness of the debt, we should now consider the claim that democratic governments can also incur odious debts. If we can persuasively make this point, we will have shown that the type of government is neither a necessary nor a sufficient condition of odiousness, as there would be cases of both autocratic governments that act in accordance with public interests and democratic governments that act in accordance with private ones. I will now consider the case of odious debts in democratic but corrupt governments.

(ii) Odious debts in democratic (but corrupt) countries. Consider the following case. A traditionally stable and democratic country, whose governments have traditionally been considered by its own population to be honest (we can think of Belgium, for example), borrows money from an international institution to cover a transitory shortfall in its national budget. The lender, aware of the fact that the government is democratic and honest, decides in good faith to lend the requested amount. A few months later, the president of that country steals those funds and sends them to his private account in Switzerland. Are citizens and future generations liable for the debts incurred by their government? According to current international law they are, with good reason. At the time the debt was incurred, the government was a legitimate representative of the citizens, citizens authorized their government, the country did not have a bad reputation in terms of its past lending history, there were accountability mechanisms to which citizens could
appeal, and the loan was made in good faith. This does not seem to be a case of odious debt. Consider, however, a very different scenario. A traditionally unstable country, recognized as democratic by the international community, with a corrupt government by all standards, and whose accountability mechanisms are poor (it is not possible for citizens to prevent the corrupt loan from happening), borrows money from an international financial agency. The agency, although aware of the fact that the government is corrupt and that the rulers will probably embezzle the funds, decides to lend the requested amount. The government ends up, not surprisingly, stealing the money. A few years later, citizens of that country are forced to repay the debt.

Under current international law, this case is no different from the first one: citizens are liable for the commitments undertaken by the predecessor government. This is because international law considers democratic countries moral persons. That is, it considers countries responsible, as a block, for keeping up with promises, as if countries were individuals. Just as a debt that a person incurs with a bank does not disappear after a few years (in the sense that if the debtor dies, the debts are charged against the estate), debts of a country do not disappear over time. The only relevant difference between individuals and countries is that individuals undertake commitments themselves, whereas citizens of countries do it through their representatives. This seems natural, given the fact that it is impossible to negotiate an agreement with every single citizen of a country. Once authorities are elected, they are entitled to negotiate agreements in the international arena (debts, trade, international treaties, or others) in the citizen’s name. If that government, or its successor, fails to comply with the commitments it undertook, the whole nation is held liable, precisely because the ruler was entitled to act in the name of the whole country.
It seems to me, however, that although the first example is not a case of odious debt, things are not so clear in the second. Debts incurred by democratic but corrupt regimes could be *suspicious*, if not plainly odious. This idea is very old in political philosophy. Aristotle, in fact, held in *Politics* that

some people raise a problem about how to determine whether a city-state has or has not performed an action, for example, when an oligarchy or tyranny is replaced by a democracy. At these times, some do not want to honour treaties, since it was not the city-state but its tyrant who entered into them, nor to do many other things of the same sort, on the grounds that some constitutions exist by force and not for the common benefit. Accordingly, if indeed some democrats also rule in that way, it must be conceded that the acts of their constitution are the city-state's in just the same way as are those of the oligarchy or the tyranny.  

If this is true, then it seems that international law, in its current incarnation, places too much pressure on indebted countries because it holds them liable for debts incurred by predecessors in *all cases*.

Why are debts incurred by democratically elected governments also potentially odious? An examination of the idea that states should be considered moral persons, and an analysis of the notion of corruption, show that this idea is not farfetched.

The claim that countries should be treated as moral persons, just like individuals, has been addressed in several accounts of collective responsibility. Stilz notes that in most of these accounts, an entity must meet a set of demanding conditions in order to be a moral person.

Among them are the following: 1) it intended its actions; 2) it had the capacity to grasp moral

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and other reason; 3) it was in deliberative control of its own actions; and 4) it acted voluntarily, without duress. These four conditions apply to individuals, but Stilz believes with good reason that they also apply to collective organizations such as states (and also corporations). States satisfy condition 1) because they are organized in such a way that they make intentional choices—occasional and unorganized groups cannot form intentions, and so cannot be held responsible. Condition 2) also applies to states, because its officials can grasp moral reasons when they deliberate either as a group or individually. Condition 3) is met when states have sufficient authority over their members to carry out their intentions. Finally, condition 4) holds that the state must act on its own, without coercion by an outside force.

When all these conditions are satisfied, Stilz claims, states are not only a mere aggregation of individuals, but also a collective that can be held responsible for its decisions. Given these conditions, we can infer that whenever a state as such makes a decision, individual members of that state—i.e., the citizens—are liable for that decision, as they would not only be part of that group but also participants in it. This is analogous to the way corporations are structured. A company that inflicts harm is responsible, as a moral person, for the wrong. Therefore, its members, individually, are also responsible. This does not mean, of course, that all members of that company are equally responsible and does not even mean that all of them are blameworthy for that wrong. New employees in a bank cannot have the same degree of responsibility as CEOs who have made wrong decisions. It simply means that they are members of an organization that has committed a wrong and, as such, they bear a special responsibility to repair the harm caused. Stilz calls this type of responsibility—task-responsibility. This responsibility does not disappear over time. If the company has inflicted a wrong on someone, the victim has a claim against that company even if those who were responsible for the decisions
of the company at the time the harm was inflicted are no longer working for the company. The victims, in other words, have a claim against the corporation’s future assets and earnings. This also extends to future employees who, even if not responsible at all in the decision process (this seems evident, given the fact that they were not even part of the corporation when the harm was inflicted), may have their situation changed because of such past harms. The current employees of Exxon Valdez are facing the consequences of the oil spill that took place in the past, as the company is still paying off the punitive damages. Had the oil spill not occurred, the current employees would be working in a different—probably better—environment. The fact that they were not responsible for the spill does not mean that they are exempted from the obligation of paying off these punitive damages. This kind of reasoning could be extended to states. Citizens are liable for the debts of their state (assuming that their state represents them) even if they had no role in making state policy. So if a state decides to borrow money to extend a railroad, and assuming that there is nothing spurious about that loan, citizens are liable in the future for that debt even if they had no say in the decision.

This leads to the question of who exactly, and to what degree, is individually responsible for the harm caused or for repairing that harm, or who is not responsible at all for any of these wrongs. The central question, in other words, is how to distribute responsibility among citizens of the state, if such responsibility should be distributed in the first place. Unless we want to take the extreme position that all members of a state are all equally responsible for the wrongs that that state inflicted (which would basically mean that, for example, those who resisted the war with Vietnam are as responsible for the wrongs inflicted as are political leaders who actively promoted it), we should conclude that responsibilities should be distributed among members in a different way.
Stilz provides a plausible solution to the problem of how to distribute responsibilities among members of a democratic state. In her opinion, citizens are implicated in the decisions made by political leaders of democratic countries when they not only do not have prudential reasons to comply with the state but also when they have moral reasons not to comply, and when these moral reasons stem from the fact that the governments are authorized by the citizens to make certain political decisions. This authorization—which Stilz calls the authorization principle—is not direct and explicit, but is derived, in a contractualist fashion, from the assumption that citizens would potentially consent to some political decisions but not to all of them. We should note here that the authorization principle also binds people over time: so the point is not that states are moral persons whenever they make decisions that those who are citizens at that time consent to (this is the mistake that some commentators on the odious debt doctrine make), but rather when they make decisions to which present and future generations could potentially consent. In other words, the idea that states are moral persons is inseparable from the seemingly contrasting idea that states exist across generations, and so are conceived of as immortal. That is the reason why laws are binding until revoked.

We might need to go back to Rousseau, Kant, or any other contractualist author to understand to what, exactly, citizens are willing to give consent. The exact content of this principle is not, however, important for now. The key point, rather, is that the authorization principle cannot give us reason to submit to any authority that clearly and obviously fails to interpret the will of its citizens. Political authorities, occasionally, make mistakes. Ill-conceived wars are a good example of this. This, however, does not mean that citizens should not be responsible for the consequences of those actions, as waging wars can count as a reasonable interpretation of the authority's rights. There are some political actions, however, that cannot
even remotely fit in this category, as they would not be authorized by citizens under any possible circumstances. Consider the following example (provided by Stilz). The rights of a child must be exercised by a guardian, because the child lacks certain capacities. Thus the ward can be liable to pay out his estate for debts the guardian incurs, as long as the guardian acts within his mandate (say, by contracting debts to maintain the ward’s property). The ward is liable to pay even when the guardian’s judgement was a bad one. But when the guardian clearly acts outside his mandate (say, by contracting a personal debt on the ward’s credit), the ward is not liable for what the ward does, since those debts were not incurred through any reasonable interpretation of the ward’s rights.

We can see from the previous analysis that the responsibility for decisions made by governments, even if democratically elected, does not always falls on citizens. In particular, citizens cannot be held liable for debts incurred by their representatives, if these debts were clearly not made in accordance with any reasonable interpretation of the citizens’ rights, as happens when there is corruption involved. Citizens, obviously, would never support being taxed to enrich the personal bank accounts of their rulers. The issue of corruption in democratically elected governments is not a minor one, as several countries reportedly misuse the loans they incur from external sources. It is therefore necessary to clarify the notion of corruption a bit more.

Corruption has been defined by Transparency International as the abuse of entrusted power for private gain. Transparency International further differentiates between — according to rule corruption and — against the rule corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law.

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constitute the former. The latter, on the other hand, is a bribe paid to obtain services the bribe receiver is prohibited from providing. This definition is useful but narrow. In addition to what Transparency has defined as an act of corruption, we may add that the abuse of entrusted power can also take other forms, such as nepotism, selling natural resources or public goods without proper authorization and embezzling the proceeds, and unjustified transfers of wealth from the public sector to the private sector even if no bribery is involved throughout the process (a common example of this is what I have so far been calling debt nationalization).

In short, corruption will be defined here as a government action that cannot possibly be considered to be carried out in accordance with legitimate public purposes, or as an action that is made in accordance with private purposes, where private purposes—as I have noted earlier—can be defined as any action that cannot reasonably be considered as being within the legitimate mandate of a political leader. Needless to say, corruption can also be private—i.e., it can take place within a private organization such as a corporation or among corporations—but that is not the kind of corruption that I am interested in discussing, for it is not relevant for the purposes of understanding the conditions under which debts are odious. An official who accepts a bribe from a foreign company in return for favourable rules to invest or trade, or an official who decides to give priority in a supposedly open and clean competition to a corporation in which he is a shareholder, constitute clear acts of corruption, for it is not possible to argue that citizens could have authorized those kinds of actions. Take, for instance, the case of mining companies in South America. Routinely, apart from being environmentally unfriendly, they are not taxed as much as other companies. One of the reasons why this happens is that local officials offer them more favourable conditions than the ones under which other companies operate, in return for a bribe.
It is usually thought that corruption most often takes place in countries ruled by authoritarian governments. Although this idea might be true to some extent (i.e., it is probably true that corruption is highly correlated with authoritarianism), it is not true that corruption is a problem associated with those kinds of regimes only. Obviously, corruption exists in democratic countries as well. If we look at Transparency International's Corruption Perceptions Index, we will see that most of the countries that are currently considered highly corrupt are democratic, in the sense that their respective governments have been voted by citizens in generally fair and open elections. Countries such as Bolivia, Ecuador, Argentina, and Paraguay, for example, are considered highly corrupt according to the perception index, but their governments are and have been elected in recent years in generally open and clean elections.

Given the fact that corruption as defined so far fits into the kinds of cases that Stilz would classify as clear and obvious violations of the will of citizens, the evident conclusion we might draw is that citizens should not be liable for debt incurred when corruption is involved.

There is a potential response to this conclusion, which I believe is misguided. Democratic countries usually have accountability mechanisms to which citizens can appeal to control their respective governments. If these accountability mechanisms are not activated (because citizens are unwilling—not unable—to do so), the claim that citizens should not be liable for the debt becomes weaker, because citizens would in a way have at least indirectly authorized these debts by failing to prevent their governments from acting corruptly. If citizens are or can be aware of the fact that their government is systematically embezzling money, and the mechanisms that

exist to prevent those things from happening are not used, citizens would be complicit, rather than simply victims.

There are several different accountability mechanisms that are usually in place. Whenever the government is acting corruptly (or at least when there are reasons to believe that it is doing so), recall elections can be used to revoke the mandate of an official; the legislative body can hold their own members or governments to account through an inquiry which can, ultimately, lead to an impeachment or suspension; and citizens may of course punish the government by simply not voting for it whenever they have the chance to do so. Other ways of controlling the government are freedom of press and freedom to protest, which are also central components of democracies.

There are, however, two important reasons why this argument of accountability is on the wrong track. The first reason is that some countries, even if democratic, are ruled by kleptocracies which do not have accountability mechanisms in place. The second one is that, even if there are democratic accountability mechanisms in place, there are cases in which there is complicity involved which makes the transaction invalid or, at least, suspicious. I will address each of these arguments in turn.

