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Alternative Solutions to the Odious Debt Problem

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Abstract

The doctrine of state succession requires that governments honor the international commitments of their predecessors. Even if a dictator borrows to oppress his own citizens, future generations are required to service the debts and commitments contracted by the dictator. This paper starts by briefly describing possible exceptions to this doctrine by focusing on war and hostile debts. Next, the paper reviews the literature on odious debt and discusses two proposals that could address this issue by using domestic legal principles.

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1 Introduction

For over a century, scholars in law, economics, philosophy and history have asked if democratic governments should honor the international commitments of their despotic predecessors. While there are good reasons to think that decisions taken by a despot, possibly against the interests of the population, should not bind democratically elected successor governments, public international law is clear: the doctrine of state succession requires that governments honor all the international commitments of their predecessors. A strict application of this doctrine leads to the unpleasant conclusion that, even if a dictator borrows to oppress his own citizens, future generations of those citizens are required to service the debts (and, more in general commitments), contracted by the dictator.

A state is normally conceptualized as an infinitely lived entity without any possibility of bankruptcy. Hence, the debt incurred by an oppressive regime can, in theory, last forever. There are, for example, still outstanding claims on debt issued by the Russian Tsar and the imperial Chinese government over a century ago, upon which creditors periodically try to sue the successor governments. The long-lasting nature of sovereign debt obligations is an important difference between international law and private inheritance law. While the doctrine of state succession binds successor governments, according to private law, individuals are not required to accept negative bequests. As Shakespeare famously stated: *He that dies pays all debt* (for more, see Buchheit, Gulati and Thompson, 2007)

It is easy to think of strong moral and economic arguments why it would be desirable to have rules that restrict the obligations of a democratic government to honor the commitments of its dictatorial predecessors. Among other things, such rules would limit the despot's ability to access the international capital market and, possibly, facilitate the transition to democracy or reduce the incentives to be a despotic ruler in the first place (Bonilla, 2011, Jayachandran and Kremer, 2007). There are, however, challenges to establishing such limits to the doctrine of state succession. From a conceptual point of view, the definition of "despotic" government is not

straightforward (Choi and Posner 2007, Buchheit, Gulati and Thompson, 2007). From a practical point of view, international law can only be changed if there is widespread agreement among the countries that make up the global community and there are many powerful countries that have either engaged in odious lending or are on friendly terms with governments that could be defined as odious, or that they might be called odious themselves. As a consequence, those who seek to establish an odious debt doctrine in international law have not been successful in gathering international support.

In Gulati and Panizza (2019, 2020), we explore the possibility of using existing national laws to raise the costs of borrowing for despotic regimes. Our premise is that all governments today claim to act as agents for their people and have domestic laws that regulate agency relationships and aim at curbing graft and corruption. If a despotic government engages in transactions that are legally problematic, it is possible to use these laws to claim that these transactions were illegal as contracted by a government (the agent, in a principal agent relationship) in violation to the interests of the population (the principal). If it can be shown that the lender knew about this violation of the principal's interest, it can be then claimed that the agent (the dictator) is colluding with a third party to cheat the principal. If this were the case, the transaction would be invalid under most legal systems. Hence, if opposition parties or civil society in countries with despotic governments could monitor and make public the potential problems with contracts issued by the ruling regime, they could limit the regime's ability to engage in dodgy international transactions.

The remainder of the paper is organized as follows. Section 2 briefly describes two exceptions to the rule of state succession, together with a summary of the Tinoco arbitration which is often considered a key precursor to the concept of odious debt. Section 3 discusses the concept of odious debt, starting from its origin and ending with recent attempts to make it operational. Sections 4 and 5 discuss how one could use existing national laws to achieve objectives similar to those sought by proponents of the odious debt doctrine. Section 6 puts forward two concrete policy proposals. Section 7 concludes.

