Odious Debt: Modernizing Ancient Problems

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Abstract

So far the odious debt debate has primarily focused on proving the existence of a rule of customary international law. Rather than following this tradition, this paper will focus on another method for demonstrating that a certain legal principle should be applied in an international context: general principles of law and equity. The heart of the odious debt debate revolves around the assertion by some that a successor government is absolutely liable for every debt incurred by a previous regime. However, almost every domestic legal regime limits the ability of a creditor to recover from a successor in interest. This paper will demonstrate that if the international community is to apply debt succession principles to international debt transactions which reflect the principles applied in their domestic debt transactions then some form of the odious debt doctrine must be adopted by the international community.

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Introduction

In early 2009, Ecuador decided to repudiate one of its bond issuances claiming that the debt was odious, or incurred by a dictator whose objectives were at odds with that of the populace, and therefore Ecuador had no obligation to repay the debt. This event brings back to the foreground the debate surrounding odious debt, when the doctrine should be applied and to what extent it should reduce these debts. This debate has received a significant amount of attention over the past decade as a result of the regime change in Iraq. Typically, this debate has tried to prove the doctrine of odious debt exists as a principle of customary international law. Those advocating the odious debt doctrine have focused on a treatise written by a Russian expatriate, Alexander Sack, in 1927. Scholars have used his writings as evidence that there was *opinio juris* that successor governments did not need to repay odious debts. This coupled with some state practices around the same time, such as the Tinoco Arbitration and the Cuban debt repudiation, would show the existence of a rule of customary international law.

This debate has received the attention from very good scholars so this paper will not attempt to show the existence of any rule of CIL. Instead this paper will focus on another method of demonstrating that a certain legal principle should be applied in an international context, general principles of law and equity. The heart of the odious debt debate questions the assertion by some scholars that a successor government is absolutely liable for every debt incurred by a previous regime, or more generally that there exists a mandatory succession of debt liability upon regime change. However, as will become evident, most domestic legal regimes limit the ability of a creditor to recover from a successor in interest when the original debtor ceases to exist.
This paper will demonstrate that if the international community applies debt succession principles to international debt transactions which reflect the principles applied in their domestic debt transactions then some form of the odious debt doctrine must be adopted by the international community. This paper will first give a brief overview of the current state of odious debt theory. Following this, this paper will explain the jurisprudence concerning general principles of law and equity. The next section will explore the evolution in debt law from some of the earliest times with a special view towards the succession of debt. Afterward, this paper will elucidate some state practices and cases which demonstrate that these principles have been applied in the sovereign debt arena.

It is troubling that some commentators still insist that sovereign debt transactions should be governed by the most archaic of debt principles. On a domestic level, the most egregious abuses of the creditor/debtor relationship have been emolliated through the passage of time. It is now time to finish modernizing an ancient problem by adopting a doctrine of odious debt.

**Background**

Near the beginning of the new millennium, the Center for International Sustainable Development Law (CISDL) commissioned Jeff King with drafting a restatement of international law concerning the succession of state debt.\(^2\) The purpose of the paper was to explore legal avenues to eliminate "illegitimate Southern debt".\(^3\) During the course of his research, he found that there were some inconsistencies in how sovereign debt succession is handled depending on the manner in which the new sovereign acquired power over its new territory. His restatement concludes that international law recognizes two distinct manners in which


sovereignty over a geographical region changes. The first manner is what he calls state succession. State succession occurs when one state acquires new territory through conquest or peaceful merging, or alternatively when an old state dissolves into multiple new states or grants sovereignty to a former colony. He calls the other kind of sovereignty change governmental succession. This occurs when the citizens of a country decide that their current governmental form is inimical to their interests and stage a revolution.

Although this distinction may seem more illusory than meaningful, nevertheless, it has traditionally had a significant impact on whether debts pass to the new sovereign or not. Under the state succession model debts do not automatically adhere to the new sovereign, except in the case of state mergers. However many creditors maintain that under the government succession model, the debts of the old government should adhere to the succeeding government. The theory justifying this outcome is that when a government issues debt it hypothecates its territory and its natural resources to the repayment of the debt.

This latter assertion became hotly debated after the United States ousted Saddam Hussein from power. Immediately upon the institution of a provisional government, US policy makers and the Paris Club began debating what should be done with the large debts which Saddam had accrued. Although creditors argued that the debts should pass from the old government to the new one, many policy makers were reticent to do this for two reasons. First, 

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4 King, supra note 2, at 4.
5 Id. at 6.
6 Id. at 9-10.
7 Id. at 9.
8 Id.
11 Id.
Saddam had incurred several of these debts in order to buy weapons with which to suppress his own people. Additionally, Saddam used a significant amount of state funds for personal enrichment such as buying one of the world’s most expensive yachts, two villas in Provence and opening a personal Swiss bank account which held up to $22bn. Considering that the demonstrable suppression debt and embezzled funds constituted about a fifth of the $125bn of the total Iraqi debt many policymakers were loathe to place the debt upon the new Iraqi government.

Those wanting to nullify these debts needed to demonstrate that there was a principle of international law which could justify their position. They began trying to demonstrate that there was a rule of CIL which allowed a new regime to repudiate debts incurred by its predecessor government. To prove the existence of a rule of CIL there must be both examples of state practice and an indication that the state practice was based upon the belief that the state practice was obligatory, or *opinio iuris*. *Opinio iuris* is mostly easily proven by examining the writings of a major figure in international politics, such as a foreign minister. The proponents of odious debt found their hero in the person of Alexander Sack.