Electoral kleptocracies. In electoral kleptocracies, governments are elected in an open and fair democratic process, but citizens are unable to control or supervise them for a variety of reasons. Consequently, we cannot plausibly claim that these governments are really representing the citizens. Take, for instance, the case where citizens are confronted with the possibility of choosing between two different candidates: the incumbent, A, and the alternative, B, who is not in power but has a past record of corruption. Even if they know that the incumbent is acting corruptly, they cannot prevent corruption from happening, as none of the options for whom they
can vote would really be representative of their interests. In that scenario, they would be able to choose who will rob them, but not whether or not they will be robbed. So one of the essential accountability mechanisms—i.e., punishing the candidate who is not representative by voting for his opponent—would be absent, for none of the candidates would have an incentive not to steal. If, however, governor A is corrupt and people endorse him even when there are other good options available, things look different because at least in that case we could say that citizens had means to prevent corruption from happening, but did not appeal to them (it is a very common argument among people that a candidate is good because—even though he steals, he does things for people). The argument that there are no accountability mechanisms in place becomes weaker.

There are many electoral kleptocracies in the world, so this is not a minor point. The Freedom House report\footnote{Freedom House, \textit{Freedom in the World 2008}, —Methodology, available at: http://www.freedomhouse.org/template.cfm?page=351&ana_page=341&year=2008.\textsuperscript{114}} classifies countries as —free, —partly free, and —not free, according to the political regimes they have (—free basically means democratic, —not free refers to dictatorships, and —partly free refers to intermediate cases, but is usually apply to elected governments). Countries that belong to the category of —partly free have a rating of 3, 4, or 5 in their scale, and the report defines them as places in which there could be civil wars, heavy military involvement in politics, lingering royal power, unfair elections, and one-party dominance, but also as places where citizens may still enjoy some elements of political rights, including the freedom to organize quasi-political groups, reasonably free referendums, or other significant means of popular influence on government.\footnote{Ibid.\textsuperscript{114}} It is obviously not the case that \textit{all} of them are electoral kleptocracies, but several of them certainly are. Consider the following
example. Pakistan (which has a rating of 5/7 in the freedom scale and is a —partly free country ) has a long-standing tradition of corruption. Political leaders alternate, some of them are elected, but all of them have reportedly engaged in acts of corruption. Musharraf’s rise to power as a result of a coup in 1999 was ostensibly a response to pervasive graft in the highest levels of government. Former Prime Minister Benazir Bhutto was recently convicted by a Swiss court of laundering money, allegedly from payoffs. Nawaz Sharif, her successor—and the man from whom Musharraf took power—was charged in Pakistan with graft once he had been deposed.  

The economist Joseph Stiglitz, aware of these circumstances, has claimed that international bodies such as the IMF and the World Bank have turned a blind eye to corruption in Pakistan when they should be checking up on whether their loans were being diverted into private pockets.  

The case of Pakistan is only one of many examples of countries ruled by elected governments who act for private purposes.

In sum, the argument that democratic countries never incur odious debts because there are accountability mechanisms in place is not true in all cases—specifically, it is not true in the case of kleptocracies. Even in electoral democracies, sometimes citizens cannot prevent their respective governments from acting outside of their mandates. In these cases, the government, as in the case of dictatorships, is not legitimately entitled to borrow in the name of others. The argument that there are accountability mechanisms in place in democratic countries is still, however, valid for those countries in which these mechanisms exist.

From the point of view of the investors, dealing with electoral kleptocracies should not really be different from dealing with autocratic governments. In both cases, the government with

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116 Ibid.
whom it deals is not authorized to borrow in the name of the people. If the government with whom investors deal is really democratic—for now, by—really democratic I simply mean that they are authorized by the population and that there are accountability mechanisms in place—and if there are no strong reasons to believe that the rulers will engage in acts of corruption, then it is not reasonable that debtors repudiate these debts on the grounds that there was corruption in the past. After all, those loans were made in good faith and rulers had the proper authorization to borrow. But if the person presenting himself as the representative of the borrower is acting entirely outside of his mandate, then it cannot be the case that only citizens should be held liable for the debt. There is a strong reason why this is so. Lending money to someone is something that the lender does at his own risk. If the lender has not checked whether the agent who borrows money in the name of someone else has proper authority to do so, the problem he faces is not that the borrower might raise a legal complaint against him. The potential problem is simply that the third party (the person in whose name the debt was incurred) will not be willing to repay the loan, because he never asked for that loan in the first place and it is therefore not binding for him. Lending money to an organization when it is not certain whether people that are supposedly representing the organization are acting within their mandates is something that lenders do at their own risk. In order to avoid this risk, lenders should check that proper authorization exists. Some might interpret this point as a defence of the requirement of due diligence (i.e., the obligation to check whether a person signing on behalf of a legal entity actually has the authority to sign). The point here, however, is not that lenders have failed to fulfill their duty of due diligence, for this is only a duty that lenders have to the parties they are representing and not to the debtor. An investor in pension funds has a duty of due diligence to the contributors of that fund to make sure that they are lending money to an authorized agent, but the authorized agent
does not have any claim against the investor of the public fund for having failed to fulfill the duty of due diligence. The point is, rather, that when lenders decide to lend money to someone who has no authority to borrow in the name of the third party, they cannot claim repayment from the third party. This is because the lender should have checked the proper authority before lending; not doing so would not be a moral problem but simply a big risk, as the person in whose name the loans were made will simply be unwilling to repay.

There are elements of public agency law in the United States that support this approach. In U.S. law, the —agent represents the —principal and borrows in his name. The investors should check, under some circumstances, whether the agent is the authorized representative of the principal. Buchheit, Gulati, and Thompson show that agency law places the risk on the lender. For instance, where a corporate officer signs a guarantee for a debt for which the corporation is not receiving any benefit, —the duty of diligence in ascertaining whether an agent is exceeding his authority devolves on those who deal with him, not on his principal. Buchheit et al. give the following example to back this claim. In a well-known case in U.S. agency law, the vice-president and treasurer of the Anaconda Corporation purported to act for Anaconda in guaranteeing the debt of another company, but the court held that the third party, the recipient of the guarantee, could not rely on the asserted agency to bind Anaconda to that debt. What shifts to the third party the burden of verifying the agent’s fidelity to his principal in a particular transaction is the presence of visibly suspicious behaviour. Since states are analogous to

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corporations (in the sense that governments can be understood to be agents), then we may conclude that the burden of verifying whether the authority that incurs debt is legitimate should belong to the lenders, at least in cases where there are circumstances of visibly suspicious behaviour. In cases of corrupt kleptocracies, or in cases where accountability mechanisms are weak or non-existing, this does not seem to be an excessive or irrational demand, as it is relatively easy for governments to show that they are legitimate —agents of the principals. As Bucheit et al. show, many countries require the government to secure the approval of the legislature before undertaking external borrowing, and in cases where the legislature is a representative assembly, these requirements force the third party, the lender, to seek the ratification of the principal (in this case, the people) for the actions of the government. In cases of corrupt kleptocracies, governments would probably not be able to pass these requirements, as they would not be able to obtain ratification from the legislature. In fact, in an electoral kleptocracy, such institutions do not exist or are already so corrupted that they cannot be assumed to act on behalf of the people. For this reason, there would be a duty on the lender to investigate whether the government it is dealing with is acting in its own private interest or in accordance with public interest.

**Complicity.** A different and related, but not less important, issue is *complicity.* In some cases, there seems to be no reason why citizens of future generations should bear the costs of the loan, even if the antecedent government was legitimately representing them and there was no kind of kleptocracy in place at that time. Suppose that the lender is responsible enough to check

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(S.D. N.Y., 1982) quoted in Buchheit, Gulati, and Thompson, *—The Dilemma of Odious Debts,* 39: *—Because the circumstances surrounding the transaction were such as to put Haggiag on notice of the need to inquire further into Kraft’s power and good faith, Anaconda cannot be bound.*
whether the person he is dealing with has proper authorization to borrow in the name of a country or organization. Suppose, further, that the representative government does have the proper authorization to borrow money. The lender, however, lends the money and adds a bribe to the loan, in return for which he makes clear that he expects the loan to be returned under certain conditions which are not normal in that context (say, he demands unusually high interest rates).

Reports by Transparency International show that these kinds of transactions are very common in the financial world. Wenar shows, with regards to the problem of the resource curse (although still applicable to our purposes), some examples of this. The Netherlands allowed tax deductions on bribes to foreign officials until 2006; it was not until 2009 that Britain successfully prosecuted a foreign corruption case; and facilitation payments are still permitted by Australia, Canada, New Zealand, and South Korea. Export credit agencies fund and insure firms that pay off local officials. Such countries, however, usually have some sort of legal accountability mechanisms to which one can appeal. But not all countries have such laws and, even in the country where does exist (the U.S.), it is usually not enforced, as it is hard to prove that bribery actually took place. The U.S. Foreign Corrupt Practices Act (FCPA) is the model here, as it makes it unlawful for an American person, and certain foreign issuers of securities, to make a payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. This law, however, is relatively recent (from 1977) and it is only enforced in the very few occasions where bribery can be proved. When a bribe is involved, the transaction itself (i.e., the loan) is invalid for legal reasons and, therefore, even if there are accountability mechanisms in place, citizens cannot be held liable for debts created as a consequence of these transactions.

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The standards for determining whether a government is kleptocratic or whether corruption was really involved in any given transaction are imprecise. No country is free from corruption, and whenever corruption occurs, it is hard to detect. In fact, the only reputable agency that measures corruption (Transparency International) develops a corruption ranking on the basis of *perceptions* of corruption, not *facts* of corruption. Moreover, proving that a democratic government acts illegitimately is usually an impossible task, as the government works to ensure that no such act is easily detectible is precisely interested in showing that no such acts occur. One might use, for example, the Freedom House ranking or the Transparency International ranking to find out in advance whether or not a specific government is corrupt, but the problem with these rankings is that they cannot determine in advance whether or not a *specific* transaction will be corrupt—which is the issue at stake. In other words, there is no objective way of establishing a standard of illegitimacy. And if we follow this line of thought, we would see that determining the morality of the loan would be useless because there would be no possible institutional reform that could help to avoid such immorality, mainly because we would not be able to tell whether this or that government is entitled to borrow funds in the first place. The question of the immorality of the loan would be replaced with the question of the feasibility of the reform.

This objection, I believe, is misleading, mainly for two reasons. First, the case of kleptocracy should not be understood as a case where there is ongoing corruption within a single country, as it usually happens in almost all countries. The relevant point in the case of electoral kleptocracies is that the government (regardless of who is in power) is not entitled to borrow in the name of citizens, and not that the government will misuse its power in the future. The difference between having the *right* to borrow and *abusing* that right is crucial. Not being entitled to sell simply means that the government lacks proper authorization because it is not
acting within its mandate. Electoral kleptocracies are, in this sense, no different from dictatorships. What makes the case of dictatorships clearly relevant in the case of odious debts is precisely their lack of authority to borrow in the name of others (which obviously does not exclude the fact that, occasionally, those authorities act in accordance with legitimate public purposes). Similarly, in the case of electoral kleptocracies, governments lack authority to borrow, because citizens never really have a chance to appeal to the accountability mechanisms that usually exist in legitimate democratic societies. Abusing the right to borrow is different, because in that case the government is legitimately entitled to borrow in the name of the citizens and the lender may not even know that the loan will be misused, even after making efforts to prevent future corruption. One might argue at this point that the problem still stands, as there is no exact standard to determine whether or not any government lacks the legitimate authority to borrow. Things seem easy when investors deal with dictator governments, as it is a well known fact that those specific governments were not elected by the population. In cases of electoral kleptocracies, however, what undermines the government’s legitimacy is not the fact that it was not elected but rather the fact that citizens lack accountability mechanisms, the existence of which is disputable anyway. There is no clear and straightforward answer to this problem, but we can say two things in response to it. The first one is that the moral issue posed above—the question of legitimate representation—shows the need for developing a more accurate and acceptable method to determine whether an authority is really legitimate, and to what degree. It is also important to determine whether the kind of legitimacy that the government has is sufficient to borrow money. This should be more plausible than rejecting the claim that there is no moral issue at stake simply because it is hard to find such a method. The test to determine the political legitimacy of a government should obviously not only take into consideration the fact
that the government passed certain minimal electoral requirements, but other things such as past corrupt practices should be included in the analysis. The Freedom House Report could potentially be a first step in this direction. The second possible response to this problem is that it seems odd to claim that investors have absolutely no responsibility to check whether the government to which they are lending money is really authorized to borrow. Under the current international practice, lenders simply make an assumption that the money will be correctly used (if there is any assumption at all), and there are no legal requirements that force lenders to verify to whom exactly they are lending, and for what purposes. So even if it is not possible to determine with total accuracy the nature of the borrowing government beforehand, Ben-Shahar’s argument still applies. After the fraud is committed, it is not really clear why future generations should have more responsibility for repaying the loans than lenders who, after all, had the possibility of checking what the loan was going to be used for.