2 Exceptions to the doctrine of state succession

While according to the doctrine of state succession governments cannot generally renege on the commitments of their predecessors, legal scholars have identified two possible exceptions to this doctrine.[1]

The first of these exceptions relates to *war debts*. According to Buchheit, Gulati and Thompson (2007, p.26): "War debts are those incurred by a government to finance the conduct of hostilities against a force, foreign or domestic, that eventually succeeds in overthrowing the contracting government."

The war debts doctrine originated with Great Britain's decision, following its victory in the Second Boer War of 1899-1902, to not repaying the debts incurred by the South African Republics during the war. Note, however, that Great Britain continued honoring the debts contracted by the Republics before the beginning of the war (Feilchenfeld, 1931). The idea behind this decision is that a state should not be responsible for the debt contracted with the specific purpose of fighting against this state.

A similar principle is reflected in the 14th amendment of the US constitution (enacted at the end of the US Civil War) which, besides addressing citizenship rights and equal protection under the law, states that:

> The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. *But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void*.[2]

[1] This section follows Buchheit, Gulati and Thompson (2007).
[2] https://www.law.cornell.edu/constitution/amendmentxiv (emphasis added).

The second, well recognized, exception to the rule of state succession relates to *hostile debts*. While there is some overlap between hostile debts and the concept of war debts, the idea of hostile debt is broader: this principle does not necessarily refer to the fact that a debt was issued to finance a war against the successor state.

The specific case that originated the doctrine of hostile debts was Spain's request that, at the end of the Spanish American War of 1898, the victorious United States would honor debt incurred by the Kingdom of Spain but which was collateralized with Cuban revenues. The United States, while not claiming that these loans were used to finance the hostilities (hence, by not making use of the war debt exception), refused to take over these debts on the grounds that: (i) the debt did not benefit the population which was expected to repay it (part of the proceeds were spent in Spain) and, in fact, it was hostile to the population (Spain was fighting against rebels in Cuba); (ii) the debt was not contracted with the consent of the (Cuban) population which was expected to repay it; and (iii) the creditors were fully aware of the first two points, and that their money was at risk if Spain lost the war.

The idea of hostile debts brought two important innovations to the traditional doctrine of state succession: (i) there are circumstances under which a debt could be considered a personal liability of the ruler who contracted it and (ii) a lender may not be able to collect its funds if he knew about these circumstances. These ideas were tested in the Tinoco affair.

On January 27, 1917 General José Federico Alberto de Jesús Tinoco Granados and his brother José Joaquín seized power and established a military dictatorship in Costa Rica. On August 10, 1919 José Joaquín was assassinated and on August 13, 1919 Federico Tinoco resigned and went into exile in Paris. Among other things, during the Tinoco regime, the Central Costa Rica Petroleum Company (a British company) purchased the "Amory concession" for oil exploration and the Royal Bank of Canada provided a line of credit to Costa Rica. However, in 1920, the new democratically elected Costa Rican Congress decide to repudiate on these contracts. This decision

was soon followed by the arrival of a warship with a British minister who supported the Amory oil concession and the Royal Bank of Canada loan.

In early 1921, the Costa Rican President agreed to an arbitration settlement. However, the Costa Rican Congress disagreed with the President and, in August 1922, passed the "Law of Nullities" which repudiated all of Tinoco's contracts. The Costa Rican Congress eventually agreed to an international arbitration and in 1923 U.S. Chief Justice William Howard Taft was appointed as sole arbiter.

Costa Rica argued that Tinoco was not the government of Costa Rica because he did not represent the people of Costa Rica. Hence, his obligations could not bind future Costa Rican governments. Taft, however, disagreed and stated that the passage from the Tinoco regime to the new democratically elected government was to be considered a change of government and, on the basis of the doctrine of state succession, the successor government was responsible for the commitments of Tinoco. Nevertheless, Taft did not order Costa Rica to repay because he found that the transactions were full of irregularities and that the Royal Bank of Canada knew that the proceeds of the loan would only benefit Tinoco (Hudson, 1924, King, 2016).