The new proponents of the odious debt doctrine believed that Sack had been a minister in Tsarist Russia who had been forced out by the Bolshevik Revolution. As such, Sack possessed the *auctoritas* necessary to demonstrate the existence of *opinio iuris*, especially since he wrote after the Bolsheviks repudiated the Tsarist debts. In his book, *Les Effets des Transformations des États sur Leurs Dettes Publiques et Autres Obligations Financières*, Sack formulated a doctrine for what he called odious debts which would allow successor

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14 Ludington et al., *supra* note 10, at 160.
15 Adams, *supra* note 10, at 164.
governments to repudiate certain debts incurred by their predecessors. There were three elements to this doctrine: first, the government incurring the debt must have ruled without the consent of the populace, second, the government must have used the proceeds of the loan for purposes which do not benefit the populace, third, the creditor must have known that the regime was despotic and did not intend to use the loan for the good of the country.\footnote{ALEXANDER N. SACK, \textit{LES EFFETS DES TRANSFORMATIONS DES ÉTATS SUR LUIERS DETTES PUBLIQUES ET AUTRES OBLIGATIONS FINANCIÈRES} 157-63 (1927).}

In addition to Sack, the modern proponents of odious debt point to the Tinoco Arbitration as an instance of state practice which would satisfy the other element of CIL.\footnote{Patricia Adams, \textit{Probe Int'l, The Doctrine of Odious Debts: Using the Law to Cancel Illegitimate Debts}, Address at the Conference on Illegitimate Debts Organized by the German Jubilee Network (June 21, 2002), available at http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=4909.} In 1917, Federico Tinoco gained control of Costa Rica in an armed revolution against his unpopular predecessor.\footnote{James L. Busey, \textit{The Presidents of Costa Rica}, 18 AMERICAS 55, 56 (1961). There were concerns over the legitimacy of Gonzalez's election since he was not on the Presidential ballot. Instead he was elected by the Costa Rican congress as was the procedure if there was no clear winner of the popular vote. However, it seems strange that the congress would pick someone who had not even run. This may explain why he quickly lost popularity.} His rule was short lived, but while he was in power he secured a large loan from the Royal Bank of Canada.\footnote{Ludington et al., \textit{supra} note 10, at 171.} After two years in power he was in turn ousted through an armed revolution and fled with the loan proceeds.\footnote{Busey, \textit{supra} note 18, at 68-69.} This new government quickly passed a law repudiating the loans and contracts executed by Tinoco.\footnote{Aguilar-Amory and Royal Bank of Canada Claims (Gr. Brit. v. Costa Rica) (\textit{Tinoco Arbitration}), 1 R.I.A.A. 369, 376 (1923).} When the Royal Bank of Canada objected, the parties turned to arbitration and named former President and then sitting Chief Justice of the Supreme Court of the United States, William Howard Taft, as sole arbiter.\footnote{\textit{Id.} at 369.} Taft sanctioned the Costa Rican law repudiating the debts, leading the proponents of odious debt to characterize this as validation of Sack's doctrine.\footnote{Adams \textit{supra} note 17.}
However, recently some scholars have researched more deeply into Sack’s background and learned that his credentials have been overstated.\textsuperscript{24} He had not, in fact, been a minister in Tsarist Russia.\textsuperscript{25} So rather than proving the existence of \textit{opinio juris}, his opinion was that of a highly qualified legal scholar, which is only a subsidiary source of international law.\textsuperscript{26}

Additionally, the state practice which may be cited to support the doctrine of odious debt does not follow the same principles which were articulated by Sack.\textsuperscript{27} Most notably, Taft’s opinion in the Tinoco Arbitration explicitly says that regardless of whether Tinoco ruled without the support of the people, he was the head of the government and thus had the right to enter contracts on behalf of his nation.\textsuperscript{28} This would suggest that Sack’s articulation may have been too narrow.

This creates a problem because there seems to be a disconnect between what the law is under the principles of CIL and what many people believe the law should be. Furthermore, this issue will likely be tested again soon since Ecuador repudiated one of its bond issuances in early 2009 claiming that the debts were in fact odious debts. Fortunately there are other methods of demonstrating a legal doctrine should be applied to international transactions.

\textbf{General Principles of Law and Equity}

According to both the Restatement (Third) of International Law and the Statute of the International Court of Justice ("ICJ") there are three sources for rules of international law: treaties, customary international law and general principles of law and equity.\textsuperscript{29} The provision in the Restatement (Third) describing this third source reads, “A rule of international law is one that

\begin{footnotesize}
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\item[25] Id. at 607-610.
\item[26] Statute of the International Court of Justice, Art 38(1)(d).
\item[27] Ludington et al., supra note 10, at 160.
\item[28] Tinoco Arbitration, 1 R.I.A.A. at 380.
\item[29] RESTATEMENT (THIRD) OF INTERNATIONAL LAW § 102(1) and STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 38(1).
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has been accepted as such by the international community of states...by derivation from general principles common to the major legal systems of the world."\textsuperscript{30} The Statute of the ICJ reads, "The Court, whose function is to decide in accordance with international law such dispute as are submitted to it, shall apply . . . the general principles of law recognized by civilized nations."\textsuperscript{31} Additionally, Lord McNair once stated, "International law has recruited and continues to recruit many of its rules and institutions from private systems of law."\textsuperscript{32}

This approach is essentially one of comparative law. It requires examining the way many different countries treat a particular issue in their domestic courts and then extracting what common principles are applied among the different countries. These principles can be especially helpful with filling in gaps or inconsistencies found in treaties or customary international law.\textsuperscript{33} However, there are two constraints to this approach. First, the principle derived must encompass a sufficiently representative group of nations.\textsuperscript{34} Second, there must be evidence that the principle is suitable for application on an international level.\textsuperscript{35} Perhaps the best way to overcome the second obstacle is to show that the principles have been applied to sovereigns in either domestic courts or international tribunals.\textsuperscript{36}

The closest analogy in domestic law should naturally be found in the laws governing the succession of debt through inheritance. However, this paper will explore the issue of succession of debts in greater depth through an exercise in legal history. Through examining the ways in which societies have dealt with debt succession throughout history, it will become

\textsuperscript{30} Id.
\textsuperscript{31} Id.
\textsuperscript{33} OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 52 (Martinus Nijhoff Publishers 1991).
\textsuperscript{34} Although it is unclear how many legal systems, short of all, is necessary to demonstrate a principle, presumably the reference to "representative legal systems" would indicate that the survey should be broad enough to cover common law legal systems, civil law legal systems, Shari'a law legal systems, and former Soviet legal systems. \textit{See Id.} at 53.
\textsuperscript{35} Id.
\textsuperscript{36} Id. at 51. Some scholars, most notably those in the former Soviet bloc, insist that the principles must have been used in an international dispute in order to prove that they are appropriate for use in the international system.
clear that some very archaic concepts concerning debts still linger in our modern debates. Hopefully courts will choose to apply the legal sophistication developed on a national level to market inefficiencies of an international scale. In this way we can finally eliminate the archaic notion of unfettered succession of state debts and instead apply the principles which every nation applies to debt succession

A. Archaic Laws Concerning Debt

Debt has been a feature of human society since at least the beginning of written history. We find discussion of debt beginning as early as 2360 BC in the ancient Mesopotamian text, *Praise of Urukagina*, and later, debt laws are included in ancient Near Eastern codifications, namely the Code of Hammurabi and the Torah. The Code of Hammurabi treated debt in a very creditor friendly manner by allowing a creditor to go beyond simply seizing the assets of the debtor. A creditor could even enslave the debtor and his children, if necessary, to satisfy the debt. Additionally, we know from Biblical sources that children were frequently enslaved to satisfy the debt of their parents.

