What citizens owe: two grounds for challenging debt repayment

What Citizens Owe: Two Grounds to Challenge Debt Repayment*[1]

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With the dismantling of the Bretton Woods system in 1971, the global economy entered a period of increased financialization.[2] Easier access to credit resulted in increased levels of sovereign indebtedness, contributing to an ever-greater climate of financial fragility.[3] In the absence of an international mechanism to restructure sovereign debt,[4] responses to sovereign debt crises today combine several ad hoc measures. The response to Greece's sovereign debt crisis at the heart of the European Union is but the most recent example of a much more general development that has come to characterize sovereign borrowing.[5]

Amidst the many uncertainties that govern debt repayment in this highly financialized economy, one background norm remains largely unchallenged: the idea that sovereign debt must be repaid by the citizenry of the debtor country. Embodied in the legal principle of Pacta

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[2]For excellent discussions on the process of financialization, see Epstein 2005; Krippner 2011; Turner 2016.

[3]For an overview and canonical analysis of the history of financial crisis, see Reinhart and Rogoff 2009. For two excellent accounts of the relationship between financialization, greater financial fragility, and sovereign debt crisis, see Roubini and Mihm 2011; Turner 2016.

[4]Helleiner 2008.

[5]For an introduction to the responses to sovereign debt crises, see Buchheit et al. 2013.

sunt servanda, this *repayment norm* extends to present and future citizens alike, making the citizens of the debt-issuing state liable to honour the contract and service the debt the state accrued in their name.

In this article, I defend two sufficient conditions that justify challenging this repayment norm. First, I argue that citizens cease to have debt-servicing obligations if the state budget as a whole—regardless of its source—is systematically used in the interest of only a fraction of the citizenry, unless this fraction is the most disadvantaged in society. Secondly, I suggest that whenever the acquisition of further debt threatens the state's ability to act in the public interest, this offers another normative ground to challenge the repayment norm.

I proceed as follows. In Section I, I ask what makes the repayment norm intuitively forceful. While I grant that the repayment norm is normatively weighty in cases in which the contracting party is a natural person, the collective agency of the state complicates this picture. In Section II, I turn to the odious-debt doctrine as a starting point to defend the first sufficient condition to challenge the repayment norm. Section III presents and defends the second sufficient condition on the basis of which the citizens' obligations to service debt accrued in their name can be challenged. Section IV presents an ex ante and an ex post interpretation of these two sufficient conditions and Section V concludes.

I. REPAYING DEBT THAT IS NOT ONE'S OWN

Why should sovereign debt be repaid? The most intuitively plausible and powerful answer springs from a comparison often implicitly made between debt contracts accrued by natural persons and those accrued by a sovereign state. We tend to think that individuals who enter a contract must fulfil their contractual obligations, except in very exceptional circumstances. There are both deontological and consequentialist reasons that support this intuition of the sanctity of contracts.[6] We might think that it is integral to the autonomy and moral

[6]For a more elaborate account of these arguments, see Barry and Tomitova 2006; Reddy 2007.

personhood of individuals to take responsibility for their own actions, and that keeping one's promises shows respect for other persons. Additionally, we might believe that failing to uphold our contractual obligations violates a duty of fair play. These deontological considerations seem to give a prima facie obligation to fulfil past promises. Consequentialist reasons further strengthen this prima facie obligation. Keeping one's promises allows agents to enter mutually beneficial agreements and provides agents with incentives to make prudent decisions, since they know they will be held responsible for them.[7]

Many of these considerations thus rely on basic considerations of personal integrity. The purely deontological considerations, especially, seem to rely on the conception of a natural person who has an integral, temporally bounded existence. But the state is no such agent. The state is a moral and legal person in its own right, an incorporated group.[8] An incorporated group does not merely act together, but has standing decision-making procedures by which it is able to grasp reasons and form and revise its intentions. It has the capacity to make intentional choices, the ability to grasp the obligations that apply to it, sufficient authority over its members to carry out its intentions, and it can—at least in principle—act voluntarily, without coercion by an outside force.[9] Although the government—a person or group of persons who rule and administer a political community—personifies the state, the state as a legal and moral person outlives particular governments.

If one understands the state as a political association characterized by its durability, by its independence from a particular set of persons, and as a moral and legal person in its own right, the resistance of some to revoking the repayment norm becomes easy to understand. For challenging the repayment norm would threaten not only the practical viability of any

[7]For a more extensive justification of this point, see Reddy 2007.

[8]Stilz 2011.