In his ruling Taft wrote: *The bank knew that this money was to be used by the retiring president, F. Tinoco, for his personal support after he had taken refuge in a foreign country*.[3] Hence, Taft's judgement was unrelated to the fact that Tinoco did not represent the Costa Rican people. The basis for Taft's decision was that Tinoco stole the borrowed money and the Royal Bank of Canada knew (or should have known) about it (Buchheit, Gulati and Thompson, 2007).

3 Odious debt

In 1927, the Russian jurist Alexander Sack published "*Les effets des transformations des états sur leurs dettes publiques et autres obligations financières."* This treatise

[3] Quoted in Buchheit et al. (2007) p. 1217

contained the first articulation of the concept of odious debt. The key passages in the original French text are the following:

> Si un pouvoir despotique contracte une dette non pas pour les besoins et dans les intérêts de l'État, mais pour fortifier son régime despotique, pour réprimer la population qui le combat, etc., cette dette est odieuse pour la population de l' Etat entier…..
>
> Cette dette n'est pas obligatoire pour la nation ; c'est une dette de régime, dette personnelle du pouvoir qui l'a contractée, par conséquent elle tombe avec la chute de ce pouvoir. La raison pour laquelle ces dettes «odieuses» ne peuvent être considérées comme grevant le territoire de l'État, est que ces dettes ne répondent pas à l'une des conditions qui déterminent la régularité des dettes d'État, à savoir celle-ci: les dettes d' État doivent être contractées et les fonds qui en proviennent utilisés pour lés besoins et dans les intérêts de l' État (supra, § 6)…..
>
> Les dettes «odieuses», contractées et utilisées à des fins lesquelles, au su des créanciers, sont contraires aux intérêts de la nation, n'engagent pas cette dernière — au cas où elle arrive à se débarrasser du gouvernement qui les avait contractées — sauf dans la limite des avantages réels qu'elle a pu obtenir de ces dettes (v. supra, § 6). Les créanciers ont commis un acte hostile à l'égard du peuple; ils ne peuvent donc pas compter que la nation affranchie d'un pouvoir despotique assume les dettes «odieuses», qui sont des dettes personnelles de ce pouvoir….
>
> Quand même un pouvoir despotique serait renversé par un autre, non moins despotique et ne répondant pas davantage à la volonté du peuple, les dettes «odieuses» du pouvoir déchu n'en demeurent pas moins ses dettes personnelles et ne sont pas obligatoires pour le nouveau pouvoir.
>
> (Alexander Sack, 1927, pp. 146-147)

The standard interpretation of Sack's definition of odious debt is that a debt is personal to the regime and it does not bind the state if the following three conditions apply: (i) The debt is contracted by a despotic regime; (ii) The borrowed funds do not contribute to the general interests of the state; and (iii) The creditors know all of the above.

Some, such as Toussaint (2016) suggests that Sack has been misinterpreted and that his definition of odious debt does not require that the debt be issued by a despotic

regime. And there is a passage in which Sack refers to debt issued by "normal" regimes.

There are, however, at least two arguments for limiting the definition of odious debt to debt issued by despots. The first is that if the population of a country chooses a government that decides to misspend, it is not obvious why the international community should block the outcome of a democratic choice (things may be different in case of graft, more on this below). The second is that the risk of "false positives" (i.e., declaring as odious a non-odious debt) could have negative effects on the working of the international debt market and might prevent some countries from tapping this market.

Sack's article sparked a large literature, which we will not survey here (for detailed discussions see, among others, Bonilla, 2011, Buchheit et al, 2007, Choi and Posner, 2007, Gelpern, 2007, Lineau, 2014, and King 2017). We note only that Sack's original analysis focused on individual loans. Hence, the same regime could issue both odious debt (e.g. debt issued to oppress the people) and non-odious debt (e.g. debt issued to fund a useful infrastructure project). However, more recent interpretations of the concept of odious debt, especially in economics, recognize that money is fungible and therefore any doctrine of odious debts needs to focus on the odious nature of a regime rather than on the odious nature of a given debt contract. Moreover, recent interpretations go beyond garden variety debt obligations and include a broader array of state obligations (for instance, natural resource concessions) that bind successor governments (Center for Global Development, 2010).