The second reason why the objection is misleading is that in cases of corruption, we do not need to determine whether there is general corruption within the country, but rather that there was some sort of irregularity in the transaction itself, generally a bribe. To determine whether there is general corruption and corruption in the transaction itself are different issues. While the former requires, in fact, a degree of arbitrariness and might not be objectively measurable, the latter can be proved in many cases, as it involves a simple crime that applies specifically to one transaction. In fact, several cases of bribery have been discovered and publicly announced in the past. So in order to show that the debt is odious we do not need to find a generally acceptable way of showing that the country is itself corrupt—this might be an impossible task—but we need to simply apply the same kind of argument that we have been using for autocratic regimes, or

show that there is corruption in the transaction itself. Once again, the public/private distinction issue, and not the nature of the regime involved, is at the centre of the problem of odious debts.

To conclude, even when states can be considered moral persons, in the sense of —moral persons that Stilz and the literature on collective responsibility use the term, there are no plausible reasons why citizens should be held liable for debts incurred through corrupt political acts, or to support such corrupt acts. In particular, the argument does not apply to electoral kleptocracies—basically because there are no accountability mechanisms in place in those cases, and because the leader is not acting within his mandate—and to cases of complicity on the side of the lender. This shows, once again, that the question of whether or not a regime is autocratic is not and should not be at the centre of the debate on odious debts.
Chapter VI – Challenges to the concept of odious debts: lack of lender’s knowledge and the consequentialist argument

In the previous chapter, I discussed two possible replies to the claim that under the stipulated conditions some debts should not be repaid. In this chapter I will discuss two more possible replies. First, one might argue that lenders did not and could have possibly known that there would be odious debts involved. Some of the arguments that I used in my chapter about corruption—such as the argument of risk—can be applied to this discussion. I will, however, develop different arguments in this chapter, all of which point out to the fact that lenders, despite what is claimed, did in fact know that there would be odious debts involved. Second, one might argue that the odious debt doctrine is wrong on consequentialist grounds, as repudiating debts would bring about worse consequences than repaying them, mainly because lenders would be reluctant to lend in the future. I shall consider each of these objections in turn.

(III) The “I did not know” objection

A third common claim against the odious debt doctrine is that the lender could not have possibly known, or should not have known, that the funds that he lent were going to be used for private purposes, or for things to which the citizens of the debtor country would not consent. It is, after all, a common feature of the international financial system that countries borrow money on an ongoing basis, and most of these times—the objection goes—this money is spent to cover the real financial needs of citizens and institutions. The fact that some of these funds end up used
for illegitimate purposes cannot be known *ex ante* and cannot be a good reason to interrupt the world flow of capital or to change the whole system. We might call this the —I did not know objection.

This objection is also misleading. There are two reasons why this objection is on the wrong track. The first possible reply to this objection can appeal to the distinction between legitimate and illegitimate governments. As suggested earlier, the distinction is not really relevant to establish whether or not a debt is odious, mainly because the illegitimacy of the debt depends on the fact that the officials of a government decided to use public funds for private purposes, rather than on the nature of the government. There is, however, a sense in which the distinction between legitimate and illegitimate governments becomes relevant. Whenever a government is illegitimate (i.e., it is ruled by an autocratic ruler), that government will be prone to spend public funds to repress the population or for the personal goals of the rulers. There is not, of course, anything in the definition of —autocratic government — that suggests that this will necessarily be so, but empirical and historical evidence show that these kinds of governments have had the tendency to spend money in those illegitimate ways. If this is true, the —I did not know objection no longer seems to be valid. Everybody is of course aware of the nature of the regime involved in the loan (this kind of information is public) and, also, of the fact that those kinds of governments have the tendency to use funds in illegitimate ways (or, at least, that there is a strong *prima facie* reason to suspect that they will use it in that way). The problem, then, is not only that the lender is being complicit when he lends to dictators, but also, and more importantly for the present purposes, that if in fact he knew beforehand that funds were going to be used for illegitimate purposes, the argument that he can claim that money back from successor
governments and future generations falls apart (in other words, the —I did not know objection would no longer apply).

The odious debt sceptic has an obvious objection at this point. He might claim that although it is true that autocratic rulers are prone to spend the money in illegitimate ways, it is not really clear which governments are autocratic and which ones are not. Governments never of course attribute themselves the label of autocratic and there is usually internal disagreement, within countries, on whether their own government is a democratic one or an autocratic one.

So it seems necessary to establish a threshold of legitimacy; or, in other words, a definition of the circumstances under which we could consider that a government is legitimate. To this end, we could rely on a strategy that is similar to the one that Wenar used. In —Property Rights and the Resource Curse, he tried to show that in order to prove that citizens of countries ruled by dictator governments did not consent to the sale of the natural resources of their country on their behalf, we do not need to engage in a sophisticated discussion on what —legitimacy means, or on a theory of what would citizens ideally consent to. So long as we can show that these kinds of governments do not even pass the most minimal test of legitimacy, we will be able to conclude that the sale of the natural resources was not approved by the population. This minimal test, Wenar says, means in concrete political terms that people should have at least minimal civil liberties and bare-bone political rights. There must also be some minimal freedom of press, so that citizens could have access to information about what the regime is doing, and the regime must not be so deeply corrupt that it is nearly impossible for the people to find out what happens to the revenue from resource sales. Citizens must also be able to pass on information about the regime to each other without fear of surveillance and arrest. The regime

must put some effective political mechanisms in place through which the people can express their unhappiness about resource sales: a non-elected consultative legislature that advises the regime, for example, or at the very least the regime should provide occasions on which individuals or civic groups can present petitions. There must also be a minimally adequate rule of law, ensuring that citizens who wish to protest resource sales publicly and peacefully may do so without fear of cruel judicial punishment, disappearance, serious injury, or death. If these minimal conditions do not exist, Wenar says, the silence of the people when a regime sells its resources cannot signal the people's consent.

There are also authoritative standards that we could use to determine whether a political regime is legitimate or illegitimate. One such standard is provided by the rating of Freedom House, which classifies countries' political conditions on a scale of 1 to 7. According to this rating, countries that score 6 or 7 on the scale have the worst political conditions and countries that score 1 or 2 have the best political conditions. In more specific terms, countries with a rating of 6 are those in which people experience severely restricted rights of expression and association, and there are almost always political prisoners and other manifestations of political terror. These countries may be characterized by a few partial rights, such as some religious and social freedoms, some highly restricted private business activity, and relatively free private discussion. Countries with a rating of 7 are those in which there is virtually no freedom. An overwhelming and justified fear of repression characterizes these societies. Regardless of the justified doubts that this rating raises with respect to the ways in which certain countries are classified and with respect to its possible political bias (the United States, for example, has rating of 1, while Cuba has a rating of 7; an evaluation that, I believe, many Cuban citizens would emphatically reject), it

is clear that the rating provides a minimal condition of legitimacy which we could all potentially accept, and that some countries clearly fall within the categories assigned to them. No one would hesitate to classify Equatorial Guinea or Eritrea, for example, as—not free. Both countries have de facto regimes and the most elementary civil and political liberties are absent in those countries. It is clearly the case, Wenar claims, that citizens of countries in which the most elementary conditions of legitimacy do not exist—or countries that could be classified as 6 or 7 in the Freedom House rating—could not possibly consent to the sale of the natural resources of their country, for they are not aware of the fact that they are being sold; there are no institutional mechanisms available to which they could appeal in case they disagree with the terms under which they are being sold; and they cannot openly and publicly voice their opinion against these terms, for they are afraid of possible retaliation from the government. By proposing these minimal standards, Wenar manages to show that the sale of natural resources is not being approved by citizens of countries ruled by non-democratic regimes, without having to develop a complete theory of legitimate government.

A similar approach could be taken to analyze odious debts. If we apply these standards of legitimacy, we might not have a perfect procedure to determine when a loan will be used for illegitimate purposes—this is usually unpredictable. But at least we will have a good procedure to determine whether there is a good prima facie reason to lend money to a specific government. In cases in which the government is illegitimate—and considering that these kinds of governments are prone to spend money in illegitimate ways—a prohibition by international institutions or an incentive not to lend can be established. This procedure, following Wenar, does not depend on an elaborate definition of legitimacy to be valid. So long as we can show that these countries did not even pass the most minimal threshold of legitimacy when they received
the loans, we could plausibly conclude that there will be a strong reason to argue that the payment ought not to be made.

An upshot of the test for legitimacy that I am proposing is that, despite the fact that it is not too demanding, it is enough to show that there is a significant number of countries that do not pass. In contrast with the number of countries that are currently being affected by the resource curse, there were many more dictatorships in the past than there are today, and most of these illegitimate governments obtained loans from international institutions. Argentina, Chile, and Uruguay, for example, are currently rated as —free by Freedom House, but as —not free during the years in which they were ruled by dictator governments. All the dictator governments of these countries borrowed heavily during the 1970s and 1980s. So we would be wrong to argue that the problem of odious debts is not far-reaching on the grounds that not many countries count as —illegitimate, or that it is not clear what —legitimate government means.

The analysis offered so far can be used to refute the ignorance argument, according to which the debts cannot be odious because the lender did not know. But this analysis, as developed, is only effective for cases in which the government involved in the loan is an autocratic one. The odious debt sceptic could still claim that in cases where the government involved is a democratic one, the argument for ignorance still applies. This would seem to make more sense. In fact, if the lender enters into an agreement with a democratic government that passes all tests of legitimacy, it seems impossible for the lender to predict how that government will spend the money in the future. Moreover, it seems that since its citizens have by definition consented to the kind of government that they have, there would be no reason not to lend money to that specific government. This has been a common phenomenon in the past years. Many democratic governments from developing countries borrowed money from international
institutions such as the World Bank with the intention of investing in public goods, but their respective governments ended up using that money for private purposes. It does not seem to be the case that the World Bank is in this case financially responsible for such misuse of the money, as it could not have possibly known that it was going to be used illegitimately.

This argument, however, seems also weak. In order to show why we could rely on an argument that Ben Shahar’s has coined —comparative fault. On his view, the problem of innocent lenders who lend funds that are subsequently misused should be discussed in the following terms. Both the lenders and the future generations are victims of theft by the government who stole the money from the loan. Once this government has disappeared, where should the loss fall? Who is more at fault for letting the government run away with the money? This is a familiar problem in private law, in cases where there is a good faith purchaser of a stolen good. Does the innocent buyer of stolen artwork get to keep it after the thief or seller has disappeared with his money, or can the innocent original owner recover her painting? It is usually the case that it is the party who could have done more, \textit{ex ante}, to prevent or insure against the loss. BenShahar and Gulati suggest that the resulting rule would be one of —comparative fault: debtors would be prima facie strictly liable for the debt, but they have a defense of contributory negligence against the creditors: —If a successor government can show that creditors were at fault, the component of the debt that served ill purposes will be discharged.

The more the populace benefited from the debt, the more they have to pay back. Thus, credit that was used by the autocratic government in ways that would count as legitimate if used by a democratic regime are not to be forfeited: —A creditor’s ‘fault’ extends only to allowing funds to

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\item[125] Ibid., 50.
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be exploited in a despotic fashion; it does not extend to legitimate uses of the funds. 126 This framework is similar to what we proposed earlier in our discussion of the—no reasonable man test. The point of this economic scheme is to induce creditors to prevent potential harm. Gulati and Ben-Shahar propose a few ways in which this control can take place. They say, for example, that creditors can exercise control of the loans via third parties who might threaten action if provided with certain kinds of information. The most relevant third party here are the citizens of the sovereign debtor. Creditors could make public disclosures of the loans being made and of the purported reasons for the borrowing. Another proposal, which they say falls under the—governance category, is that creditors can negotiate, *ex ante*, control rights when indications that the money is being misused start to appear. For example, debtors can be required to engage expert monitors to evaluate whether specified milestones for the project are met. Additionally, creditors can demand from the debtor adequate assurance that the funds will be used legitimately, by requesting proofs as to how funds are being used, and to make these statements public. Other mechanisms of control could be implemented. The main point, in any case, is that liability should be placed on the least cost-avoider. If creditors are better preventers of the loss, creditors should bear the consequences of their failure to take precautions against corruption.

There is an additional argument that we may use to show why creditor countries should bear the costs of misappropriation of funds by corrupt governments or democratic governments. This argument is developed by Wenar, 127 who analyzes the case of dictators that sell stolen goods and natural resources to the international community. When someone buys a stolen watch, does he gain good title to the watch? Wenar argues that that will depend on whether that person is a—good faith purchaser. A good faith purchaser is one who buys without notice of

126 Ibid.
127 Wenar, “Property Rights and the Resource Curse”.
circumstances that would make a person of ordinary prudence inquire whether the vendor’s title to the good being sold was valid. An executive who buys a Rolex from the sales counter at Saks Fifth Avenue is a good faith purchaser. He gains good title to the watch, even if somehow it turns out that Saks received the watch from the Rolex Corporation through deception, duress, or undue influence. But an executive who buys a Rolex on the street from an unshaven man carrying several watches inside his coat cannot be a good faith purchaser. This executive should suspect that the unshaven man may not have good title to the watch. He is, in other words, a bad faith purchaser and the law will not favour him.

