

Some Promises Ought Not Be Honored:

The Case of Odious Debts

Cristian Dimitriu*

Abstract: According to a popular belief, states should honor the debts incurred by public officials in their name. Against this belief, I argue that the population of a state and its future generations are entitled not to honor debts, if these debts were incurred by governments in their name, but used for private or illegitimate purposes. I also argue the portion of debts the population is entitled to repudiate is huge, as several different governments of all kinds have used public funds for private or illegitimate purposes. Finally, I address some possible replies to my account.

Odious Debts

Promises ought to be honoured. There is not much disagreement about this proposition. If it was permissible to break promises, Kant would say, the practice of promising would lose its meaning and would ultimately disappear, as people will not be able to trust each other anymore. Utilitarians will not really disagree with this argument. For the proponents of utilitarianism, a world of reliable rules is a far better world than a world without rules.

Now, I agree honouring promises is a valuable practice and a necessary one. However, I also believe *not all* promises ought to be honoured. The kinds of promises I have in mind involve financial transactions and occur regularly in international financial markets.

More specifically, I believe despite the fact many countries have been borrowing funds from the international community and have made the promise to repay these funds, the debtor countries are not under any moral obligation to live

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Cristian Dimitriu is Lecturer at the Department of Philosophy and Humanities and Western Civilization Program, University of Kansas; and Postdoctoral Fellow at the National Scientific and Technological Research Council of Argentina.

up to this promise. These transactions involve billions of dollars and, because of this, deserve special attention.

In order to show how promise breaking in international debt is possible, I start by giving a simple example. Suppose a customer from a bank, Peter, borrows money from a bank in the name of his friend, Jack. Peter uses the money to buy a birthday present for his daughter, but passes on the bill to Jack. Despite the fact the bank is aware of this situation, it forces Jack to pay off the loan. In this case, there is a promise involved; the promise of repaying the loan. However, there is something odd about saying Jack should live up to this promise. After all, he did not ask for the loan and did not even benefit from it. There was a promise involved, but the promise was not a promise Jack made. Rather, someone else made it in his name, without proper authorization. Why would Jack be morally obligated to repay this debt? Nobody normally thinks Jack is under any obligation in this case.

Think of a similar kind of injustice at the international level, with transactions between lenders and countries. Suppose a public official from an African country borrows money from an international bank in the name of the people he supposedly represents. Suppose, further, this public official uses the money to buy a splendid palace for his daughter, but passes the bill on to the State; that is, he declares the debt a national debt of the State. Despite the fact the international bank is aware of this situation, the bank forces the African state, successor regimes and future generations, to repay the debt. As in the case of the customer, Peter, who borrows in the name of his friend, there is a promise involved: the promise of repaying the loan. Yet, as with the case of Peter and Jack, there is something intuitively wrong about forcing the state in whose name the loan was incurred to pay off this loan. The wrong arises from the fact the population of the state in whose name the loan was incurred never asked for the loan, and did not even benefit from it. Moreover, the loan was used for purposes the public official was not authorized to make. Why would a country's citizens then bear the burden of repaying the personal debts of the regime that corruptly borrowed in their name? The injustice here is clear, and it has a name. According to an old legal doctrine, developed in 1927 by Russian Scholar Nahum Sack, these kinds of debts should be called *odious*.

Real World Examples of Odious Debts

The examples discussed so far are imaginary. However, cases of odious debts have been occurring on an ongoing basis in the real world, and the amount of money involved is huge. Despite this, international law, the media, and a majority

of people believe that states should honour all their debts, and support enforcing mechanisms to force governments to do so.

Take for example the case of the former dictator of Zaire, Mobutu Sese Seko. While he was in power, corrupt spending of public funds was all too common. In 1982, Sese Seko travelled to Disney World and invited 100 of his closest friends to enjoy the wonders of the amusement park. The trip cost Mobutu around 2 million dollars. Or take for example his choice of vacationing abroad at a “lavish townhouse in Paris, a 32-room estate in Switzerland and a 16th century castle in Spain”. Or even simply his personal salary as “President,” which at one point surpassed total national spending on all social services combined. This kind of behaviour shows that on the dictator's view, the difference between public funds and private ones is morally irrelevant.

This is of course not an isolated example. There are many others. Consider Haiti. The violent dictatorship of Haiti ravaged the country for almost thirty years, between 1957 and 1986. During those years, foreign debt multiplied by 17.5. At the time the dictator Duvalier left the government, the debt was around 750 million dollars but it rose, through interest and penalties, to 1.8 billion dollars. What proves that the debt was not in the interest of the state or its citizens is the Duvalier's family wealth estimated at 900 million dollars at the time the dictator fled the country. There is no other source from which Duvalier could have obtained the money.

Cases like Zaire's and Haiti's are common in most African, Latin American, and Asian countries. These countries have something in common. Despite being ruled by governments which were very likely going to spend the money for illegitimate purposes and which showed a very poor record of transparency, the international community kept lending to them without restrictions. Moreover, after the funds were stolen or used for illegitimate purposes, creditor countries have been forcing states (instead of public officials) to repay these loans and interest rates attached to them. The enforcing mechanisms include trade, diplomatic and political sanctions; policies that lead to loss of reputation, exclusion from future financial markets, and even confiscation of public goods and assets in foreign countries.

How big is the problem of odious debts? The easy conclusion some may be tempted to draw is odious debts only affect a few countries ruled by autocratic and corrupt governments who used public funds for personal benefit. However, once we understand the role of public officials, and why they can borrow in the name of the people, we realize the problem of odious debts is much more widespread and pervasive than we think.