In the presence of an odious debt doctrine, successor governments could refuse to honor all international commitments (including debt contracts) that have been declared to be odious, without suffering any legal or reputational consequence.

Another important question is whether debt issued by a despotic regime should be labeled as odious *ex-post* (i.e., after the debt has been issued and possibly after a democratic government replaces the despotic one) or *ex-ante* (*i.e.*, before the debt is

issued). An *ex-ante* declaration of odiousness would imply that all contracts issued after the declaration will not be honored by successor governments and that this action will not have any legal or reputational consequence as long as the successor government keeps honoring all contracts issued before the declaration of odiousness.

Proponents of the *ex-post* approach include several NGOs who also support citizen debt audits (see, among others, Toussaint, 2019) like the one used by President Rafael Correa to challenge the legitimacy of Ecuador's debt.[4] We have reservations about the content of the Ecuadorian debt audit, but the reasons of those who support *ex-post* odiousness declarations are understandable. And there are instances where there the case can be made that the international community was complicit in much of the despotic behavior and could not have been relied on to have done an *ex-ante* designation enough in advance to constrain the despot. A ready example here is South Africa's apartheid regime that was an accepted part of the international community despite the horrific policies it imposed on a majority of its population. Similarly, the People's Republic of China has long taken the position that it will not pay the debts incurred by predecessor regimes on the grounds that many of those loans were the product of the global powers trying to take over China.[5]

There are, however, two issues with establishing an *ex-post* odious debt doctrine. The first issue is that uncertainty related to the possibility of such a declaration could have a negative effect on access to credit for all countries. This is especially the case if it were possible to apply this *ex-post* declaration to debt issued by non-despotic regimes.

[4] In late 2008, president Correa used the findings of this report to default on two existing sovereign bonds which Ecuador then repurchased on the secondary market at a deep discount. This episode represents a rare case of a "strategic" sovereign default (i.e., a default that happened in the absence of deep financial stress and in a situation in which the country could have easily serviced its debt) based on the assertion that the debt contract was illegitimate. It is worth noting that while the debt audit claimed that the debt was illegitimate because, according to the audit, it had brought unfair gains to various parties, it included oppressive terms, and it crowded out useful public expenditure, the audit did not claim that the debt was issued by a despotic regime. For added detail and color, see Salmon (2009).

[5] On the unpaid Chinese debts and the odiousness argument, see Feinerman (2007). The Center for Global Development (2009) provides other examples: Croatia between 1994 and 2004; Guinea between 2003 and 2008; Myanmar between 1998 and 2008; Sudan between 1970 and 2008; and Zaire between 1970 and 1977.

The second problem with the possibility of an *ex-post* declaration of odiousness is that under reasonable assumptions it would provide limited incentives for truth-telling and increase the likelihood of false positives (Jayachandran and Kremer, 2006).[6]

The case for establishing an *ex-ante* odious debt doctrine is stronger. In the worst-case scenario, such doctrine would make little difference with respect to the *status quo* (hence would adhere to the *primum non nocere* principle). In the best-case scenario, it would facilitate access to credit for non-odious governments while sanctioning odious regimes (for details see Jayachandran and Kremer, 2006, and Center for Global Development, 2009).[7]

A point worth noting is that supporters of an *ex-post* odious debt doctrine tend to be debt relief activists who are mostly worried about shielding new democratic governments from the debt accumulated by their despotic predecessors. Supporters of an *ex-ante* odious debt doctrine, by contrast, tend to be economists and legal scholars who are worried about limiting the ability of despotic regimes to access the international capital market while protecting the workings of this market. Be as it may, there does not seem to be widespread international support for the implementation of an odious debt doctrine either *ex-post* or *ex-ante*. Given the current challenges faced by the multilateral system, such support is unlikely to come soon.