It seems at first glance that this line of thought could be used to support the idea that creditors should have no responsibility for the fact that leaders of democratic borrowers appropriated the funds. Creditors, after all, lend without notice of circumstances that would make a person of ordinary prudence inquire whether the borrower will misuse those funds in the future. But classifying these cases as —good faith lenders or, following the analogy, as executives buying Rolexes at Saks Fifth Avenue, is in most of the cases misleading. Many governments, even democratic ones, have records of corruption. Lenders can assume, when lending money to those kinds of governments, that if a record of corruption exists, it will be very likely that it will continue to exist in the future. When this record exists, lenders cannot possibly be classified as —good faith lenders.

A related problem that I have been neglecting so far and that deserves some consideration is fungibility. A good is fungible if one unit of a good is substantially equivalent to another unit of the same good of the same quality at the same time and place. The notion of fungibility is
normally used in the context of international aid.\textsuperscript{128} Aid intended for resources to crucial sectors is sometimes (only) a substitute for spending that recipient governments would have undertaken anyway. Since the government now gets external funding, it sees its own money freed up and may use it for other purposes. In this case, aid money is fungible. Even though aid and the original appropriated domestic funds have the same purpose (which should thus boost spending on a specific social policy) as they both are tied to this purpose (and are thus not fungible/substitutable with other funds, e.g., military expenditures), the recipient government can redefine the purpose of its own funds, but not the purpose of the aid money. Something similar happens with debts. A government might borrow money from an international institution or investor to build, say, schools or bridges: but that money could actually be a substitute for funds from the national treasury that were going to be used for those purposes. If the government pockets those funds from the treasury, it seems that the loan is indirectly serving the interest of the corrupt government. The loan is then fungible, because it is indirectly beneficial to the private interest of the rulers. From the point of view of the investor, the problem of fungibility seems hard to solve, as it is not possible for him to trace the money after it is lent. Once the government receives the loan, it —mixes in with the general budget. Is the loan in this case odious? An additional problem is that usually governments borrow money to pay interest rates on an old debt, but it is unclear for lenders whether those interest rates are also illegitimate, mainly because the government had been borrowing for years from many different investors to pay off the old illegitimate debt and part of the new loan could be used to pay off debt to those (good faith) investors. The problem, in other words, is that because of fungibility, it is also hard to trace the real origins of the debt that the government is trying to pay. If the debt is \textit{originally


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illegitimate, the fact that the government finds new sources of funding to pay it off seems to gradually dissolve its illegitimacy, because the old original loan ends up being —mixed in with subsequent —good faith loans that were intended to pay off the original one. At some point, governments simply owe money to many different sources of funding, some of which were involved in irresponsible lending and some of which were not, and it is not feasible to identify each single source of funding throughout history. The investor simply lends money, with the hope that the government uses it wisely and, of course, with the hope that it will make a profit in the long run out of it. This is not a far-fetched hypothetical scenario, as most of the indebted countries cyclically issue bonds in order to obtain hard currency, and part of that currency is used to pay off debt from old bonds. I believe, however, that fungibility and the apparent impossibility of tracing is as weak as the argument against the illegitimacy of debts. As I have said before, the problem is not that the lender —does not know where exactly and for what purposes the money will be used: knowing this might almost be impossible and to use this criteria would lead to the radical conclusion that none of the debts are odious. The central point, rather, is that at some point future generations are confronted with the burden of paying for a debt they have not benefitted from, and their claim not to pay off this debt seems to have more moral weight than the claim of the lenders to recover the money. This is basically because the original investors had the opportunity (and even perhaps the duty) to demand conditions in return for loans and they had the possibility to implement supervision mechanism and it decided to take a risk; whereas future citizens simply inherit the burden of the debt and are not free to reject it without negative consequences. So the same principle that applies in cases of —good faith purchasers seems to apply here. Even in cases of fungibility (i.e., even in cases where the government borrows money to cover a shortfall created by misappropriation of funds), citizens are not responsible for the
debt. This creates, of course, the burden to show that fungibility occurred, but the fact that this is hard to prove does not speak against the immorality of the loan itself.

Ben-Shahar’s notion of —comparative fault and Wenar’s notion of —good faith purchasers are two strong reasons to challenge the claim that lenders are entitled to recover the funds they lent (plus the interest rates), even when the borrowing government stole or misused those funds.

There are, to conclude, two strong reasons why the argument that international financial institutions —did not know is misleading. The first one is that in cases where the government is an autocratic one the probabilities that the money will be used for private purposes are higher. The second one is that the loans are at lenders’ risk, so even if the lender does not know how the money will be spent, the lender will have to assume the losses if the government borrows in the name of its citizens but ends up using the money for illegitimate purposes. Otherwise, the possibility of implementing strict control mechanisms is always open.

(IV) The consequentialist argument

There is a fourth argument one might appeal to against odious debts. If indebted countries decided to invoke the odious debt doctrine, the whole international financial market would be at risk, for future creditors would not be confident that they would get their money back and they would consequently be reluctant to keep lending money in the future. In other words, this objection criticizes the doctrine by pointing out the consequences of invoking it. The central idea I have been discussing so far is whether or not some debts are binding. This is not, however, what matters most for those who put forward the consequentialist argument. What they want to
show, rather, is that we should force countries to repay their debts, even if we know that they are not binding. In other words, consequentialists do not dispute the legitimacy of the debt itself, but rather argue that promoting a general financial system that includes some elements of illegitimacy in it is better than eliminating those illegitimacies at the expense of the whole system. In this vein, someone might argue that odious debts could be analogous to the system of criminal justice. For example, Rawls reminds us that the criminal justice system is an example of imperfect procedural justice. That is, there is a just outcome (convicting the guilty, acquitting the innocent), but we have to establish a set of procedures to try to achieve that outcome and we know that no matter how we construct the procedures, they will fail some of the time—convicting some who are innocent and acquitting some who are guilty. But we cannot step outside those procedures (which include various appeal levels) in making enforceable judgments about particular cases. We may think an accused person who has been acquitted is really guilty (e.g., O. J. Simpson), but we cannot lock him up once a jury has ruled otherwise. Philosophers like Hume justify the institutions of property and contract on similar consequentialist grounds. Having a stable, relatively clear set of rules with respect to property and contract makes everybody better off, and once those rules are established we should not try to introduce moral considerations independent of those rules in making judgments about who owns what or whether a given agreement is fair. Do we not face the same difficulty with respect to international finance? All states and private lenders will be better off if there is a stable, clear set of rules regarding when a state may contract a debt and when the lender may expect the state’s debt to be repaid. So, we cannot normally look at particular debts to see whether they were appropriately incurred apart from seeing whether or not they satisfied the limited general rules.

I am indebted to Joe Carens for this point.

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This objection is the most popular one among investors and lender institutions in general. It seems, however, weak. First of all, the claim that countries should be forced to repay debts that are not binding seems hard to accept, even for a consequentialist. A rule that enforced non-binding rules could hardly be a rule that brings about a better state of affairs. Second, even when occasionally indebted countries declare a default on their debts, the whole financial system still survives. This is an empirical fact, which can be easily proved. So the fact that indebted countries have the possibility to repudiate their debts does not give lenders a reason to stop investing their money. Even in the case that occasionally a portion of the loans will be channeled through the wrong path, most of them would continue to provide returns. Ecuador, for instance, has repudiated part of its debt by invoking the odious debt doctrine, but this did not prevent the country from accessing international markets, as it continued to borrow after this happened.

One might reply here that, if it is true that a large portion of debts are odious (as I have been arguing), the number of countries that should be able to declare a default on their debts would also be huge. Therefore, the consequences of invoking the doctrine would in fact affect the whole financial system. The case of Ecuador would not be a valid empirical objection, one could say, because it is only an isolated case. So the consequentialist objection would seem to miss the point if only a few countries can declare a default on their debts—as has been the case in the last few years—because the normal functioning of the international financial system would not be endangered by the few isolated cases that do not comply with their duty to repay their debts. But if the number of countries whose debts are illegitimate is in fact high and all of them repudiated their debts concurrently, the consequentialist objection would be on the right track, as investors would in fact be reluctant to lend money out of fear of the consequences.
Does this mean that even if debts are not binding, we should force those who have them to pay them off, on the ground that we need the overall system to survive? That is, should we maintain the current set of rules at the expense of promoting an unjust financial system for most of the world’s countries? The kind of answer that we could give to these questions is the same answer that we could give, I believe, to the question of whether it is fair that the best possible system of rules that the criminal justice system has produces, occasionally, unjust outcomes by condemning innocent people. If the set of rules on which the criminal justice system is based generates only a few isolated wrong cases, these rules may be justified. But if as a consequence of the application of those rules innocent people end up massively convicted, the system itself as a whole obviously cannot be justified. The consequentialist principle of promoting the rules that maximize overall benefits would in that case be defeated, because in the name of justice we would be (contradictorily) defending a system of rules that produces injustices most of the time. If the criminal justice system produces massive injustices (i.e., more innocent than guilty people are convicted), it does not follow that we have to tolerate these deviations as a means of defending the whole system of rules. Even on consequentialist terms, what we should rather do is replace or eliminate the rules in the first place. Odious debts are similar. We might find acceptable that a few countries are forced to pay a debt that is not theirs and that this is an effective means to promote a general system of rules under which countries in general benefit (although, as I noted earlier, it is not clear that we should necessarily accept this trade-off, because even when these countries repudiate their debts the whole financial system keeps functioning normally). But if a majority of debts fall on people who did not benefit from them, then it seems that the set of rules as a whole should be completely changed or eliminated. This follows from the fact that we should maximize individual aggregate benefits on consequentialist
grounds. By definition, odious debts *harm* citizens instead of benefiting them (because public wealth is transferred to private interests). So a system that would not benefit most people, because it promotes odious debts, cannot be justified with consequentialist premises. Not having a financial system at all would be better than having the one we have.

I do not wish to suggest that we should eliminate the whole financial system. I am simply suggesting that the consequentialist strategy of showing that odious debts should be enforced is misplaced because the consequences of repudiating odious debts are not negative overall, and even if they were, this would show that the financial system should be replaced (instead of the odious debts tolerated). The question we should deal with, then, is whether or not certain debts are binding. If some (or many) are, then the question that seems to follow is how to identify them and how to prevent them in the future. So the central concern is whether or not debts are intrinsically immoral and not whether or not we should tolerate this immorality as a means of something else. Considerations of prudence are therefore misplaced in this context. Odious debts are illegitimate and should be declared so regardless of the consequences. So even if it is true that if countries massively invoke the odious debt doctrine the international financial system would collapse, this would not undermine the fact that the debts are immoral or illegitimate. My intention in this chapter is simply to show that some countries are unjustly burdened with a cost that they should not have to bear. An additional point is that if odious debts were repudiated, lenders would be more careful about where and to whom they will lend money in the future. So rather than contributing to the collapse of the financial system, declaring some debts odious would work as a powerful incentive not to support and promote certain kinds of governments in the future.
There is also a practical consideration one should have in mind against the consequentialist argument. We can make a distinction between autocratic and legitimate democratic regimes. Investors could avoid potential of default by predicting that there will be one. As I said earlier, when a government is autocratic it tends to use loans for illegitimate purposes. Therefore, investors could be warned beforehand that certain types of governments should not receive loans, and these governments could be excluded from the international financial system. Doing this does not depend on a case by case analysis of each of the governments, and it would certainly not mean that we would have to step out of the general financial procedures. This is basically because there could be general mechanisms that could be put in place to determine whether a government is authoritarian and whether it will use the funds illegitimately. Kremer and Jayachandran have argued that one way of addressing this problem would be to have some international institution to show *ex ante* that a regime is odious: in order to lend to such a regime, a creditor would have to exercise due diligence to ensure that the funds were applied to legitimate, non-odious purposes, in order to avoid the possibility of a successor regime repudiating the debt as odious. We cannot do something similar with the criminal justice system, basically because there are no general and *ex ante* procedures that we could use to determine if a guilty person should be condemned. If such a procedure existed, it should obviously be incorporated into the criminal justice system. Using these *ex ante* procedures would certainly help not to put the whole financial system in danger, as after excluding these particulars regimes, the rest of the financial system could function normally. This procedure does not work in all cases, but could be applied to some of them.

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A second practical consideration is that, as I have mentioned earlier, there are supervision and control mechanisms that could be implemented to control the funds and how they will be used. Given that these mechanisms exist, lenders can prevent repudiation of debts before they take place. This is a point against the consequentialist argument, because it shows that the possibility of repudiating debts and maintaining the stability of the financial system can coexist. Lenders have tools to know how and who to lend to.