Reasons for Not Honouring Odious Debts

Philosophers such as Hobbes, Kant and others are helpful to illustrate this point. According to their views, what makes a government legitimate is its duty to interpret and uphold citizens' basic rights. Basic rights are, among others, a right to security, life, basic liberties and equality. Public officials are expected to secure these rights, because citizens cannot do so by themselves. This inability to secure rights is because people are usually biased or self-interested in their judgements; or because they are unable to take care of public issues.

This idea, although fairly simple, is useful in clarifying the issue of debts. Public officials can borrow in the name of the people when the borrowed funds advance and uphold citizens' rights. However, if this basic condition is not satisfied, citizens cannot be held responsible for the debt.

Two interesting conclusions follow from this premise. The first is, contrary to popular perception, the problem of odious debts affects not only countries ruled by autocratic rulers, but also countries governed by democratic institutions. Both kinds of governments can in principle fail to act in ways that advance and uphold citizens' rights. A dictator can of course embezzle money, but a president of a democratic government can do the same. So what makes a debt odious is not that people have not consented to being ruled by the government under which they live, but the fact that this government, whatever its nature is, has acted in ways contrary to citizens' rights.

The second interesting conclusion is that debts that are odious are those that involve money embezzled by the government, as well as those that involve violation of citizens' rights. These odious debts can include borrowing for the purposes of oppressing citizens, restricting their liberties, undermining their security, using public funds to benefit private companies, and others.

Debts managed irresponsibly and recklessly (something the Greek government has been doing in the last few years) are not odious, because managing money in an irresponsible way does not count as a violation of citizens' rights. However, many other cases, such as the case of debts incurred by the South African government to oppress the majority of its population during Apartheid, clearly count as a case of odious debt. Those debts were incurred by the regime, in the name of the people, but for purposes that were incompatible with citizens' rights.

These two conclusions show that odious debts are not only generated by autocratic rulers who embezzle money to buy palaces and Ferraris. The injustice

is much larger. Odious debts also involve cases of violation of citizens' rights, which unfortunately have been very common in recent history.

Possible Objections and Responses to Objections

It is of course possible to raise different objections to what I have said so far, and it is important to discuss them.

First, someone may argue that lenders do not usually know how the money they lend is going to be used. It is unfair to make lenders responsible for the corrupt uses of the funds. If the government of a country in good standing borrows money for some reason, and later on decides to embezzle the funds or use it for corrupt purposes, lenders should still be entitled to receive the money back from the state. The objection goes on to argue that lenders cannot possibly know the purposes for which borrowed money is used.

This objection does not work for three reasons. First, debts are odious when lenders have some degree of knowledge. If the government that lenders deal with is totally corrupt, autocratic, borrows for suspicious purposes, or neglects to declare what the money from loans is going to be used for, and lenders still lend, they cannot plausibly claim they *did not know* about the possible uses of funds. Since information about degree of corruption or authoritarianism of governments is publicly available, one can always show that lenders know, or should have known, about the possible corrupt uses of the funds. Those loans, in other words, will not be *good faith* loans. Given that they are not good faith loans, it seems odd to claim the population of a state should bear the burden of repaying them. Those transactions are corrupt transactions between two parties (the lender and the corrupt public official), and a third party cannot be held responsible for the corrupt agreement of two others.

Second, some people argue if states are morally entitled to repudiate their debts, international markets will collapse and nobody would lend anymore. This lending freeze results from lenders being reluctant to provide loans, out of fear they will not recover the loans. This fear, however, is unfounded. As stated earlier, debts are odious only when lenders know, or should have known, that money can be used for corrupt purposes. Lenders can avoid losing their investments by lending *exclusively* to governments that show no indication of possible embezzlement or corrupt use of funds, or that are able to demonstrate the funds will be used for public purposes (such as building public infrastructure, schools, hospitals, or any other). If they do so, international financial markets can keep working normally. A solution to the problem of odious debts, properly applied, will not lead to higher interest rates either. It is well known that higher interest rates are linked to higher risks. The risk related to the problem of odious

debts is not however that the borrower defaults on its debts. The risk is simply that the borrower is corrupt. Therefore, if lenders implement appropriate safeguards to make sure the borrower is acting within its legitimate mandate, the possibility of declaring some debts odious should not necessarily lead to higher interest rates. More research about how to reform the current international financial institutions in light of the concept of odious debt is definitely needed.

Third, one may argue it is hard to establish if borrowed funds have been used illegitimately *post facto*, as sometimes funds from debts are commingled with normal public spending. Often, corrupt governments borrow money for some legitimate public purpose, such as covering a shortfall in the national budget, and later embezzle funds from the national treasury. In these cases, it is not clear whether the official obtained money from the general budget, the loan, or both. The term commonly used to refer to this problem is *fungibility*. This, however, is not a serious challenge to the idea that some debts are odious. First and foremost, the problem of odious debts is a problem of *justice*, and not a problem of accountability. In other words, these kinds of debts are immoral, regardless of the difficulty of distinguishing the specific funds. Second, it seems possible, after all, to identify at least some of the funds, because several governments have historically diverted massive amounts of money for clearly unauthorized purposes.

In sum, promises ought to be honoured. However, there are exceptions to this general statement.

Odious debt is one exception. Promises to repay debts are not binding on states (and therefore on its citizens) if public officials use the borrowed funds for unauthorized purposes. Given that (1) public officials of both democratic and autocratic regimes can overstep their authority, (2) there are many policies that count as being in violation of citizens' rights, and (3) many governments in the past have been borrowing for purposes which were not authorized, we may conclude a significant portion of the debt of countries are odious and should not be repaid.

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