4 National Law Solutions to the Odious Debt Problem

An *ex-post* doctrine of doctrine of odious debt is conceptually problematic and an *ex-ante* doctrine does not seem to go anywhere. As a consequence, countries continue to be stuck with debt accumulated by oppressive regimes.

[6] At the end it all boils down on the international community's preferences for the regime, for the population and the successor government (see Jayachandran and Kremer, 2006, for a formal model). Ex-ante designations of odiousness would not work if powerful countries that control the designation body find the dictator useful.

[7] Caveats and implementation details are discussed by Center for Global Development (2009), which also presents a model declaration.

We already mentioned the case of post-apartheid South Africa, but the same logic applied in the Philippines when the Aquino government decide to service $28 billion of debt inherited from the Marcos regime. Post Saddam Iraq, obtained debt relief but this did not happen on the basis of the odiousness of the Saddam regime, and it is not clear what it will happen with the Venezuelan debt after the Maduro regime will be replaced by a democratic government (for a discussion of the parallels between the restructuring of Iraq's debt and the Venezuelan situation, see Buchheit and Gulati, 2019). There are also cases in which, in order to protect their reputation, governments decided to take over illegally issued debt. (See for example Mozambique with the "tuna bonds", Cotterill, 2019 and Malaysia with 1MDB debt, Wright and Hope, 2018). Domestic legal principles could be used to mitigate these problems.[8]

Most domestic legal codes contain two principles that could be used to curb dictator's ability to borrow. In fact, these legal principles would apply more broadly to corrupt governments, even if they are not despotic.

The first of these legal principles is usually referred to as *misbehaving agent*. The idea is that, if a counterparty signs a contract with an agent while fully knowing that this agent is not authorized to conduct such transaction by his principal, the contract is not valid and enforceable. This principle is part of New York law and many sovereign bonds are issued under New York law.

As an example, consider the case of Venezuela: there have been plenty of statements by senior US officials (including President Trump) stating that Nicolas Maduro does not represent the Venezuelan people. Hence, a successor government could argue in front that the holders of Venezuelan debt should have known that the debt had been issued by an agent (the Maduro government) which did not represent its principal (the Venezuelan people). This argument is similar to those made by the US government when it refused to take over Spain's debt after the Spanish-American War.

[8] The section draws from Gulati and Panizza (2019, 2020).

The main problem with this legal principle is that, while in a corporate contract it is clear that the company's management is an agent of the shareholders, it is less clear whether US courts will accept the idea that the government is an agent of the people. (Demott 2007).

Another relevant legal principle is that of *unauthorized transaction*. For instance, US law states that municipal obligations issued in violation of law are void. Hence, if a given contract is issued without proper authorization, the contract is in, all effects, invalid. Consider again the case of Venezuela: it has been argued that several Venezuelan bonds have been issued without the approval of the National Assembly, which is required by law. If it can be proven that these bonds were indeed issued without proper authorization, a US judge could decide that these bonds are illegal and non-enforceable.

The link between the misbehaving agent principle and the concept of odious debt is obvious. If it is possible to claim that he actions of a dictator do not represent the interest of its principal (the populace), it is then possible to claim that the debt issued by the dictator in non-enforceable. The link between odious debt and the unauthorized transaction principle is more tenuous as it requires that a regime should be both despotic and incompetent or corrupt. Specifically, the idea that despotic regimes engage in actions that will result in legal infirmities that successor governments can utilize against creditors is based on three assumptions: (i) dictatorships are more likely to be incompetent; (ii) there is a price penalty associated with incompetence; and (iii) the price penalty associated with incompetence is higher for dictatorships.

In Gulati and Panizza (2020) we proxy incompetence with corruption and use data for 23 emerging market countries for the period 1994-2017 to test whether the assumption that despotic regimes are also more corrupt is supported by the data and if capital markets penalize the interaction between lack or democracy and corruption.