Possible accusations of imperialism are, I believe, misplaced in this particular context. By imperialism I mean a policy of extending rule over foreign countries. This policy is imperialist insofar as it is coercively imposed upon countries. But there is no imposition involved here, because lenders offer these loans with certain conditions attached to them, which the foreign country is always free to reject. Just as in the relationship between banks and customers at the private domestic level banks offer conditions attached to loans and these conditions cannot be considered impositions in the strict sense of the word, conditions that international lenders attach cannot in principle be considered impositions in the strict sense of the word. Things look different if the bank that is offering those conditions is able to offer them because it created a prior illegitimate debt with the client. In that case, the bank would not even be entitled to impose a single condition, because the new debt would be incurred to pay off a previous illegitimate debt, and there cannot be conditions to pay off illegitimate debts. But the kinds of conditions that we are considering here are conditions that would prevent a new debt from being odious and therefore, by definition, this new debt would benefit the citizens and especially the future citizens of a debtor country. In other words, if the lender attaches conditions attached to new loans that would make it harder for the government to use it for illegitimate means, the only beneficiaries

\[131\] See the section where I discuss Ben Shahar's proposal.
of this would be the citizens, for they would not have the burden to repay a debt that it is not theirs. This seems true even if those loans are given to pay off a prior illegitimate debt. Accusations of imperialism in the specific case in which the loan is used to pay off a prior illegitimate might therefore seem valid, but we should note that the kind of imposition that would take place in this context is a kind of imposition that would only benefit citizens. If the conditions attached demanded a reform that would generate an unclear or harmful effect on the citizens (instead of a reform to avoid future odious debts), such as adopting certain trading policies or implementing economic reforms that would harm the countries’ performance, the accusation of imperialism would make more sense. But this is not the kind of reform that I propose here and that Ben-Shahar seems to have in mind when suggesting possible reforms to improve the international financial system.

A third, related, practical consideration to which one might appeal to show that debts should not be declared odious is that it is usually not convenient for a government to default on its debts—even partially—because of the retaliation it would face from the international credits system. Any future loans to that country, even if legitimate, could be put at risk by invoking the doctrine. This is, in fact, true. Although several countries recognize that parts of their debts are illegitimate, most of them find it inconvenient to invoke the doctrine, out of fear of the consequences that this would have in the future for their economies. The fact that there are no international institutional procedures to which governments could appeal might also affect their decisions. This, again, is a marginal consideration with respect to the issue of whether or not these debts are illegitimate, and with respect to the issue of whether or not they are a burden for countries when they negotiate trade agreements with other countries.
Chapter VII - Debts and trade

In this chapter I discuss the implications that odious debts have on trade. Hopefully, this will show that trade, as it has been structured so far, is usually unfair, although for different reasons than the ones provided by cosmopolitans. The point of this chapter is also to show that odious debts are not only a relevant issue per se, but also that they connect with the issue of coercion discussed in Chapters I and II.

Odious debts are a kind of injustice because autocratic/corrupt regimes are given support from the international community but also, and perhaps more importantly, because citizens of future generations are held liable for a debt they do not have the duty to repay. To this double wrong we should add, however, a third kind of injustice, which I would like to discuss in this chapter. According to a popular view that I have challenged in earlier chapters, international trade, as it is currently structured, is unfair because its rules are set in a way that lead to a state of affairs under which many people fall below the human rights threshold. As we saw in Chapter II, this view is misleading for the following reasons. In the first place, it assumes that the problem with trade is that it is coercive. However, unless one can show that there is a duty to trade—and it does not seem possible to do this—failing to engage in a transaction that would make the other party better off (but that would not make him worse off if it does not take place) cannot be coercive, as the notion of coercion by definition stipulates that those who are coerced are made worse off relative to some baseline (either moral or empirical). Second, the argument assumes that those who engage in trade transactions with developing countries have a special responsibility to address poverty in those countries, but this seems implausible for the simple reason that merely engaging in a trade transaction with others cannot add a duty that did not exist.
before the transaction took place. We should not conclude from this that all trade transactions in the international sphere are fair. There are other (unexplored) possible ways on which trade can be unfair. The problem of odious debts is at the center of this kind of unfairness. I would like to show here two different ways in which odious debts could —taint the fairness of trade transactions. First, one of the conditions demanded by creditors (usually countries or financial institutions that represent creditor countries) in return for the loans needed to repay the interest rates of an already—sometimes odious—existing debt is that the debtor country liberalizes its economy. By —liberalization I mean, broadly, friendly rules for investors (exemptions from the obligation to reinvest part of their profit in the domestic economy, flexible labour laws, low taxes, low environmental standards and, also, a stable and predictable economy, legal protection, and others), privatization of public companies and, more importantly for our purposes, unilateral liberalization of trade. —Unilateral, in this context, means that developing countries open up their economies to products made by developed countries by reducing tariffs and restrictions, but developed countries do not reciprocate by opening up their own economy to products made in developing countries. This could be interpreted as a plain offer that developing countries accept because it is convenient for them, in which case there would be no unfairness involved, but it could also be interpreted as a coercive proposal or threat that developing countries are forced to accept, given the fact that they need some sort of relief for their extremely onerous external debts. My aim in this chapter is to discuss the normative implications of this situation. I argue that transactions that result from these kinds of demands are unfair. What makes them unfair is precisely the fact that those who benefit from them are the same ones who enforce (non-binding) debts. The second way in which odious debts taint the fairness of trade is by worsening terms of trade for developing countries. —Terms of trade could be defined as the relative costs of a
country’s exports in comparison to its imports prices of a country’s export to import. The central problem is that indebted countries need hard currency to pay off their external debts (as this is the only kind of currency that international financial agencies accept), and this causes export prices to fall and import prices to rise. When the terms of trade fall, more products have to be exported to pay for imports, which means that less production is available for domestic consumption (causing inflation), or imports have to decline. This is arguably a setback for the domestic economy, basically because of inflation. A related problem is that these worsening terms of trade, even if eventually beneficial, are not autonomously decided. Countries have no choice but to adopt the policy of worsening the terms of trade even in circumstances in which it is not convenient.

I divide this chapter into two different sections. First, I explain how trade has traditionally been conceived in the global justice literature and by economists, and how my view differs from those conceptions. Second, I develop and explain the ways in which odious debts are connected to the issue of trade, by explaining the problem of unilateral trade liberalization and the problem of worsening terms of trade. I rely on empirical information to show these points, but only insofar as it is useful to support the point that odious debts also have moral implications for trade.

Trade as voluntary and mutually advantageous

A common view of trade is that trade is a voluntary and mutually advantageous enterprise. If two parties trade, they do it because is mutually convenient for them or because
they both benefit from it. If this benefit does not exist, parties are free to step out of the transaction.

This idea applies to both countries and individuals. When countries voluntarily engage in (free) trade transactions with each other, they mutually benefit; when individuals voluntarily engage in free trade transactions with each other, they mutually benefit. This is the view of trade that both economists and (some) global justice scholars have adopted.

In more specific terms, the picture of trade that economists usually accept as valid is that trade is a means for countries to obtain more wealth. Countries want to export as much as possible and as long as they obtain a profit from doing so, and they want to import only insofar as the products they need are less expensive than the ones they could obtain in the domestic market. By doing this, they find a way to maximize their income and to minimize their expenses when they buy. Since this interest is reciprocal, a voluntary relationship of cooperation arises between two countries when they engage in trade. The economic literature similarly characterizes trade (as it has been put forward by Adam Smith) as an opportunity for comparative advantage. The argument, in a nutshell, holds that if a country specializes in the production of those commodities in which it has a comparative advantage, it can gain from trade. Comparative advantage is the ability to produce a product with the highest relative efficiency given all the other products that could be produced. The upshot of this argument is that if countries are allowed to trade freely, they will reach a Pareto Optimal state (i.e., they will reach a state such that no one can be made better off without making someone else worse off). Consider the following example. Country A makes shoes more efficiently than country B, and country B makes cars more efficiently than country A. They will both benefit more from exchanging shoes and cars than if they made the products they do not specialize in themselves. The example also
holds if country A has a comparative advantage of both shoes and cars, but has a *superior* advantage in making shoes than in making cars. In that case, it will also be mutually beneficial for A to produce shoes and for B to produce cars and to exchange them, for even if A has an advantage in both products it will be more convenient for A to concentrate on the goods it is more efficient at producing. The comparative advantage argument could be interpreted as a normative claim or as a descriptive claim. Under the normative interpretation, countries should ideally shape their foreign policies in a way that facilitates a transition to a world in which there are no barriers to trade. According to the descriptive interpretation, this is already taking place. Free trade advocates obviously defend the normative interpretation but they also, perhaps surprisingly, defend the descriptive one. According to them, there has been a process of trade liberalization in the last half century or so which has promoted growth and which has generally been beneficial for everybody, including the worse off. The fact that they mention trade barriers as the only residual obstacles for Adam Smith’s ideal world shows that, for them, no other obstacles to a wholly free trade state of affairs exist. In this vein, Tesón 132 (a firm believer in comparative advantage), for example, claims that theoretical models and empirical data support the conclusion that free trade leads to economic growth and he concludes that we should liberalize trade as a way to improve the situation of the worse off in poor countries. Given that trade leads to growth, he says, we should promote it so that governments of poor countries can have more resources to distribute among their citizens. He also believes that this process is already taking place, and that countries have, on the whole, benefitted from them.

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Curiously enough, most of the standard philosophical literature on trade is completely in line with this picture. Blake,\textsuperscript{133} for example, in his discussion on global justice and trade, attempts to explain the process of trade by asking us to imagine two countries: Borduria and Syldavia. Bordurians have better farming techniques and soil conditions, and they found a way to develop good universities and good literature. They have, in other words, a lush way of life. Syldavians are in a worse situation: their soil is not in good condition and they lack the know-how to develop farming techniques. As a result, life in Syldavia is poor. However, Blake stipulates, no one in Syldavia suffers to any great degree; they all have enough to live a normal and productive life and no one is in imminent danger of falling in poverty or objectionable poverty. He then asks us to imagine that Syldavians start trading with Bordurians. The trade has advantages to both parties, but the advantages to the Bordurians are greater than are the advantages to the Syldavians. After ten years of trading, the situation of the rich imaginary country improves substantially, but the poor country is slightly better off. No moral wrong seems to be involved in this situation, according to Blake. The Bordurians were under no obligation to begin trading with the Syldavians; indeed, they were under no obligation to do anything with them at all. In this case, trade is a matter of offers, not threats. The Bordurians’ offer of regular trading routes was not a coercive offer and it did not take away any entitlements from the Syldavians. The Bordurians did nothing wrong in proposing trade with Syldavians. Neither, he says, are the Bordurians under any obligation to continue trading with the Syldavians, because their situation without trade—by stipulation—was morally acceptable. From this imaginary example, Blake reaches the conclusion that there is no coercion in the international trading system as it is currently structured and that, in general, trading proposals among countries do not

involve any kind of moral wrong. If two countries voluntarily decide to trade, they do it because they think that they will benefit from it. Trade, in other words, is a means to improve countries‘ situations. No one forces them to trade, and the fact that they do it means that they believe it is the best way to pursue their self-interests. In other words, he thinks of trade as a matter of plain offers. Blake’s view fits the traditional view that trade is a voluntary and mutually advantageous agreement that benefits both parties, and that weaker countries that benefit from trade are vulnerable due to circumstances which involve no harm (or in which a possible harm is irrelevant to assess the agreement).

The picture of trade as an innocent, fair, voluntary, and mutually beneficial enterprise can be disputed from three different fronts. First, one might argue that trade is unfair when it falls short of realizing the human rights threshold, or any other threshold that we consider appropriate. This is the kind of strategy that I have tried to debunk in the second chapter. Second, one might claim that voluntary trade transactions are unfair because they fall short of realizing an internal procedural fairness baseline. This is the path that, for example, Aaron James seems to have taken, by developing what he calls —internal principles. Internal principles articulate a conception of fairness that applies specifically to international trade transactions and that could be complemented with broader theories of global distributive justice. James mentions, for example, the —collective due care according to which trading nations are to protect people against the harms of trade by direct compensation or social insurance schemes, as well as —international relative gains, according to which gains to trading societies are to be distributed equally, unless unequal gains flow (e.g., via trade privileges) to poor countries. This approach

also resembles Wertheimer’s idea that there is an objective fair price of transactions that we could derive if we understand what the ideal market conditions of a transaction is (an idea that he refers to as the —hypothetical fair agreement ). However, although interesting and worth pursuing, I will not discuss this line of thought in this chapter. A third way in which trade can be demonstrated to be unfair is by showing that the rules under which trade takes place have been coercively imposed on the weaker parties in the negotiation, especially because they actively and unfairly reduce the options of the weaker parties and, consequently, because they force them to accept terms of trade that are different from the ones they would accept if these constraints did not exist. This is the view I will defend in this chapter.

The conception of unfairness I am proposing can be made clearer by distinguishing between the following cases: 135

(i) Country X is destitute, due to factors that country Y is not responsible for (no natural resources, inefficient or corrupt administration, or others). Country X decides to trade with country Y in a way that benefits Y much more than X.

(ii) Country X is destitute, and country Y is totally or partially responsible for X’s situation. Country X decides to trade with country Y in a way that benefits Y much more than X. This benefit is obtained precisely because Y has been responsible for X’s situation in the past.

135 I assume that all these transactions take place in a context in which there is no monopoly involved. In other words, country X trades with Y, but any other country could have traded with Y under the same circumstances. This, I believe, accurately reflects the normal circumstances under which trade takes place.
Most of the literature on free/fair trade tends to analyze trade in terms of (i). However, the kinds of cases I am interested in exploring are cases like (ii). In the following paragraphs, I will try to explain in more specific terms why we should focus on cases like (ii) to understand the morality of trade transactions.