Records from Qin Dynasty China indicate that similar problems existed in the East Asia in the 4th century BC. Previous to the advent of a statesman named Shang Yang, all land was governed by the *jing* system. Essentially, under this system peasants did not own the land which they worked but they were instead allowed to keep 90% of the produce from the land which they were allotted. Shang Yang abolished this system and moved to one of individual property.

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38 *Id.* at 11. Luckily for debtors the code did limit the amount of time an individual would have to serve as a slave to three years.
39 2 Kings 4:1.
41 *Id.* at 44-45.
Additionally, he instituted a flat property tax rather than one based on produce.\textsuperscript{42} Unfortunately almost immediately after the peasants were given both the rights and burdens of individual ownership, debt became a regular feature in the Chinese economy.\textsuperscript{43} Later Chinese commentators were highly critical of this reform because of its destructive effects, namely that it resulted in so many sons and grandsons being seized by creditors to satisfy ancestral debts.\textsuperscript{44}

Originally the Greeks and the Romans had debt practices similar to those in the Code of Hammurabi and Qin Chin. Fortunately we can reconstruct with a high degree of precision the legal evolution of debt and debt succession in the Roman world because of the wealth of Roman legal documents. The Romans addressed this issue in their very first set of \textit{leges}\textsuperscript{45} the Twelve Tables, which provided that a person who had defaulted on his debt could be seized and enslaved in satisfaction of the debt.

Aulus Gellius, a Roman author of 2nd century AD, gives us a detailed description of how the process worked. After the individual had defaulted on his loan a creditor could take the debtor to a judge concerning the debt.\textsuperscript{46} If the judge found that the debt was legitimate then the debtor would have 30 days to repay the loan.\textsuperscript{47} After that time, the debtor would be brought into court again and, unless another individual should redeem him, imprisoned by the creditor.\textsuperscript{48} The debtor would then be held for 60 days during which time he would be displayed in the \textit{comitium}, or main meeting square, on three successive market days.\textsuperscript{49} During this time it was possible for the creditor and debtor to make some compromise or for a third party to redeem the

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\textsuperscript{42} \textit{Id.}
\textsuperscript{43} \textit{Id.} at 54.
\textsuperscript{44} \textit{Id.}
\textsuperscript{45} The term \textit{leges} (singular \textit{lex}) referred to written laws which were adopted through express consent of the \textit{populus} as compared with \textit{iures} (singular \textit{ius}) which was a general and pliable notion of justice mainly informed by \textit{mos maiorum}, or traditions and customs, and the rules applied by different Roman magistrates.
\textsuperscript{46} AULUS GELLIUS, \textit{NOCTES ATTICAE} 20.42.
\textsuperscript{47} \textit{Id.}
\textsuperscript{48} \textit{Id.} at 45.
\textsuperscript{49} \textit{Id.} at 47.
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debtor.\textsuperscript{50} If the creditor had not been satisfied by the end of the 60 day period, he had the right to either sell the debtor as a slave in a foreign nation or he had the right to put the debtor to death.\textsuperscript{51} Additionally, if there were multiple creditors then they could divide the body between them!\textsuperscript{52} Although it is questionable how creditor friendly his rule is, and Gellius tells us that no Roman actually made use of the capital punishment option, this legal rule is, to say the least, not debtor friendly. But, what may be even more shocking is that this debt obligation, and the liability under \textit{nexum} law, could pass from father to son.\textsuperscript{53} In principle, a son could inherit a death sentence.

Eventually the enormity of this rule became unpalatable to the Romans because of an inordinate abuse of \textit{nexum} law. In 326 BC Lucius Papirius decided to collect a debt owed to him by another man. However, this man had recently passed away leaving behind a son, Gaius Publilius, whom Papirius enslaved through the operation of \textit{nexum}.\textsuperscript{54} Livy, a Roman historian writing during the rule of Augustus, states, "Gaius Publilius surrendered himself to Lucius Papirius as a debt-slave because of his father's debt."\textsuperscript{55} Publilius suffered additional outrages since he was apparently a handsome youth and Papirius had a penchant for adolescents.\textsuperscript{56} Publilius' resistance to Papirius' amorous advances infuriated Papirius so he ordered Publilius stripped and whipped.\textsuperscript{57} During this beating Publilius manage to extricate himself and he ran to

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\textsuperscript{50} \textit{Id.} at 46.
\textsuperscript{51} \textit{Id.} at 47. It was necessary to sell the debtor in a foreign nation because a Roman could not legally hold another Roman as a slave.
\textsuperscript{52} \textit{Id.} at 49. Fortunately the law also had immunity privileges in case a creditor accidentally took too much of the debtor's body.
\textsuperscript{53} \textsc{Oxford Classical Dictionary} 758 (Simon Hornblower & Antony Spawforth eds., Oxford University Press 2003). \textit{See also} \textsc{A Dictionary of Greek and Roman Antiquities} 797 (William Smith, William Wayte & G. E. Marindin eds., John Murray 1875) and 2 \textsc{Brill's New Pauly Encyclopaedia of the Ancient World: Classical Tradition} 1094 (Francis G. Gentry ed., Brill 2007).
\textsuperscript{54} \textsc{Titus Livius, AB Urbe Condita} 8.28. Although Livy does not explicitly say that Gaius Publilius' father had died, Dionysius does. \textit{Διονύσιος Ἀλέξανδρου Ἀλικαρνασσιούς, ὁ μακαριστὸς ἀρχιερέας} 16. Additionally, Publilius' father is strangely absent from Livy's narrative. If his father had been alive he surely would have been characterized as the one leading the charge to reform the law.
\textsuperscript{55} \textit{Id.} "L. Papirius is fuit, cui cum se C. Publilius ob aes alienum paternum nexum dedisset..."
\textsuperscript{56} \textit{Id.} The term \textit{adulescens} usually refers to a person who has reached the age of 15.
\textsuperscript{57} \textit{Id.}
the street crying for help against the money-lender's lust and cruelty.\textsuperscript{58} A crowd soon formed. They were immediately moved by pity for the youth and fear that the same thing might happen to their own children.\textsuperscript{59} The crowd immediately marched down to the Senate and demanded that the law be changed. The consuls brought the proposal to the people and \textit{nexus} was forbidden.\textsuperscript{60} As Livy puts it, "In that year there was as if a new beginning of liberty created for the Roman commoners because debt-slavery ceased."\textsuperscript{61} From that time forth debt collection was limited to the \textit{bona debitoris} or the debtor's possessions.\textsuperscript{62} If Livy is to be taken at his word, this would have eliminated both debt-slavery and familial succession of debt. After this Roman heirs had a legal procedure, which the Romans called \textit{beneficium abstinendi}, which allowed an heir to refuse his inheritance if he believed the debts of the estate outweighed the assets.\textsuperscript{63}