As a first step, we show that there is a correlation between control of corruption and the level of democracy. The correlation between these two variables is 0.44 and

statistically significant at the 1 per cent confidence level. Next, we check the correlation between sovereign spreads and each of corruption and democracy. As expected, we find that less corrupt countries have lower spreads, the relationship between the level of democracy and sovereign spreads is instead always negative (indicating that more democratic countries have lower spreads), but not always statistically significant. Finally, we look at the interaction between democracy and corruption and find that it is indeed the interaction between these two variables that matters. While neither corruption nor democracy are significantly correlated with sovereign spreads when they are evaluated at the mean value of the other variable, the interaction between these two variables is positively and significantly correlated with sovereign spreads. This finding is consistent with our hypothesis that the correlation between corruption and sovereign spreads is particularly strong in non-democratic countries. If we restrict the sample to countries with low levels of democracy, this interaction is even statistically significant when we control for credit rating (this is a strong result, as credit ratings already incorporate various indicators of institutional quality, see Panizza, 2017).

5 Naming and shaming

The story of the Hunger Bonds (Gulati and Panizza, 2019) shows that it could also be possible to limit dictators' ability to borrow by creating public awareness around debt issuances which are tainted from the moral and legal point of view.

The story goes as follows:

1. On May 26, 2017, Harvard professor Ricardo Hausmann published an Op Ed on *Project Syndicate* which argued that investing in Venezuelan bonds was immoral because it was based on the premise that a despotic regime privileged its bondholders over the welfare of people. Hausmann titled the article: "Hunger Bonds"

2. Three days before the publication of Hausmann's article, Goldman Sachs Asset Management (GSAM) had purchased a large amount issued by the Venezuelan state-owned oil company (PDVSA). These PDVSA bonds had a face value of $2.8 billion but they were bought by GSAM at a 70% discount, with a disbursement of approximately $865 million. The price paid by GSAM for this bond was well below that of comparable PDVSA bonds. GSAM claimed to have bought these bonds on the secondary market (the bonds had been officially issued in 2014). However, prior to the GSAM purchase the bonds had never been traded on the secondary market and immediately after the purchase Venezuela's international reserves increased by about $750 million. It is thus likely that GSAM provided direct funding to the Venezuelan government by buying bonds that had been parked in the accounts of the central bank.

3. While Hausmann had not known about the GSAM purchase when he wrote his Project Syndicate article, the press immediately saw a link between Hausmann's article and the GSAM purchase: the PDVSA bond bought by GSAM was labelled as "Hunger Bond". This was followed by several high-profile comments on the immorality (and possible illegality) of the GSAM purchase and by street protests in front of Goldman Sachs' headquarters.

In Gulati and Panizza (2019), we show that Hausmann's article was followed by a collapse in the price of Hunger Bond, with its price dropping by more than 16% compared to the price of comparable PDVSA bonds. Moreover, we also present evidence showing that spikes in Google searches for the term "Hunger Bonds" were associated with a drop in the price of the GSAM bond.

A similar event happened more than 100 year ago. In 1906, Maxim Gorky published an article in the one French newspaper *L'Humanité* titled: "Pas un sou au gouvernement russe." The target of Gorky's article was the Russian Tsarist government. Gorky argued that lending to Russia would help the Tsarist regime to carry out massacre and oppress, torture, and kill thousands of men. Gorky wrote: "Do

not give a penny to the executioners of the Russian people, executioners of bodies and executioners of minds!"

Collet and Osterlinck (2019) show that, not unlike the "hunger bond," the Russian loan criticized by Gorky had been issued on shaky moral and legal grounds and that after the publication of Gorky's article markets imposed a penalty on the bond's price. They also show that as time passed and people stopped paying attention to this issue, the penalty diminished. This is similar to what we find for the Hunger bond, with the price penalty associated with the salience of the bond.

One key lesson from these two episodes is that actions that give visibility to illegal debt issued by despotic governments can raise the cost of capital for these governments.