[9]Ibid.

form of sovereign borrowing and lending, but the very existence of what we have come to understand states to be.

The complex, collective agency of the state complicates the picture that the analogy to individual cases of debt acquisition paints. When stating that a state accrued debt, what we are actually saying is that finance ministers or other public officials within the executive branch of government decided either to knock on the door of private banks (private sovereign debt), governments (bilateral sovereign debt), or other multilateral institutions (public sovereign debt) or to sell bonds on private financial markets (again to either public or private creditors). It is in virtue of their role as legitimate public officials that the acts of these individuals become the state's responsibility. Debts incurred by legitimate state officials are then treated as an obligation of the state.[10] When, in turn, a new government comes to power, all the debts that were the obligations of the previous regime are treated as the new government's obligations. Present and future citizens are then burdened with debt-servicing obligations.[11]

The morally relevant disanalogy between individual debt contracts and sovereign debt contracts is that, in the former case, the same agent borrows and services the debt, whereas, in the latter, state officials at one point in time accrue debt that the citizenry—which is distinct from both state officials and the state—has to service at a later point.[12] The question that

[10]This formulation assumes the 'fictional conception of the state', according to which the state is distinct from both the rulers and the ruled; Skinner 2009, p. 347. A representative of the state is a person who takes upon herself the artificial role of speaking or acting in the name of the state.

[11]In this article, I bracket questions relating to intergenerational justice in debt repayment. For excellent discussions on this, see Gosseries 2007; Reddy 2007.

[12]For a detailed discussion of this, see Wollner's article in this issue.

springs from this disanalogy is thus: what normative link justifies burdening citizens with debt-servicing obligations for a debt they themselves did not accrue?[13]

Before starting to answer this question in the next section, let me respond to a possible objection raised against formulating it in this way: that the question of legitimate debt-servicing is only a subset of the more general question of legitimate taxation. Since one mechanism by which states pass on debt-servicing obligations to citizens is taxation, it can be argued that one should focus on the more general question instead; for taxing to repay sovereign debt is only a special application of the general principle of legitimate taxation. Conversely, if one still chooses to begin with the question of legitimate debt servicing, then whatever answer is given to this narrower question also needs to be plausible as an answer to the broader question of legitimate taxation.

While I acknowledge that the state uses taxation to impose debt-servicing obligations on its citizens, I want to resist the conclusion that the question of legitimate debt servicing is simply a subset of the question of legitimate taxation. First, other ways of passing on debt servicing exist. A state 'raises revenues to service its debt (*at least in part*) from taxes imposed

[13]Were one to adopt not the fictional conception of the state, but the 'modern' or 'reductionist' conception, the argument runs slightly differently. According to the modern conception, the state simply denotes 'the individual person, or the body of individual persons, which bears the supreme powers in an independent political society'; Skinner 2009, p. 356. The representatives of the state simply *are* the state. According to this conception, individual and sovereign debt are thus analogous in that it is one and the same agent (the state) who accrues and services the debt. Note, however, that the same question arises. For even if the state is the primary bearer of the obligation to repay debt, the state can only service its debts by taxing its citizens. The question thus becomes: when can the state legitimately burden its citizenry with debt-servicing obligations via the collection of taxes? I am grateful to the editors of the *Journal of Political Philosophy* for pointing this out.

on citizens and other subjects taxable by the government'.[14] Secondly, just because many domains exist in which normative questions arise that are ultimately connected to taxation—questions relating to jus ad bellum or migration management, to name but a few—this does not make such questions merely subsets of the broader question of legitimate taxation. For particular characteristics of the different domains affect the answers given to the specific normative questions that spring therefrom.[15] Nonetheless, as will become clear as I proceed, the answer I provide to the narrow question of legitimate debt servicing is similar to reasonable answers given to the question of legitimate taxation.[16] Thus, whether one sees the question of debt servicing as connected to, yet independent from, the question of legitimate taxation or merely as a subset of it, one can still agree with the argument put forward here.

II. THE USE OF DEBT IN THE PUBLIC INTEREST

We saw how the complex, collective agency of the state questions the intuitive appeal the repayment norm has in cases in which the debtor is a natural person. In this section, I outline and defend one sufficient condition that justifies challenging the repayment norm. I argue that citizens cease to have debt-servicing obligations when the state uses its available budget

[14]Barry and Tomitova 2007, p. 52, my emphasis. This is acknowledged even by those who see the question of debt servicing as a sub-question of the one of legitimate taxation. 'To be sure, states have other ways of raising revenue or lowering their debt burden, e.g., by selling off public assets or by inflating their currency'; (Wollner, 2017, p.9)ADDED, though this is the reference to the online publication. The article will only be published in this issue, but I don't know what the page number for that is going to be.