\textbf{B. The Modern Laws Governing Debt Succession}

This limitation on the inheritability of debts is a feature of all modern legal codes. The Napoleonic Code limits an heir's exposure to a decedent's debt through what it calls the privilege of inventory.\textsuperscript{64} Under the privilege of inventory, the heir is obligated to make an inventory of the deceased's estate within three months of the opening of succession.\textsuperscript{65} Once he has completed his inventory, he has 40 more days during which to decide whether to accept his inheritance or not.\textsuperscript{66} The heir receives two benefits if he invokes his privilege of inventory. First, it is presumed that he did not mix the deceased's estate with his own and he is entitled to

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  \item \textsuperscript{58} \textit{Id.}
  \item \textsuperscript{59} \textit{Id.}
  \item \textsuperscript{60} \textit{Id.}
  \item \textsuperscript{61} \textit{Id.} "Eo anno plebi Romanae uelut aliud initium libertatis factum est quod necti desierunt."
  \item \textsuperscript{62} \textit{Id.}
  \item \textsuperscript{63} \textsc{Jane F. Gardner}, \textit{The Recovery of Dowry in Roman Law}, 35 \textsc{Classical Q.} (n.s.) 449, 452 (1985). \textit{See also} G. \textsc{Inst.} 2.158.
  \item \textsuperscript{64} \textsc{Civil Code} [C. \textsc{Civ.}] art. 793 (Fr.).
  \item \textsuperscript{65} \textit{Id.} at art. 795.
  \item \textsuperscript{66} \textit{Id.}
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remuneration for his efforts.\textsuperscript{67} Second, he is not liable for any debts beyond the amount of goods collected by him.\textsuperscript{68} This system has been adopted in several other countries including Belgium, Romania, Poland, and Colombia.\textsuperscript{69} Argentina also has adopted provisions mirroring the benefit of inventory except that there is a statutory presumption that any heir who accepts the inheritance does so under the benefit of inventory.\textsuperscript{70} Switzerland follows a similar system except that the court compiles the inventory. Once it completes the inventory an heir can know absolutely whether the assets exceed the debts.\textsuperscript{71} Once the inventory is complete the heir then must choose whether to accept or reject the inheritance.\textsuperscript{72} The Dutch Civil Code provides that a creditor only has recourse against the assets of the estate unless an heir unconditionally accepts the debt when he accepts the assets.\textsuperscript{73} In Brazil, heirs are not liable for debts which exceed the value of the inheritance but the heirs must also prove that the debts exceed the value of the inheritance.\textsuperscript{74} The heirs may fulfill this obligation by making an inventory before the distribution of assets.

Under Soviet law, heirs were joint and several debtors within the limits of the value of the property which has passed to each heir. This rule still applies in former Soviet Republics such as Kazakhstan, Uzbekistan, Russia and Armenia.\textsuperscript{75} Hungary follows similar regime. Its civil code provides that heirs shall be responsible to creditors for estate debts with the objects and proceeds of the estate up to the value of their inheritance.\textsuperscript{76}

East Asian countries typically follow the same rules as Civil Law or Soviet Law countries. China employs a variation of the Dutch regime by providing that an heir may opt to limit his

\textsuperscript{67} Id. at art. 802
\textsuperscript{68} Id.
\textsuperscript{69} CIVIL CODE art. 802 (Belg.), CIVIL CODE art. 1031 (Pol.), CIVIL CODE art. 713 (Rom.), CIVIL CODE art. 1304 (Colom.).
\textsuperscript{70} CIVIL CODE [CÓD. CIV.] art. 3363 and 3371 (Arg.).
\textsuperscript{71} CIVIL CODE [ZGB] art. 580-590 (Switz.).
\textsuperscript{72} Id. at art. 588.
\textsuperscript{73} CIVIL CODE [BW] bk. 4 art. 184 (Neth.).
\textsuperscript{74} CIVIL CODE [C.C.] art. 1792 (Braz.).
\textsuperscript{75} CIVIL CODE 1081 (Kaz.), CIVIL CODE art. 1156 (Uzb.), CIVIL CODE [GK] art. 1175 (Russ.), CIVIL CODE art. 1244 (Arm.).
\textsuperscript{76} CIVIL CODE [PTK.] art. 679 (Hung.).
liability for estate debts to the assets he receives in the succession. Japan and Indonesia follow the Napoleonic Code by adopting the provisions regarding the privilege of inventory. The Civil Code of Thailand states that heirs are responsible for the debt of the estate, but it also provides that an heir shall not be liable in excess of the property devolving on him. Vietnam’s standard is that the persons enjoying the inheritance shall have the responsibility to perform the property obligations within the limit of estate left by the decedent, unless otherwise agreed upon.

Islamic law countries have different baseline assumptions about inheritance than Civil Law countries. Under Islamic law, inheritance does not begin until after all the debts of the estate are paid and if the debts exceed the assets, the debts are ratably reduced. This system is reflected in the Iranian code which states the order in which assets are disbursed from an estate. Assets are paid out first for burial expenses, second for debts, third specific bequests and after all those are fulfilled, the residue is divided according to mandatory inheritance scheme. Egypt and Libya follow a procedure which mixes elements of Shari’ah Law with the Napoleonic Code. First the administrator draws up an inventory of the estate, then discharges the debts of the estate. If an heir takes assets before the debts are discharged he is liable for his portion corresponding to the net value of the assets he takes. Also, if a creditor was not properly notified before the distribution of the estate, he will be able to recover from the heirs but