Cases like (i) could be understood in three different ways. First of all, they could be considered plain offers. Let us recall that offers, as defined by Wertheimer, are proposals that A makes to B and that render B better off if accepted and that do not render B worse off if refused. A wealthy country offers a trade deal to a destitute country. Both parties win if the agreement takes place. There is no unfairness involved. This seems to be the view that mainstream economists—generally in line with Smith’s comparative advantage argument—have put forward. Second, these cases could be considered instances of unfairness if we appeal to internal fairness principles like the ones Aaron James puts forward (i.e., principles such as —due care ), or if we appeal to the well-known principle of reciprocity that some fair trade scholars, such as Kapstein or Kokaz,\(^\text{136}\) defend. According to this view, trade as described in (i) would be unfair because the stronger parties would be falling short of realizing these internal procedural requirements. This case would be analogous to a case in which a rich real estate agent takes advantage of the fact that one of his clients lives in generally poor conditions by offering him lower than the market price for his house. Although he would not be responsible for the fact that his client is poor, he would be failing to offer some sort of —fair price (the analogue to the reciprocity baseline in international trade) in return for the house. For this reason, some scholars have disputed the supposed innocence of this way of trading. One could argue, therefore, that classifying cases like

(i) as plain offers is misleading. Given the fact that they involve a situation in which somebody
(wrongfully) takes advantage of someone else's vulnerabilities, the objection goes, they should
be classified as instances of exploitation. Third, they could be considered instances of unfairness
because of the fact that the stronger party in the negotiation failed to realize a prior demand of
assistance to the weaker party by trading with it in an insufficient way. So the problem would lie
in the fact that there is a positive duty of assistance to developing countries that developed
countries are not living up to, by trading in a certain way. The idea that is usually defended in
this context is similar to the one that exists in the famous case of the Anna—the ship that took
advantage of the fact that no other ship was in the area by charging an unreasonable amount of
money to rescue a boat that was about to sink. Although in that case there is an offer involved,
something wrong seems to have happened. We are generally inclined to believe that the Anna's
should have rescued the boat for —free, or at least out of humanitarian motivations, rather than
for a profit. The reason we tend to think of cases like these as unfair is that there are implicit
positive duties involved in it, which the stronger party has failed to fulfill. In the case of the
Anna's, what seems wrong is not the fact that the ship made a profit from rescuing someone, but
rather that the profit was made from someone whom it had the duty to assist in the first place. In
the case of trade agreements, to reach a mutually advantageous (but asymmetric) agreement does
not seem to be bad; what does seem to be bad is to reach this agreement when the stronger party
has the duty to assist that country—or some of its citizens—in the first place. Hawkins\footnote{Jennifer S. Hawkins, —Research Ethics, Developing Countries, and Exploitation: A Primer, in
Exploitation and Developing Countries: The Ethics of Clinical Research, eds. Jennifer S. Hawkins and
to cases in which A has a pre-existing moral obligation to aid B but fails to do so as positive
obligation flouting cases. The exact content of this positive duty might not be clear. The duty to

\footnote{Jennifer S. Hawkins, —Research Ethics, Developing Countries, and Exploitation: A Primer, in
Exploitation and Developing Countries: The Ethics of Clinical Research, eds. Jennifer S. Hawkins and
aid B might simply exist in virtue of the fact that it is expected from us to be Good Samaritans, but it also might exist because some sort of stronger commitment could be expected from us. While we may all have the obligation as good Samaritans to help a sick person, a doctor might have an even stronger obligation to assist his patient (an issue worth discussing is whether good Samaritanism is even an obligation in the first place).

In any case, none of these three ways of understanding the fairness/unfairness of international trade are even close to the way I would like to discuss it here. Trade is unfair, I argue, because, most of the time, real-life trading situations are instances of (ii). That is, what makes the transaction unfair in those cases is that one of the parties is responsible for the other party’s weakness in the bargaining and uses this advantage to coerce the weaker party to accept terms of trade it would not otherwise accept. The idea that developed countries are actively responsible for wrongfully creating a disadvantage on developing countries has already been explored in chapters I and II but, as I have tried to show in those chapters, the strategy either does not seem compelling enough or it does not connect with trade in the right way. Rather than making the broad claim that there is a global order that has been coercing the poor throughout history, we need to show the exact mechanism through which this has happened.

Cases like (ii) seem straightforward. If somebody pushes another person into the water and afterwards offers to rescue him for a certain amount of money, he is directly involved in creating the circumstances that led the drowning person to ask for help. In that situation, the drowning person’s options are reduced by the person who is helping him and, therefore, the drowning person is being or has been coerced. So the rescuer’s wrong does not only consist in the fact that he profited from someone in need—and therefore failed to be a Good Samaritan, or to fulfill the duty to save someone’s life—but also in the fact that he wrongfully harmed
someone in the first place. Similarly, if country Y is involved in creating the circumstances that led country X to accept an asymmetric trade agreement, there will be a coercive proposal involved, as country Y will have reduced the options of country X by harming it in the first place. It is of course possible that a country engages in trade with another country that has been wronged by a third party in the past. These kinds of cases, however, fall outside the scope of the argument I try to develop and, in any case, they would be simple cases of unfair advantage-taking—and would therefore fall under (i).

Pogge has made an attempt \(^{138}\) to put forward the idea that transactions between agents are unfair when one of the agents actively creates an unfair disadvantage on the other, but applied this idea to the specific case of a company that interacts within a country. The argument, so construed, seems to miss the point, for it fails to show the connection between that specific company and the harm that has been inflicted on the country with whom it trades. It is useful to see why this argument fails, because it helps us to clarify the kind of argument I defend. According to Pogge, a pharmaceutical company from a developed country that takes advantage of the bad situation in which some people from the developing country are in (by for example offering them an effective vaccine, although not the best one available in the market) is wronging those people, as it also contributes to create the circumstances that lead these people to be poor. This follows, he says, from the fact that—the existing global economic order, through its centrifugal tendencies, contributes to the persistence of severe poverty on many poor countries[,] the most powerful states and their corporations and citizens, playing the dominant role in

designing and imposing this order, share responsibility for such poverty.\textsuperscript{139} The pharmaceutical company is then, he says—even before entering the developing country—already both a contributor and a beneficiary of global economic injustices, which effectively excludes most people in poor countries from access to advanced life saving drugs.\textsuperscript{140} His claim, in other words, is that merely by being part of what Pogge calls the —international order, the company shares responsibility for the fact that the developing country in which it operates is poor (either by directly creating or by sustaining poverty in that place).

This is implausible for the following reasons. First of all, Pogge does not seem to give any argument to prove that the pharmaceutical company is part of what he calls the international global order; he simply stipulates it. Since the global order as a whole is harmful for the poor, and the pharmaceutical company is by stipulation part of this global order, then it follows that the pharmaceutical company is also harmful for the poor. The problem with this reasoning is that it does not offer any independent argument to show that the company is engaged in such practices. Second, even if we assume that there is a clear and well-defined global order, that the pharmaceutical company belongs to it and that it harms the poor, it still seems farfetched to claim that the pharmaceutical company as such has created the conditions that led to poverty in the developing country. This is because usually these conditions exist well before the company has been created. In fact, many of the largest pharmaceutical companies were started in the middle of the twentieth century, whereas the global order that Pogge refers to is much older. Being causally responsible for such a state of affairs seems plausible only if we assume that this responsibility is indirect, as when a normal citizen votes for a government which in turn promotes unfair policies in other countries. There may be some responsibility involved in

\textsuperscript{139} Ibid., 114.
\textsuperscript{140} Ibid., 115.
these cases, but certainly not to the same degree as the level of responsibility that exists when
agents are directly implicated.

A similar conclusion can be reached if we think of developed countries as responsible for
the fate of poor countries by omission (i.e., by failing to assist those in need). It is plausible and
in fact unsurprising that countries fail to fulfill their general responsibility to help—assuming
that such responsibility exists. But to claim that one specific country which participates in a
negotiation is wronging (or unfairly trading with) another country by trading in a way that fails
to comply with aid demands seems to miss the point, as it seems clear that that specific country
does not have the responsibility to aid another specific country; the burden to do so is shared,
rather, with all those who are better off. The responsibility to aid is, in other words, a general
responsibility. As a consequence, it seems an excessive burden for the wealthy country to be
responsible for the fate of each individual country with whom it trades. Trade is not analogous to
the case of the Anna’s. In the Anna’s, it was clear that the responsibility to aid fell only on the
Anna’s, as no one else was around. Countries, in contrast, are not isolated.

In a nutshell, different strategies to show that cases like (ii) take place in the real world
seem to be misleading, and we therefore need a different way of making the point.

**Debts and Trade**

That trade agreements are usually cases of the kind of unfairness mentioned above can be
proved if we show that (1) debts that countries inherit are not binding, (2) creditor countries
create an unfair disadvantage on debtor countries by coercing them to repay non-binding debts,
and (3) this disadvantage forces developing countries to accept asymmetric trade agreements. It
is an empirical assumption of the premise that countries want to maximize their wealth and, therefore, we can speculate that the terms under which trade would have taken place would have been different (i.e., better) for debtor countries if these unfair disadvantages had not existed. These three premises connect with the kind of unfairness I put forward in the following way. (1) and (2) are examples of one of the possible ways in which developed countries are (partially) responsible for the fact that their trading partners are destitute; and (3) is an example of how this harm is used to tailor terms of trade in favour of developed countries.

In the previous chapter, I have shown that external debts are a big burden for several developing countries and that a portion of these debts are odious. Moreover, I have argued that the portion of debts that are not binding is quite big. This follows from applying consistently the odious debt doctrine. I have therefore shown (1) and (2). We should acknowledge that, in order to show that there is an injustice in the way trade is structured, we need premise (1). That is, we need to show that debts are non-binding. If the debts were simply debts and debtor countries had the duty to pay them off, the argument of unfairness could not be made, for in that case the responsibility for the fact that the debtor countries’ options are reduced as a consequence of the existence of the debt would be its own, or maybe of a third party, but not of the creditor country. Consider an analogy at the individual level. Part of what it is for someone to be responsible for his choices is that if he commits himself, he may end up drastically reducing his future options. A person who uses his credit card in excess will limit his own personal choices in the future and such person may, because of the fact that his debt is too high, be charged higher interests rates when he wants to borrow money. It does not seem to be unfair that he is charged high interests rates. But these are not the kinds of cases that I am trying to discuss.
In this brief section, I would like to show (3). What is the connection between debts and trade agreements? Why does the fact that some debts are not binding matter when we evaluate trade agreements? After all, two parties can freely and voluntarily decide to exchange goods regardless of the fact that one of them owes money—especially if this money is not owed to those with whom he trades. Consider, however, a very different picture. Two merchants, John and Paul, decide to trade with each other. Paul claims from John a debt John is not liable for. Paul has legal resources to enforce this debt. John decides that it is better to repay this debt, even if it is not binding, because the consequences of repaying this debt are worse for him than the consequences of not repaying it. In order to obtain money to repay it, he decides to trade with Paul himself. Paul, aware of the fact that the debtor needs currency to repay the debt, proposes terms of trade that are more convenient for him than the ones he would normally propose (he demands, for example, that John sells his goods at a lower price). In this hypothetical scenario, it would seem that there is a double injustice involved. First, John is being forced to repay a debt he is not liable for; second, John is forced to trade under circumstances under which he would not normally sell. This double (unfair) pressure benefits the creditor. This hypothetical case seems to fit the type of unfairness mentioned above.

Trade among countries is in several respects analogous to the case of the two merchants. In theory, two countries accept trade agreements because they are mutually convenient (as a theorist of comparative advantage would believe). However, odious debts play a crucial role in these agreements, as they force some countries to accept terms of agreements that are worse than the terms they would otherwise accept. There are many possible ways in which odious debts are linked to the issue of trade. I would like to focus here on two specific ways in which this normally occurs, and that has become very common in virtually all the countries of Africa, South
America, Central America, and Eastern Europe. We might call the first one —*unilateral* trade liberalization — and the second one —unequal terms of trade. Both are different versions of unfair asymmetric trading practices.

(i) *Unilateral liberalization.* We can explain the first mechanism—unilateral trade liberalization—by analyzing it in stages. First, developing countries inherit an (odious) debt from the previous government. Funds to afford the interest rates of this debt—not to mention the debt itself—are usually scarce. The reason why these funds are scarce is not only explained by the fact that the country is destitute, but also by the fact that the prior governments had been paying the usually high interest rates associated with the original debts. Second, the indebted country incurs more debt in order to repay the inherited debt. Not doing so would present the country with the problem of having to declare a default on the debt. Since declaring a default is penalized by the international community through several different mechanisms and countries' situations worsen even more after these sanctions are enforced (a devaluation usually follows after a default, as it happened in Ecuador, Russia, Indonesia, or Argentina when they each declared a default), asking for more loans to repay the previous debt ends up being the only viable option. Third, international financial institutions take advantage of the fact that developing countries need funds to repay old debts by demanding that debtor countries institute —structural adjustment programs (or SAPs, as economists call them) in return for those loans. This is the point where trade becomes relevant. SAPs are, among others, demands of unilateral trade liberalization. By unilateral trade liberalization I basically mean that debtor countries are required to open their domestic economy to foreign products, although creditor countries are not required to reciprocate. Given the fact that countries want to maximize their income, and assuming as correct the point made by comparative advantage theorists that it is usually convenient for
countries to export the products they are most efficient at producing, the requirement of unilateral trade harms debtor countries, as they are constrained to accept rules of trade that are disadvantageous in comparison to the rules that would exist if the burden of debts did not exist. The inherited debt leads in consequence to a double injustice: countries are forced to pay a debt they do not have, and the burden of this debt forces them to accept terms of trade they would not otherwise accept.