[15]In Section III, I argue that one of the features of sovereign debt that makes the question of legitimate debt servicing specific is that high indebtedness of states may undermine their ability to act in the public interest.

[16]See Wollner in this issue.

to systematically act in the particular interest of only a sub-group of its citizenry. To make this argument, I first introduce the odious-debt doctrine, since it succinctly formulates a sufficient condition to challenge the repayment norm. Then I propose and defend two distinct changes to the sufficient condition, as formulated by this odious-debt doctrine, and consider objections.

The odious-debt doctrine offers a promising start to answer the question of when citizens can, and when they cannot, be legitimately burdened with servicing a debt accrued in their name. First developed after the Spanish–American War of 1898, and later formalized by Alexander Sack in 1927, the classical legal doctrine of odious debt has proven hugely successful in challenging the repayment of debt accrued by autocratic regimes.[17] The doctrine consists of two provisos, the first focusing on the nature of the regime that contracted the debt (the regular government proviso), and the second concentrating on the purpose and use given to the debt accrued (the public interest proviso). While disagreements prevail regarding the definitive interpretation of Sack's classical doctrine, agreement exists regarding the normative relevance of the second proviso.[18]

[17]For an excellent analysis of how the enforcement of the repayment norm changed over time, see Lienau 2014. Lienau discusses how, before the Second World War, the repayment norm was challenged in a broad set of cases by debtors and creditors alike, but since then only in cases of regime change (from autocratic to democratic governments).

[18]According to Sack, both provisos are sufficient conditions. That implies that 'if a debt was in fact incurred to benefit the people, then it should not be considered odious even if it lacked popular consent'. In contrast, Gosseries (2007) shows that while the second proviso alone may be sufficient, the first proviso alone is not; it is the second proviso that does the normative heavy lifting. Despite this disagreement, scholars working with the odious-debt doctrine agree that, from a normative standpoint, the second proviso is the more significant one; Toussaint 2016. It is this second proviso that I focus on in the succeeding discussion.

According to the public interest proviso, debts 'must have been contracted, and the money raised through it, used to care for the needs and in the interests of the State'.[19] Thus, the answer that the second proviso of the odious-debt doctrine would provide to the question that concerns us here is the following. Whenever the state fails to contract the debt and use the money raised through it in the public interest, citizens cease to have debt-servicing obligations.

So far, the doctrine's second proviso has been interpreted as saying something about the scope of authority of the public officials accruing the debt. Iff the public official acted within the scope of her authority when accruing and spending the money, then the debt is legitimate and citizens have debt-servicing obligations.[20] By contrast, if the public official exceeded the scope of her authority, the debt is odious and citizens cannot be legitimately burdened with debt-servicing obligations.

One of the strengths of this interpretation is that it remains fairly restrictive in its assessment of what constitutes odious debt, limiting the number of cases in which the repayment norm is challenged. This is important, since many proponents of the doctrine take its main strength to be that it can serve as a public standard; they want the doctrine to be immediately applicable, allowing us to discern in practice which debts ought to be repaid and which not. At the same time, this narrow interpretation of the doctrine comes at the price of excluding cases from normative challenge, where the enforcement of the repayment norm seems intuitively doubtful. Cases such as those triggering most debate in the latest sovereign debt crises in Europe, for instance, are excluded from scrutiny: cases in which the lower and middle classes bail out private creditors for their excesses in boom times, through austerity

[19]Sack, translated by Gosseries 2007, p. 101.

[20]Dimitriu (2017) has defended this argument by extending the principles of agency law in the domestic arena to the international domain of sovereign lending.

measures in the debtor countries, and through international 'solidarity packages' from other countries.