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77 CIVIL CODE 1154 (P.R.C.).
78 CIVIL CODE [MINPO], art. 1025 (Japan), CIVIL CODE art. 1023-1032 (Indon.).
79 CIVIL CODE art. 1600-1601 (Thail.).
80 CIVIL CODE art. 637 (Vietnam).
81 MAHOMED ULLAH, THE MUSLIM LAW OF INHERITANCE 110 (Kitab Bhavan 1999) and DAVID S. POWERS, STUDIES IN QUR’AN AND HADITH 9 (University of California Press 1986). Determining the true state of Islamic law on the subject of inheritance is as difficult as any other area of Islamic law since the tradition is not centralized and changes from locale to locale, however it is fair well agreed that debts do not pass from father to son under Shari’ah law.
82 CIVIL CODE art. 869-870 (Iran).
83 CIVIL CODE art. 892 and 895 (Libya), CIVIL CODE art. 888 and 891 (Egypt).
84 CIVIL CODE art. 899 (Libya), CIVIL CODE art. 895 (Egypt).
only to the extent to which the heir benefited.\textsuperscript{85} Turkey has adopted the Swiss provisions mentioned above.\textsuperscript{86}

Common Law countries and Northern European countries follow a minority rule which limits the liability of the heirs by essentially putting an insolvent estate through bankruptcy. The German Civil Code contains provisions that an heir automatically inherits both the assets and debt of the deceased.\textsuperscript{87} However, if the heir suspects that the debts outweigh the assets then he has the right to declare the estate bankrupt, freeing himself from any liability for the debt.\textsuperscript{88} In this way, the heir is only liable for the debt to the extent that he benefits from the estate. Denmark follows a similar procedure.\textsuperscript{89} In Finland, the heirs of an estate can avoid all liability for a decedent's debts by opting to have a court appoint an executor to administer the estate.\textsuperscript{90} The most common US rule is present in the Uniform Probate Code, which has been adopted in its entirety in 15 states and partially adopted in many more. It contains exemptions for certain kinds of property similar to those found in the US Bankruptcy Code.\textsuperscript{91} Therefore, even if the estate is insolvent, heirs may still benefit from the decedent's estate. In the United Kingdom and Australia, a decedent's heirs are also protected against the insolvency of the deceased through bankruptcy proceedings.\textsuperscript{92} In India the Indian Succession Act provides that all creditors shall be paid equally and ratably as far as the assets of the deceased will extend.\textsuperscript{93} In Ghana, the same principles which have been applied in other Common Law systems is also applied. In

\textsuperscript{85} CIVIL CODE art. 901 (Libya), CIVIL CODE art. 897 (Egypt).
\textsuperscript{86} CIVIL CODE art. 619-623 (Turk.).
\textsuperscript{87} CIVIL CODE [BGB] § 1967 (F.R.G.).
\textsuperscript{93} The Indian Succession Act 1925 § 323, No. 13, Acts of Parliment, 1925.
1932 a Divisional Court in Ghana held that "liability of the family for the debts of its members belongs to another age."\(^{94}\)

C. Application to International Controversies

This survey of various legal systems has demonstrated that many archaic legal systems contained very creditor friendly rules relating to debt. The ancient rules allowed a creditor to seize not only the assets of original debtor, but even the assets of the debtor’s heirs. The creditor was so favored that he could enslave the children of the debtor even after the debtor had passed away, even if the heir did not receive any cognizable benefit from his father’s debt.\(^{95}\) Fortunately, every legal system eventually realized the great social harm which resulted from allowing an imprudent or profligate parent to destroy the finances or very freedom of his posterity. Currently every legal system limits an heir’s liability for his parent’s debt to the benefit which the heir may have derived from his parent’s indebtedness.

Having determined how various countries deal with successor debt liability on a domestic level, we now turn to examining whether the same rule is appropriate for the international system. Despite what many modern scholars may think about the propriety of applying rules similar to inheritance law in the realm of sovereign debt succession, such considerations were originally part of the justification for holding citizens liable for the debts incurred by their government. Grotius used inheritance law as his starting point when he analyzed whether a private citizen could be held liable for the debt of his country. As he states, "No man is bound by the (act) of another except he who inherits his goods."\(^{96}\) After discussing


\(^{95}\) Indeed, if poor Publilius had received any monetary gain as a result of his father’s indebtedness he would surely have had the means with which to repay Papirius. See supra 10.

\(^{96}\) Hugo Grotius, De Iure Belli Ac Pacis, bk. 3 ch. 2 § 1 (Richard Tuck trans., Liberty Fund, Inc., 2005). The translation used the word “fact” rather than “act”, however, the usage of the word fact in this text is
some thoughts by ancient authors on the subject, Grotius concluded that the whole populace could be held liable for the obligations of a country because the whole populace benefited from the creation of the obligation.\textsuperscript{97}

Since Grotius' time several judges have used the same analysis to determine whether a specific debt of a prior sovereign should pass to a successor government. \textit{Vilas v. City of Manila} is a case which clearly follows this rationale rather than the hypothecation theory. This case arose in the Philippines after the Paris Treaty ending the Spanish-American War in 1898. The Paris Treaty is a popular document in the odious debt debate since the issue of succession of state debt was vigorously debated by both the Americans and the Spanish. In the end the American delegation refused to assume Cuba's pre-treaty debt and claimed that Cuba need not assume the debt.\textsuperscript{98} However, the US did offer to assume the debt which Spain had secured in the Philippines for public improvements.\textsuperscript{99} This offer was modified to a simple cash settlement of $20 mil paid to Spain with which Spain could pay off the public debt of the Philippines.\textsuperscript{100}

After the signing of the Treaty of Paris, the Philippines passed from Spanish to American control and all of the municipal corporations were dissolved.\textsuperscript{101} Three years later, Manila was reincorporated within roughly the same boundaries as it possessed under its Spanish charter.\textsuperscript{102} After its reincorporation several individuals who had issued performance bonds to the city of Manila sued Manila to recover their money.\textsuperscript{103} Manila resisted, claiming that the Paris Treaty of