Given the importance of SAPs, we should discuss them in more specific terms. The literature on SAPs is vast—too vast to summarize here. But some central features are worth mentioning. SAPs are created with the goal of reducing fiscal imbalances by promoting economic growth. It is assumed by those who design SAPs that the best way to promote growth is by implementing free trade reforms which, in more specific terms, mean trade liberalization, devaluation, financial liberalization, and privatization.  

—Trade liberalization here means the elimination of obstacles to import or export to or from any country or, in practical terms, that indebted countries are—encouraged to remove their trade barriers, so that developed countries do not have obstacles to export their locally produced goods or to invest in developing countries. Trade liberalization, however, does not imply that the indebted country's counterpart (usually a developed country) also eliminates obstacles for importing or exporting goods; this only happens if such country considers it convenient.

This process, as I am describing it, is morally problematic for two different reasons. The first one is that if unilateral trade liberalization conditionalities did not exist, developing countries would obviously be able to obtain better trade deals with their counterparts. This is because both would have to make concessions to each other in order to pursue their trading

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goals. When unilateral trade liberalization takes place, these kinds of concessions have already been made by one of the parties in trading negotiations and, consequently, its counterpart does not need to make so many concessions in order to pursue its own economic goals. If Ecuador wants to export bananas to the US, and the US wants to export manufactured products to Ecuador, they would both have to agree on a trading arrangement that would let each other export their own products. This could have negative consequences for banana producers in the US (assuming that there are some) and for the local manufacturing in Ecuador but, overall, we can infer that both parties would benefit (assuming that there are no other issues involved, such as bribery, lack of knowledge and information, etc.). However, if Ecuador has already made these kinds of concessions and is already willing to import manufacturing products from the US, the kind of deal it would obtain is obviously worse than the one it would obtain when mutual concessions are made, even if it is still convenient. This is simply because selling bananas and importing manufactured products is obviously better than simply importing manufactured products. To sum up, forced unilateral trade liberalization is morally troubling because even in the hypothetical case that it is convenient for those who implement it, it is still worse than a simple trade transaction where mutual concessions are made. The second reason why unilateral trade liberalization is morally troubling is autonomy. The problem here is not whether trade liberalization is convenient or not, but rather that it is forced upon someone who for different reasons might not consider it adequate or convenient or even desirable at that point. Perhaps selling a house is a good idea and it might be convenient for those who sell it, but even in that case it would seem wrong to force people to sell it.

These kinds of agreements are typically demanded and enforced by the IMF. Most of the time, the only option to obtain these funds is to borrow money from this institution, as all the
other sources offer either inconvenient terms for the loan (even worse than those offered by the IMF) or are directly blocked for several reasons. The World Bank, for example, offers funds to developing countries if and only if the IMF has given its approval first, and the conditions attached to those loans are usually the same ones that the IMF typically demands. In the case of private investors, the decision of whether or not to give the loans, and the conditions under which they are given, is based on the recommendations and assessment of the IMF. Additionally, the IMF is the creditor for many of the old original debts, some of which are odious. The IMF becomes, then, a crucial player in the international financial markets: it lends money without any kind of legal constraint and to all kinds of governments; it becomes the enforcer of those debts after the loans are granted; and it demands as a condition for new loans asymmetric terms of trade.

The IMF/World Bank apply conditionalities on loans on an ongoing basis. As international trade scholars have shown, the number of trade-related conditions attached to IMF loans increased during the 1990s, especially in low-income countries. The IMF reports that for this group, the average number of such conditions increased three-fold between 1988-1990 and between 1997-1999, which explains the fact that these countries have rapidly liberalized. Most low-income and some middle-income countries have been forced into implementing unilateral trade liberalization. Consider the following examples. IMF programmes managed to promote incredibly fast liberalization in Bolivia and Indonesia (who were expected to go from a


143 This is also from the Oxfam report.

144 Ibid., 127. The Oxfam report relies on information provided by the IMF.
TRI\textsuperscript{145} level of 4 to 1 in only three years), and Peru and Zambia went from being among the world’s closest economies to among its most open in a space of a few years. In all these cases, liberalization was possible because debtor countries had to repay old debts, some of which were odious. But the case of Haiti is, by far, the most remarkable one. Being the poorest country in the Western Hemisphere, Haiti became in 1986 one of the few countries to reach the elevated status of a fully open economy, with a ranking of 1 on the TRI. Guided by the IMF and the World Bank, Haiti had joined the super-league of trade liberalizers.\textsuperscript{146} But what is especially remarkable about Haiti’s case is that virtually all its debt is odious, and the connection between the odiousness of its debt and further trade liberalization is clear in this case. The violent dictatorship of Duvalier ravaged the country for almost 30 years, between 1957 and 1986.\textsuperscript{147} During those years, foreign debt had multiplied by 17.5. At the time Duvalier left the government the debt was around 750 million dollars but it rose, through interest and penalties, to 1,884 million dollars. What proves that this debt was not in the interest of the state or its citizens is that the Duvalier’s family wealth was around 900 million dollars (more than the full amount of the debt incurred by him) at the time the dictator fled the country and there is no other source from which he could have obtained that money. According to the latest estimates, over 80% of Haiti’s foreign debt is with the World Bank and the Inter-American Development Bank (IBD), which also answers to the IMF, with Haiti owing each up to 40% of its debt. What makes Haiti’s case especially interesting is that the connection between odious debts and trade is clearer here

\textsuperscript{145} TRI (Trade Restrictiveness Index) measures the restrictiveness of a trade policy. The higher the number, the more closed the economy of a country is. See James E. Anderson and J. Peter Neary, "A New Approach to Evaluating Trade Policy," \textit{Review of Economic Studies} 63 (1996):107-25.

\textsuperscript{146} Watkins and Fowler, \textit{Rigged Rules and Double Standards}, 127.

than it is in any other country. Almost all its debt is odious and the country radically liberalized its economy after the debt was incurred. Moreover, what made the unilateral trade reforms possible is precisely the fact that this debt existed and that it was widely recognized by the international community as legitimate. Without this debt, imposing such strict conditions would not have been possible, for the simple reason that the country would not have had to incur new loans if the old debt did not exist, and therefore the conditions attached on them would not have existed.

It is not clear whether in general developing countries benefit or not from implementing SAPs—empirical evidence about the matter does not seem to be conclusive. 148 But having such evidence, however, does not seem relevant to the point I want to make. Even if implementing conditionalities was successful at promoting economic growth, it seems clear that trade liberalization is unilateral and unfairly asymmetric in these cases.

It is not hard to prove that trading rules in general are asymmetric. Stiglitz, for example, shows that there has been very little progress in the reduction of trade protection and subsidies of farm-related products by developed countries—precisely the kind of products in which developing countries have a competitive advantage—and in non-agricultural goods in which developing countries also specialize. Stiglitz shows that developing countries face—in average manufacturing tariffs of 3.4 per cent on their exports to developed countries, more than four

148 Stiglitz, for example, claims that trade liberalization demands make countries worse off most of the time, while Bhagwati claims that the opposite is true. See Joseph Stiglitz and Andrew Charlton, Fair Trade for All: How Trade Can Promote Development (Oxford: Oxford University Press, 2005) and Jagdish Bhagwati, In Defense of Globalization (Oxford University Press, 2004). Paul Mosley, Turan Subasat, and John Weeks show in —Assessing Adjustment in Africa, World Development 23.9 (1995): 1459-1473, empirical evidence that supports the claim that SAPs have done more harm than good in Africa during the years in which they were implemented. Rigged Rules and Double Standards [Watkins and Fowler, 128] shows that arguments used to support the claim that open trade benefits the poor are tricky because they use aggregative statistics and therefore do not focus on whether the absolute number of poor individuals increases or decreases.
times as high as the average rate faced by goods from developed countries, 0.8 per cent. The picture might not be so clear for some. One might argue, for example, that the type of trade liberalization imposed on developing countries also favours their chance of exporting their domestically produced goods, as one of the conditions for SAPs was currency devaluation. However—with the exception of a few products of some specific countries—the exports of the products in which developing countries have a comparative advantage have not in general increased after trade liberalization policies were implemented. Again according to Stiglitz, in the latest rounds of trade there was a focus on the liberalization of service industries of primary interest of developed countries, and significantly less attention given to low-skilled, labour-intensive services in which developing countries have a comparative advantage. In his own words, —developing countries have increased their export of services more than fourfold since 1990, despite the large trade barriers facing many of their most promising industries. The bottom line seems to be that the only sectors of the economy in which developing countries obtained a real advantage are precisely the sectors in which they had a small comparative advantage, while the sectors in which they have a real comparative advantage still face difficulties because of the protections and subsidies of developed countries.

One might still insist that the fact that the rules are asymmetric is not enough to show that they are unfair, as these rules still promote a state of affairs under which all parties obtain an advantage. This point would seem to make sense, as trading in asymmetric terms is better than not trading at all. So it might be true that it is convenient and rational for a country to pursue that kind of arrangement. However, in certain contexts, doing something that could be a rational response to your situation is not justified if you are compelled to do it because you are being

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149 Stiglitz and Charlton, *Fair Trade for All*, 50.
150 Stiglitz and Charlton, *Fair Trade for All*, 52.
placed at a disadvantage in advance. It becomes the only option but also, just as significantly, the rational response to an illegitimate situation. This is analogous to the case of a slave who decides that it is rational and convenient for him to work for $1 a day instead of starving. It is obviously rational for him to accept such a deal but (we might stipulate) there could be a prior wrong involved, namely that his employer created the conditions of slavery in the first place.

The problem with trading rules as they are currently shaped, also, is not simply that they are asymmetric, but rather that asymmetric rules were imposed on those who obtain the greater benefits by forcing weaker parties to accept terms of trade they would not otherwise accept. Assuming that developing countries have an interest in improving their economic situation as much as possible by selling the products in which they have an advantage, and that developed countries would have had to offer more—i.e., level the playing field in favour of developing countries—had the conditionalities imposed by the IMF not taken place, it seems clear that the kind of agreements that effectively took place are worse—i.e. unfairly worse—than the ones that would have counterfactually taken place. The problem with the agreement, in other words, is not the pre-existing bargaining inequality between trading partners, for this inequality does not necessarily reflect a prior historical injustice and does not necessarily lead to an unfair outcome, but rather that the asymmetric outcome is asymmetric precisely because a prior unfair background condition exists—odious debts—and because the stronger party takes advantage of them by placing extra demands on the weakest party or by taking advantage of them by tailoring the terms of the agreements in their favour.

We should note that the assessment of the situation would be different if the debts that burden countries who accept these terms of trade are not illegitimate, or if the injustice of the debts is not created by those who tailor terms of trade in their favour. If debts are not illegitimate,
attaching conditions to new loans would count as a simple and straightforward offer. Conditions are always attached to loans, because lenders want to make sure that the client will be able to repay the loan. At the international level, if the IMF or any other creditor demands that debtor countries open up their economy, devaluate their currency, reduce their fiscal deficit or any other thing, they may do so if they want or if they find it convenient. The most we could say in those cases is that the creditors would be taking unfair advantage of vulnerability by attaching excessively harsh conditions, but lenders could always respond that those conditions necessarily have to be harsh, for they need to make sure that they will not lose their investments. Things look different, however, if the reason why clients need or want to borrow money from international lenders has been created by lenders themselves, by inventing a debt that should not exist. The conditions attached to loans would seem to be, in those cases, coercive, for the debtor's options are being unfairly reduced by creditor countries. The argument I am putting forward has some obvious limitations. First of all, it is obviously not the case that all debts are illegitimate and therefore not all conditions attached to loans count as unfairly coercive. Second, odious debt enforcers and lenders are in many cases very different agents. Sometimes, for instance, the IMF becomes the enforcer of an odious debt and private investors who are not directly related to the IMF are the lenders of a new debt. When these private lenders offer to lend under strict conditions, we might be able to claim in some specific contexts that they are taking (unfair) advantage of weakness or vulnerability, but the argument of coercion that I am putting forward here could not be made.

However, although these limitations obviously exist, I believe that the scope of the argument—i.e., the range of cases in which this kind of unfair coercion exists—is very wide. The first reason why this is so is that, as I have tried to show earlier, the problem of odious debt is not
marginal and isolated. The number of countries affected by this problem is very high. Second, the *enforcers* of odious debts and the lenders who attach conditions to new loans are, most of the time, one and the same. The main international lenders are and have always been the IMF and the World Bank. These institutions have been lending money to virtually any country, regardless of the virtue of its regime, and demand conditions on new loans under terms that favour the nations they represent. Also, these agencies determine the behaviour of private investors by recommending them to lend or not to lend, and by offering a backup for debtor countries which reduces their vulnerability and consequently the risk that private investors face by lending. This fact reinforces the idea that the IMF is the main enforcer of the debt. In practice, debtor countries can have access to new loans *only* if they have the approval of the IMF first, even if the lender is not the IMF itself.