6 Policy Implications

We have seen that there are domestic legal principles that can limit a despot's ability to borrow and that the same can happen by disseminating information about possible moral and legal infirmities of a debt contract. The question though is whether it is possible to make this system work in a more systematic way.[9]

One possibility is to create an odiousness rating system (Hausmann and Panizza, 2017). While credit ratings focus on the ability of the borrower to pay, odiousness rating would provide an estimate of how likely it is that a court would decide that the debt is personal to the regime and non-transferrable to successor governments. Instead of having a dichotomous separation between odious and non-odious regimes, a system of odiousness ratings would be based on a continuous scale going from odious repressive dictatorships to well-managed democracies. Along this continuum, there would be intermediate notches for dictatorships that promote economic development and corrupt democracies characterized by economic mismanagement or graft.

[9] This section draws on Gulati and Panizza (2019) and Hausmann and Panizza (2017).

A system of odiousness ratings could become part of soft international law and help determine which bonds are included in the calculation of emerging-market indexes. The same country could have bonds which, being issued in different periods, have different odiousness ratings and enforcement probabilities. While this idea is similar to that of *ex-ante* odiousness as discussed in Center for Global Development (2009) and Jayachandran and Kremer (2006), there are differences. The first is the continuous nature of the odiousness rating system. The second is that the rating would be done by an independent agency and it would not require an intergovernmental agreement.

Another proposal which, instead of focusing on the odiousness of the issuing regime, concentrates on legal infirmities, is a public ranking of bonds which lists potential ethical and legal problems of individual bonds (Gulati and Panizza, 2019). Such system would increase the borrowing costs for regimes that, besides being despotic, adopt murky debt management practices. In the presence of this type of public information, few investors could claim to have bought a bond on the secondary market without knowing its illegal origin. This proposal is more modest than the odiousness rating idea but also more readily implementable because it does not require a value judgment on the despotic nature of a regime. It is based on an objective evaluation of the bond's legal infirmities. In the worst-case scenario, such list of legal problems of individual bonds would create incentives to adopt more transparent sovereign debt management practices.

Both proposals have the advantage of not requiring any legal innovation or international consensus building because they are based on the action of non-government organizations and use existing laws and legal principles. Like the implementation of an odious debt doctrine, these two proposals could increase the cost of funds in the primary market and also allow opposition parties in countries with potentially despotic regimes to announce their future plans regarding likely future investigation or even repudiation of those bonds.

7 Conclusions

Scholars in many fields have struggled for over a century to establish a legal doctrine of Odious Debts. These efforts have not gone anywhere mostly because it is difficult to build international consensus on the definition of a despotic regime and because many powerful countries still view some dictatorship using the philosophy that: "He may be a son of a bith, but he's our son of a bitc."[10]

This paper starts by reviewing literature on odious debt and then discusses two proposals which could have effects similar to those that are sought by odious debt activists but do not require international consensus because they could be implemented by non-governmental organizations leveraging existing national law.

While, to the best of our knowledge, Hausmann and Panizza (2016) and Gulati and Panizza (2019) were the first to discuss these proposals in detail, the possibility of outsourcing the definition of odious debt to a non-governmental organization was hinted at by Jayachandran and Kremer (2002; this is the working paper version of the paper published in 2006) who also implicitly refer to the misbehaving agent principle discussed in Section 4 above:

> The courts could take into consideration whether the predecessor regime had been on the NGO list when the loan was made. Just as courts deciding whether an investment manager is guilty of fiduciary negligence might use as evidence the Moody's ratings of the financial assets in the manager's portfolio, courts could use the NGO rating as evidence that the bank had foreknowledge that the borrower was odious and hence the loan is unenforceable (Jayachandran and Kremer, 2002, p. 30-31).

We are in good company!

[10] The quote supposedly comes from Franklin D. Roosevelt, talking about Nicaragua's Anastasio Somoza Garcia.

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