\textsuperscript{97} Id. at bk. 3 ch. 2 § 2.
\textsuperscript{98} Ludington et al., \textit{supra} note 10, at 168. Spain subsequently asked Cuba to assume some of Cuba's pre-treaty debt but Cuba refused. Similarly, Puerto Rico and the other Spanish colonies in the West Indies were declared free from any pre-treaty debt.\textsuperscript{99} See \textit{A Treaty of Peace}, \textit{supra} note 9, at 109. The amount of debt which Spain initially claimed was 200,000,000 peseta which was approximately worth $33 mil. The US was unwilling to repay the Spanish for any Filipino debts incurred to fight wars, which totaled at least $5 mil.\textsuperscript{100} \textit{EXCITING EXPERIENCES IN OUR WARS WITH SPAIN AND THE FILIPINOS} 198 and 201 (Marshall Everett ed., The Educational Co. 1900).
\textsuperscript{101} \textit{Vilas v. City of Manila}, 220 US 345, 357 (1911).
\textsuperscript{102} Id. at 354.
\textsuperscript{103} Id. at 362-363.
1898 released it from its debt obligations and placed the obligation on Spain.\textsuperscript{104} It further alleged that the dissolution of the City of Manila as incorporated under its Spanish charter also destroyed any obligations incurred under the Spanish charter.\textsuperscript{105} The Supreme Court of the Philippines agreed with the City of Manila holding that Manila was not liable for the debts, however, pursuant to the Paris Treaty, "the plaintiff may have a claim against the Crown of Spain, which has received from the United States payment for that done by the plaintiff."\textsuperscript{106} This statement reflects a strong presumption that the governmental successors to Spain were free from all debts.

However, since the Philippines were now a US protectorate and the lawsuit involved the interpretation of a treaty, the US Supreme Court had the authority to review the case.\textsuperscript{107} After reviewing the case, the Supreme Court overruled the lower court but on narrow grounds. The Court drew a distinction between two kinds of public debt in the Philippines, the debt for which Spain is liable and debt for which the municipalities of the Philippines are liable. Although the Court never stated explicitly how to determine whether the debts were Spanish debt (or a debt which did not pass to the new regime) or Filipino debt (one that did), the Court did explain why it thought the debts in dispute in \textit{Vilas} should pass to the City of Manila. The essential element of the argument was whether the successor government retained the benefit from the debt.

The Court began its analysis by examining the city charter reincorporating Manila. Unfortunately, the city charter did not discuss whether Manila would be liable for any debts.\textsuperscript{108} However, Manila was given the property of the former municipality and the ability to sue in order to enforce the rights of the former municipality.\textsuperscript{109} The Court then proceeded to state a general rule that since there was no indication to the contrary, the debts passed along with the

\begin{footnotes}
\item[104] \textit{Id.} at 355.
\item[105] \textit{Id.} at 351.
\item[106] \textit{Id.} at 355.
\item[107] \textit{Id.} at 345.
\item[108] \textit{Id.} at 354-55.
\item[109] \textit{Id.}
\end{footnotes}
property.\textsuperscript{110} With the general rule laid down, that a successor is liable for the debts associated with the property it inherits, the Court proceeded to apply it to the case before it. A man named Aguado had entered a contract with the City of Manila to provide coal for the waterworks.\textsuperscript{111} The city had a special fund set aside for the maintenance of the waterworks known as the Carriedo fund.\textsuperscript{112} When Aguado won the bid for the contract, he was required to deposit a performance bond with the city.\textsuperscript{113} Aguado fulfilled his contract and supplied coal for the city waterworks even after the US occupied the Philippines.\textsuperscript{114} After the dissolution of the old municipality of Manila, the Carriedo fund did not pass to Spanish control but instead was maintained and given to the new city of Manila after its reincorporation.\textsuperscript{115} Since the city still held the performance bond money and had received the fund dedicated to maintaining the waterworks it was deemed to be liable for the contract which was also for the maintenance of the waterworks.\textsuperscript{116}

However, there is further evidence that the rule applied in Vilas \textit{v.} Manila relies on the notion that a successor government will only be liable for debts from which it directly benefits. The Court remanded two of the claims in the case because it lacked the factual information necessary to determine whether those debts passed.\textsuperscript{117} This would have been unnecessary if the rule were merely one related to territorial succession.

Taft, in the Tinoco Arbitration, also relied heavily on the theory that the successor government should only be liable for those debt from which it derives benefit. Because of Taft's attention to detail we can recreate many of the arguments and rationale presented by both parties in addition to Taft's reasoning. Costa Rica's main justification for its repudiation of the

\begin{footnotes}
\item[110] Id. at 360-61.
\item[111] Id. at 362.
\item[112] Id.
\item[113] Id.
\item[114] Id. at 363.
\item[115] Id.
\item[116] Id.
\item[117] Id.
\end{footnotes}
debt incurred by Frederico Tinoco centered on the fact that Tinoco was a dictator ruling without the consent of Costa Rica’s people and contrary to the Constitution of Costa Rica which had been established in 1871. Taft quickly refuted the validity of this argument. He stated that to suggest there could be a revolutionary government which conforms to the previous constitution is a contradiction in terms. To forbid a government from engaging in legitimate state activity because of its provenance has not been a principle of international law. The test of a government, according to Taft, requires that "[the government has] really established itself in a way that all within its influence recognize its control, and that there is no opposing force assuming to be the government in its place." Under this standard, Taft found that the Tinoco administration was in fact the government of Costa Rica during the relevant time period.

After Taft found that Tinoco did have the power to bind Costa Rica, he specifically looked at the debt contracts and articulated a standard which determines whether a debt passes from a deposed government to its successor government. The Costa Rican government challenged two loans made by the Royal Bank of Canada ("RBC"). The first was a $100,000 disbursement to Federico "for expenses of representation of the Chief of State in his upcoming trip abroad." Tinoco used the second loan to pay Tinoco’s brother Jose Joaquin for his future services as ambassador to Italy. After identifying the loans, Taft questioned whether they benefited the populace in any way or served any legitimate government purpose. Additionally he placed the burden of proving that the loans were used for a legitimate governmental purpose on the plaintiffs, RBC. He ultimately found that the proceeds of these loans were used for the

\[118\] Tinoco Arbitration, 149.
\[119\] Id. at 154.
\[120\] Id.
\[121\] Id.
\[122\] Id.
\[123\] Id. at 168.
\[124\] Id.
\[125\] Id.
\[126\] Id.
support of the Tinoco brothers rather than the benefit of the state. Since the Royal Bank of Canada failed to prove that these loans benefited the people of Costa Rica, they should not pass to the successor government.

However, Taft's analysis and final holding go further than this and demonstrate that he truly was applying a successor's benefit test to the inheritability of sovereign debt. The government of Costa Rica took several steps to recover the funds that Tinoco brothers had embezzled. In addition to the Law of Nullities, the Costa Rican government claimed a mortgage on property which had been owned by Jose Joaquin Tinoco for $100,000, the amount he had embezzled. Since this mortgage had allowed the Costa Rican government to retain some of the benefit from the RBC loans, the government would either have to assume that portion of the debt or assign the mortgage to RCB. This rule mirrors the inheritance rules which are currently in place throughout the world.