(ii) *Unequal terms of trade.* So far I have shown one of the ways in which odious debts make international trade rules unfair, which is different from the traditional cosmopolitan argument that trade is unfair because it does not put people above the human rights baseline. I would like to suggest in this brief section a *second* way in which odious debts can have a relevant implication on fair trade. In a nutshell, the argument is as follows. A critical element of international trade is the ‗terms‘ on which it takes place. Terms of trade are the quantity of foreign goods and services (imports) that a country can purchase from the proceeds of the sale of its goods and services (exports) of a given quantity from another country. To give an example: Namibia exports fish and imports oil. If the world price of fish halved or the price of oil doubled then Namibia would have to export twice as much fish to import the same amount of oil. Its terms of trade would have worsened. The key factor is not then the price of an export, but is its price relative to other commodities. In general, commodity prices have been falling in the last
two decades relative to manufactured products. Since developing countries mainly depend on exporting commodities to obtain hard currency, they have been able to buy fewer finished goods for the same amount of raw materials, and it has been harder for them to obtain hard currency to repay their external debts. Terms of trade, in other words, have been worsening for developing countries. Since the 1990s, Africa has been particularly affected by worse terms of trade. The fact that terms of trade eventually—in worsen, although definitely bad for a country’s economy, is not necessarily immoral or unjust. Fluctuations of prices can be the result of many different factors, some of which may even be the product of (bad) luck, as when a natural disaster affects the crops of a country. However, worse terms of trade can also be the result of an immoral practice. When this happens, countries affected by inferior commodity prices would be victims of an *injustice*, rather than victims of bad luck. Odious debts are an example of such injustice. One of the implications of odious debts is that paying them off *negatively* affects countries’ terms of trade. The reason why this happens is that the only way for debtor countries to pay off debts is by using the hard currency that they had previously obtained by exporting commodities, and using hard currency results in a loss of purchasing power of their domestic currency, what economists call a rise in the real exchange rate. The real exchange rate, as defined by economists,\(^{151}\) seeks to measure the value of a country’s goods against those of another country, a group of countries, or the rest of the world, at the prevailing nominal exchange rate. Whenever countries pay off their debt, their local currency loses value against other currencies in the world (although this is not of course the only variable that intervenes in the value of currency); another way to put it is that the terms of trade of countries are deteriorated, as it will be more difficult for

them to pay for the imports they need to pay, and their domestic products will lose value against those currencies.

The problem of worsening terms of trade is just an example of one of the possible (unfair) implications of odious debts. The point is simply that forcing countries to repay debts they should not repay does not only create an unfair burden on them, but also that this unfair burden has additional implications for the economies of those countries in general. If this unfair burden did not exist, countries would be able to set their own domestic economic policies with less constraints and their currency would not be facing the kind of pressure it is currently facing. If the claim I am making is on the right track, we can say that there is a further reason why trade is unfair— a reason that is different from the cosmopolitan claim that appeals to distributional outcomes. This further reason is simply that countries that enforce debts they should not enforce are, additionally, benefitting from terms of trade that reflect the fact that these debts are enforced. This is not a case of someone benefiting from an injustice that has been committed by someone else (showing the injustice in these cases is probably harder). The case of injustice I am putting forward seems more clearly a case of injustice because it is often the case that those who enforce the debts are the same as those who benefit from better terms of trade. If we were to discuss the issue of debts from the perspective of justice, we should not set aside the possible implications of odious debts, as potential claims of redress could also include these marginal implications. Economists might dispute the argument of worsening terms of trade by providing different empirical information, or by assessing the impact of worse terms of trade differently. They might say, for example, that terms of trade have been worsening in only some countries but not in all of them, or that having worse terms of trade is not really a big problem after all. I will

not discuss these interesting points here, because they require an extensive empirical analysis that only economists can undertake. The point I wanted to make is simply that there is an additional moral implication of odious debts that we should probably be concerned about, if we accept the empirical premises I am putting forward.
Conclusion

I have divided the dissertation into two different sections, and I have attempted to show how and why there is a unity and connection between them. In the first section, which is comprised by Chapters I and II, I have shown that global justice theories have focused on the wrong issues or in wrong ways of supporting their views. The contemporary debate on global justice can be mainly divided into two different groups, cosmopolitanism and associativism. There are many substantial differences between them. One of the central ones hinges around the notion of coercion. While associativists claim that states coerce their citizens but no coercion exists at the international level, cosmopolitans claim that the state and global level are no different in nature for coercion exists in both domains. From this, each of these positions derives a radically different conclusion. While associativists believe that given that coercion triggers egalitarian demands distributive justice should exist at the domestic level only; cosmopolitans—or at least the version of cosmopolitanisms that I have considered—believe that distributive justice should be applied globally. I have tried to show, thus, that it becomes crucial to clarify the notion of coercion and whether we could reasonably say that there is coercion at the international level. An essential feature of coercion that has been assumed correct by both traditions is that coercive proposals make someone worse off by reducing his or her options. I suggest in Chapter II that two of the most important strategies that cosmopolitans rely on to show that there is ongoing coercion at the international level fail. The first one is trade. Given that trade is a mutually advantageous enterprise, the most we could say about trade is that it is unfair because benefits are asymmetric or unequally distributed among parties, but not that it is coercive. Cosmopolitans have tried to show that the claim of coerciveness can be justified by pointing out
to the fact that current international trading rules fail to realize the human rights of the poorest citizens of the world. This seems misleading, as the mere fact that countries engage in trade with each other does not generate a positive duty to fulfill the human rights of the citizens with whom rich countries trade with. If such duties exist, they can be derived independently of the fact that trade transactions exist and therefore failing to trade with others in a way that realizes these rights would not be wrongful. As long as there are other ways of realizing these rights, and it seems an empirical fact that there are, not trading with poor countries, or to do it in a way that does not generate enough benefits to take citizens out of poverty, cannot possibly be a (wrongful) coercive proposal and, therefore, a moral wrong. The second argument that cosmopolitans have appealed to to show that there is ongoing coercion at the international level is the argument of colonialism. The idea is that the wrongs inflicted in the past by colonizer countries has held back the development of poorest countries; the consequences of such (sometimes horrible) historical processes are still present today, and richer countries take advantage of the vulnerability that they have created by tailoring rules of interaction in their favour. I argue against this approach that although colonialism in the past has certainly involved grave moral wrongs (slavery, genocide, massive forced labour, etc.), it is hard, if not conceptually impossible, to trace down the effects of colonialism on the current state of affairs. In fact, it is even conceivable that colonialism could have counterfactually improved the situation of the colonized countries with respect to an alternative scenario in which colonialism had not taken place. Furthermore, even if we could trace down such effects, it is clear that in almost all cases, the developed country that interacts with the developing one is not the same country that has been colonizing the developing country in the past. To give an example, trade or financial interactions between US and Ecuador could not possibly be an example of a harmful relationship as a consequence of colonialism, for
Ecuador was colonized by a third country—i.e. Spain—in the past and not by the US. This is true of almost all interactions in real world. Given that the notion of coercion (or harm) supposes that an interaction between two parties is coercive when the harm has been inflicted by the coercer himself, and not by a third party, the claim of coercion can hardly be made. The general conclusion of this section of the dissertation is that coercion has proven to be a central notion in contemporary debates of global justice, but two of the most popular ways of showing that coercion takes place at the international level fail.

In the second part of the dissertation, which I develop in chapters III-VII, I attempt to examine a more specific and also unexplored way in which it makes sense to claim that developed countries are (wrongfully) making countries worse off. I focus thus on the issue of odious debts. I argue that a large portion of the debts of the developing world are not binding and should not be repaid and, therefore, developed countries could not no longer be justified in coercing them to pay them off. The reason why they are not binding is mainly that government borrowed money in the name of their citizens, without proper authorization and for illegitimate purposes. I discuss in Chapter IV the exact meaning of illegitimate purposes. By forcing developing countries to repay debts that are not theirs, developed countries wrongfully make countries worse off. I consider four potential counter objections to odious debts and show why they are not on the right track. I argue in Chapters VI and VII, in particular, that odious debts are an exception to the generally valid legal principle that states ought to honour their commitments, that debts cannot be considered immoral on consequentialist grounds, that odious debts are a widespread phenomenon because debts incurred by democratic countries can also be odious and that the odiousness of the debt does not depend on lender's knowledge. Chapter VII explains how the issue of odious debts connects with the issue of coercion developed in the first section of
the dissertation. Cosmopolitans fail at showing that trade is coercive as it is currently structured, or so I argue. However, it is still possible to show that trade is coercive after all, although for different reasons than the ones provided by cosmopolitans. The problem of odious debts is at the center of this kind of coercion. Conditions attached by developed countries in return for debt renewals or new loans to cancel already existing debts almost always involve a demand to change trading rules in favour of developed countries (although not necessarily against the interest of developing countries). Such conditions, or any other conditions, are normal when there are loans involved, as lenders want to make sure that the debtor will be able to repay loans. But when the debt under negotiation is odious to a great extent, the proposal turns into a coercive one, as debtor countries are faced with the alternative of paying off a debt that does not exist or enforcing a trading policy that they would otherwise not want to enforce. The proposal made by creditor countries, then, would involve the following threat: either change trading policies or face the pressure that not repaying (odious) debts would bring about. As a consequence of odious debts, then, the options of developing countries end up being substantially (and wrongfully) reduced. This argument has, of course, some limitations. Sometimes the enforcer and the creditor are not one and the same. Also, not all debts are odious. Despite these limitations, I argue that this source of injustice is pervasive, not only because of its impact on development but also because of its scope; in fact, most of the countries in Latin America or Africa are currently exposed to these kinds of pressures. It is yet to be shown what the exact relevance for global justice this would have. In principle, we could say that the global basic structure addresses or is supposed to address already existing unfair background conditions (exactly as the domestic basic structure is supposed to address domestic unfair background conditions, although perhaps the kind of unfairness and response that each of them provide is different). It becomes necessary,
then, to identify what these sources of injustice are, so that we could give an appropriate response to them. What exactly this response would be is something that still needs to be done, but hopefully my dissertation has given the first step in that direction.

The work on odious debts and its implications that I have developed also has consequences on the broader debate on global justice. In particular, I argue that the distinction between relationalists and non-relationalists (or associativists and cosmopolitans) should be approached from a different perspective in light of the partial conclusions achieved so far. Cosmopolitans share a misconception with associativists. Cosmopolitans believe that the internal structure of a country does not matter at all. For them, the fact that citizens belong to a state and have a relation with it is not relevant from a moral point of view. All moral or distributive justice principles that regulate the relationship between individuals are pre-existing to the state; and so the fact that the state coerces its citizens, or the fact that there is a sense of belonging to that state, does not generate or justify any new or different moral requirement. On the other hand, associativists draw a radically opposed conclusion. For them the internal structure of a country matters in a way that there is no issue of global justice at all. Indeed, they all claim that the kind interaction that takes place between citizens and states is special and this uniqueness is precisely what generates distributive justice principles at the domestic level. Given that special relations like these do not exist at the international level, the conclusion they draw is that there is no issue of global justice. The issue of odious debts brings these two perspectives together and shows what is wrong with each of them. Debts are odious because of how the internal structure of a country works. As I showed in the dissertation, what makes a debt odious is mainly the fact that a public mandate was used for private purposes. This shows that the relationship between citizens and their states, in contrast to what cosmopolitans believe, is relevant from the point of
view of global justice. The approach that associativists have taken is also based on a misconception, as odious debts are an example of how internal relations in a state are relevant from the point of view of global justice. My dissertation brings these two perspectives together by explaining how the internal relations of a state are crucial for global justice issues.

A second, but not least important consequence of odious debts in the debate between them is that we now have a new and different way of showing that there is ongoing coercion at the global level. This suggests two things. First, associativists should revise their claim that the international arena is a domain where countries freely and voluntarily pursue their self interest. Given that they claim that what triggers demands of distributive justice is coercing others, we should conclude that the kind of coercion that odious debts entails also generate some sort of distributive claim. Perhaps the idea that a global egalitarian distributive justice principle would be the consequence of odious is too radical and certainly implausible. But given that odious debts entail a pervasive and ongoing redistribution of wealth at the private level (i.e. odious debts are by definition an illegitimate appropriation of public funds), we should conclude on associativist terms that some sort of justification for this kind of global coercion is owed to citizens in the world at large. What this justification would be like is something that I obviously do not discuss in the dissertation; this task is pending. By bringing up the issue of odious debts I also show that cosmopolitans have focused on the wrong issues or, at least, in an incorrect way of approaching them. The strategy of appealing to distributional outcomes that we all find desirable, such as the idea that everybody in the world lives above the human rights threshold, does not seem to work as a way of showing that poor countries are being harmed. This dissertation hopefully offers an improvement in that direction.
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