These cases are important for two reasons. First, these cases show that courts have successfully applied a legal rule based on property succession to the issue of state debt. Second, they demonstrate the robustness of the rule proposed in this paper. As the Vilas case demonstrates, this rule is not subject to opportunistic behavior. Courts are very able to evaluate who holds assets and appraise the value of those assets. Although the court's analysis would be fact intensive, the legal analysis would be very simple and free from politicizations.

**Proposed Rule and Practical Implications**

The question remains of what should be the general contours of the legal rules governing odious debts. The rules which are most commonly suggested, called the "ex post odious loan framework", are reminiscent of the Napoleonic Code's approach towards inherited

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127 Id.
128 Id.
129 Id. at 169.
debts. Under this framework, whenever there is a regime change in a country the new government would need to conduct an inventory of all of its outstanding debts and determine whether each individual loan was used in a manner which benefitted the populace. If it finds that its predecessor secured the loan for personal enrichment or to suppress the populace then the government would bring suit before an appropriate tribunal to have these debt declared void as odious debts.

However, several commentators question whether courts could viably implement such a legal regime. The first concern stems from the debate revolving around how courts should treat sovereign defaults and more particularly partial sovereign defaults. The second concern is that since the primary enforcement mechanism in sovereign debt is reputational constraints, legal proceedings will have little beneficial impact on the repudiating state.

Sovereign debt litigation is a relatively young field and only really began in 1992 with the US Supreme Court decision, Republic of Argentina v. Weltover, in which the Supreme Court held that sovereign debt transaction were not subject to sovereign immunity and thus a nation

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130 Dörte Dömeland, Frederico Gil Sander & Carlos A. Primo Braga, The Economics of Odious Debt, in DEBT RELIEF AND BEYOND: LESSONS LEARNED AND CHALLENGES AHEAD 276 (Carlos A. Primo Braga & Dörte Dömeland eds., The World Bank 2009). The current debate has two major divisions over the scope of this legal regime. The first division is over whether the court should ask if a regime was odious rather than if a particular loan was odious. The former is referred to as an odious regime framework and the later as an odious loan framework. The second major division is over whether the odiousness of the regime or the loan should be determined ex ante or ex post. Thus there are four major proposals over what the ultimate legal regime should look like. The ex ante odious regime framework is unworkable because it is necessarily too political. Furthermore, if a regime is inclined towards odious behavior and is starved of loans then it is will likely embezzle funds from other sources like tax revenues. This would most likely lead to more suffering in the country. The ex post odious regime framework is unworkable because it run contrary to the legal principles which justify an odious debt legal regime. It would be contrary to the general principles of law and equity to allow a successor to enjoy the benefits of its predecessors borrowing without having to account for the benefit it derives. Finally, the ex ante odious loan regime is inefficient because it would place the loss from the odious loan on a party who was completely incapable of preventing the bad behavior.

131 Some commentators would include other classes of non beneficial debts such as fatuous debts, or debt incurred for costly projects which do not benefit the populace. Buchheit et al., supra note 10, at 31 and 45. See also Bonilla, supra note 96, at 17.


133 See Dömeland et al., supra note 130, at 282.
could be sued in US courts if it defaulted on its debt obligations.\(^{134}\) This paved the way for creditors to sue debtor nations if the creditor believed the sovereigns had treated it unfairly in a debt restructuring or for a creditor to hold out in restructuring negotiations in hopes of suing the sovereign later to recover its full debt rather than accept the same haircut as other creditors.\(^{135}\) This can become problematic since sovereigns cannot be forced into bankruptcy.\(^{136}\) The fallout from such cases along with Argentina’s drastic debt restructuring near the beginning of this decade has led several scholars to opine that the world needs a sovereign bankruptcy regime to prevent disorderly workouts when a sovereign repudiates some of its debts.\(^{137}\) Some commentators believe that any odious debt regime would be unworkable in the absence of a sovereign bankruptcy regime.

However, this concern is unjustified since few domestic regimes governing insolvent estates or debt succession rely on a bankruptcy code. In fact many civil codes predate bankruptcy regimes and certainly the Romans did not have bankruptcy laws. However, the concern is unjustified on other grounds as well. Under the ex post odious loan framework a sovereign would need to have its debts affirmatively absolved by a competent court. Otherwise the sovereign would undoubtedly face market sanctions. Thus, contrary to the typical problems in debt repudiation, it is likely that a sovereign repudiating an odious debt would actively seek to participate in a court proceeding with its creditors in order to legitimate its repudiation. Since courts already have the authority to rule on the legitimacy and interpretation of sovereign debt contracts, the adoption of the doctrine of odious debt would not alter any authority but simply the rules and the incentives of different parties to participate in litigation.

\(^{136}\) Bratton, supra note 132, at 827.
Second, the concern over the economic feasibility of the doctrine of odious debt is misplaced because a successor government would only invoke the doctrine when it deemed it economically advantageous, meaning that the amount of debt the successor government would escape should be greater than any costs created by the odious debt regime. Dömeland analyzes the potential economic impact of odious debt regimes by analyzing the costs associated with a conventional debt repudiation.

Dömeland identifies three classes of costs associated with repudiation. The first are political costs. In the past, these costs range from military intervention and imposed fiscal oversight to trade sanctions. However, no state has used military intervention to enforce the payment of sovereign debts since the First World War. Furthermore, Jose Martinez and Guido Sandleris have demonstrated that in the past 30 years no countries have used either overt or covert trade sanctions to pressure defaulting sovereigns into repaying their debts.

The second group of costs would be the legal costs associated with the default. Legal costs have been associated with sovereign defaults since the sovereign debt crisis in the early 1980s when sovereign debt restructurings began on a large scale. Many lawyers were necessary to restructure the faltering syndicated loans and later transform them into Brady Bonds. More recently, the Supreme Court ruling in Weltover and cases such as Elliott Associates, L.P. v. Republic of Peru and Red Mountain Fin., Inc. v. Democratic Republic of Congo & National Bank of Congo have introduced litigation costs as a meaningful part of legal costs. The dispute with Elliott Associates ultimately cost Peru over 55 million dollars in addition to...
Another such case, *Noga v. The Russian Federation*, lasted for over 13 years without a enforceable judgment and cost Noga over 40 million dollars in attorney fees alone.\(^{143}\)

The final set of costs which a nation incurs when it defaults are market related costs. This mostly occurs in the form of exclusion from capital markets while the country is in default and increased interest rates after the default is resolved.\(^{144}\) It is widely believed that the main reason why sovereigns repay their loans is to maintain access to capital markets. This access is often vital to the economy of any sovereign not so much because of the need for loans to fund infrastructure or other such projects, but for access to short term trade credits.\(^{145}\) If a country loses access to these then its economy, which is probably already in a poor state if the sovereign had to default in the first place, could be further weakened due to loss of trade revenue.\(^{146}\) Additionally, the interest rate increases which accompany defaults may initially pose obstacles to sovereign borrowing.\(^{147}\)

However, the main problem with Dömeland's analysis is that he assumes that the initiation of an odious debt repudiation would be viewed in the same manner as a traditional default. One of the purposes of the odious debt proposals is to help successor governments avoid defaults due to excessive debts which did not benefit the country. In fact, one study suggests that odious debts have a more profound negative impact on a country's economy


\(^{143}\) Dömeland et al., *supra* note 130, at 270.


\(^{145}\) Dömeland et al., *supra* note 130, at 274.

\(^{146}\) *Id*. However, there is little consensus on the extent of this harm. The best study, which examines GDP growth on a quarterly basis in both default episodes and non default episodes, claims that recessions are 3 percent deeper if they are accompanied by a default by the sovereign. Eduardo Levy-Yeyati & Ugo Panizza, *The Elusive Costs of Sovereign Defaults*, 8 (Universidad Torcuato di Tella, Centro de Investigación en Finanzas Working Paper 11/2006). However, a partial explanation to this could be that domestic financial institutions often hold significant amounts of "external" sovereign debt in their own countries. Therefore, if the sovereign defaults, those financial institutions will feel an even tighter squeeze than in a typical recession which could deepen its effects.

\(^{147}\) Dömeland et al., *supra* note 130, at 272. However, the interest rate penalties are relatively short lived.
growth and development than debt overhangs. Ideally, the adoption of an odious debt legal regime would have a normative effect which would cause lenders to view the repudiation of odious debts not as a default, but as a legitimate and normal part of governmental succession. Even if markets initially view the repudiation as a default, after the repudiation is legitimized the interest rate increases should disappear. So it is unlikely that the traditional costs which are associated with sovereign defaults would adhere to a government who pursues odious debt relief in good faith.

The only real cost of an odious debt repudiation would be the litigation expenses of the odious debt proceedings. Dömeland argues that the legal costs associated with an ex post odious loan regime would be greater than the costs associated with a typical default or repudiation. However, this is far from certain. The normative value of an odious debt legal regime would probably reduce the inclination of creditors to sue the successor government after the initial debt settlement proceedings. Not only that, it would provide clear rules which would enable different parties to evaluate their chances of success and provide a uniform regime for settling such disputes. This increased certainty would eliminate situations such as those present in *Noga*. 

Finally, in any efficient market the legal rules will place the risk of loss on those who are best able to avoid the loss or those who stand to gain the most from the risky investment. If a creditor is able to avoid internalizing the costs of its investments then the creditor is likely to engage in too much risk taking. This in turn creates a market distortion, often called moral hazard. Most commentators would agree that the circumstances surrounding the creation of odious debts is a market inefficiency. The important question is which party should bear the

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149 Dömeland et al., *supra* note 130, at 272.
150 A large amount of the legal expenses incurred in *Noga v. The Russian Federation* arose from the uncertainty of where to sue and what legal rules would govern the suit. See Dömeland et al., *supra* note 130, at 270.
loss of this market inefficiency. There are only three reasonable groups on whom the loss
should fall: the former government, the creditors or the populace. Frequently, the former
governmental leaders have disappeared leaving only the creditor and the populace. Of these
two, only the populace is clearly not responsible for the creation of the inefficiency.152 In fact,
most often this group is unable even to influence the behavior of its government. However,
ironically, this is the very group on which standard sovereign debt succession theory places the
costs.

Although the creditors only have limited ability to monitor the behavior of sovereign
debtors, they do have greater ability to prevent the misappropriation. Dömeland analyzed the
potential economic impact of placing the risk of loss on creditors. He first identifies that the
borrowing costs of countries would increase because of the increased need for due diligence.153
However, he does not identify why this is necessarily a bad thing or impractical. On a domestic
level lenders must evaluate risk, including embezzlement risk, all the time. Closer scrutiny of a
sovereign’s finances could increase transparency and thus decrease risk of embezzlement.
Additionally, these costs would most likely be borne only by those governments with unsavory
reputations.

Conclusion

Society has struggled for thousands of years with how to treat debts when the person or
entity who incurred the debt ceases to exist. In all early civilizations the initial reaction was to
hold the children liable for the debts of their fathers and even to allow a creditor to enslave the

152 Dömeland himself espouses an ex ante odious loan framework, under which a loan is declared
legitimate before it is dispersed, since he believes it will result in the greatest market efficiency.
Dömeland et al., supra note 130, at 284. However, this still creates perverse incentives for the creditor
since the creditor would not internalize the loss for his poor judgment in extending a loan to a corrupt
official.
153 Id. at 282.
children of a bankrupt decedent. However, over time each civilization and nation has realized that this practice is detrimental to the development of a peaceful society and stable economy. The Romans eliminated this practice around 2400 years ago. Since this time every other nation has adopted laws which limit a successor's liability for inherited debts to the assets which the successor inherits.

A similar problem has existed on the international level. Many dictators and other unscrupulous leaders have used their positions to personally enrich themselves and oppress their citizens only to leave their successors to languish under the onerous yoke of debts which in no way benefitted their people. It is unsurprising that the response of early international legal thinkers was the same as that of primitive societies. However, experience has shown that this uncritical response to the succession of state debts has the same deleterious effects on peace and prosperity as the outdated practices on the inheritability of personal debts in domestic law.

As the international legal system matures, the early legal doctrines must be re-evaluated and modernized to ensure a smooth and efficient legal regime. One of the methods available for this modernization is the adoption of a general principle of law and equity from the nations of the world. We know that all domestic legal systems have rejected the archaic doctrines providing for the absolute inheritance of debts. Now is the time to deal with this ancient problem on a global level by adopting the doctrine of odious debt.