In what follows, I propose an alternative, broader interpretation of the second proviso than that focusing on the scope of the authority of public officials. The aim of this broader interpretation is to make sense of our intuition that there is something wrong with the way in which the most vulnerable groups in society have been burdened with debt-servicing obligations in cases such as the recent European crisis. While this makes the odious-debt doctrine less readily applicable, I think that much value resides in understanding why we hold the intuition that there is something wrong with holding citizens responsible for servicing debt that was not spent in their interest. Rather than providing a public standard that is readily applicable, I intend to give a principled answer to the question of when the repayment norm ought to be challenged, and when citizens can no longer be legitimately burdened with debt-servicing obligations.[21]

[21]This is not to say that the philosophical argument made here may not, in the end, inform a public standard. To do so, however, other relevant considerations will have to be evaluated first. One of the most crucial considerations (which I bracket by focusing exclusively on the debt-servicing obligations of the citizenry), for instance, is the question of the legitimate claims of creditors. Something that the odious-debt doctrine successfully captures is that it matters normatively whether creditors borrowed money in good or in bad faith. The argument runs as follows: to the extent that creditors did not know, and could not possibly have known about the illegitimate purposes to which a debt contract was put, lenders still plausibly hold a claim of restitution against the debtor state; Dimitriu 2017, p. 91. This is a reasonable argument to make, and I consider its implications in Section IV. Were I to have the ambition of turning the philosophical answer provided in this article into a public standard, however, I would have to address the question of how the legitimate claims of the creditors are to be weighed against the legitimate claims of the debtor in a much more extensive manner. I hope to provide a reasonable answer to this question in a future article.

To begin offering this alternative, broader interpretation of the second proviso, let us briefly examine why states accrue debt. When the 'public interest' is invoked in the context of the acquisition and investment of sovereign debt, examples such as the waging of a just war or the building of dams come to mind. The state can be said to accrue and use debt in the public interest when it invests the attained resources in common goods. But how representative, really, are prototypical examples such as the building of a dam or the fighting of a just war? What do states accrue debt for?

Debt can be accrued to meet whatever expenses the government has. Most commonly, it is accrued with the aims of repaying old debt, covering a deficit, stimulating the economy, or developing new sectors.[22] In principle, states could also use other fiscal or monetary policy levers to pursue any of these goals. In terms of fiscal policy, they could increase their revenue by increasing taxes, or they could lower their expenditure (via adjustment and austerity policies). In terms of monetary policy, they can (via the central bank, whose real and formal independence varies across countries) make use of the printing press to stimulate the economy or pay their deficit, or lower interest rates (thereby giving agents incentives to spend, rather than save, and stimulating the economy via private credit).

Using each of these levers carries a certain cost for different groups of the population, however. We can think about domestic groups along two axes: classes or sectors. Whereas sectors demarcate particular branches of a national economy (telecommunications, banking, industry, agriculture, and so on), classes are social divisions based on social and/or economic status.[23] Now, who is affected by tax rises, for instance, depends on the concrete tax reforms

[22]Bucheit et al. 2013.

[23]I intentionally adopt a non-technical definition of class that resembles its common usage. For an excellent discussion of different ways of understanding class, see Wright 2015. Wright establishes a typology of three different forms of understanding class: namely, one which defines class in terms of individual attributes and definitions (the stratification approach); a second which thinks about class in

made, by how progressive or regressive the tax system is in relation to class, or whether particular sectors are taxed more than others. Adjustment will largely affect the lower and middle classes, those who rely on the public services offered by the state.[24] In terms of monetary policy, a devaluation of the currency might strengthen the export sector, although a very unstable exchange rate is harmful for all sectors across the board. Devaluation also harms those sectors relying on imports, as they become more expensive. Finally, lower interest rates can help stimulate the economy, replacing public spending with private credit, but also risks damaging consequences, as with the effects of all the easy money flowing into the housing market in the world's capitals today.

We gain two main insights from looking at the actual reasons governments have to accrue debt, which translate into two central modifications I propose to make to the public interest proviso. First, we learn that it would be both difficult and misleading to separate the discussion of the use given to sovereign debt from a broader discussion of the use of the state's budget. Money is fungible, and the debt accrued by the state is only a portion of the budget that the state has at its disposal (fiscal and monetary policy levers generating the rest). The fungibility of money makes it extremely cumbersome (and maybe even practically impossible) to trace the use given to the money raised with each individual debt contract. More importantly, from a normative standpoint, the source of the money seems irrelevant. What is normatively relevant is not with what purpose each (individual) debt contract is accrued and ultimately invested, but whether the state promotes the public interest.

Taking the fungibility of money seriously thus requires reformulating the public interest proviso in the following manner. If the state, *with all its available budget*, strives to serve the public interest, then the citizenry has debt-servicing obligations, regardless of the

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terms of a variety of opportunity hoarding (the Weberian approach); and a third which defines class in terms of mechanism of domination and exploitation (the Marxist approach).

[24]For an excellent account of the classist character of adjustment policies, see Blyth 2015.

use to which the (individual) debt contracts has been put to use. Conversely, if a state is sufficiently unjust, its citizens are not obliged to repay debts, regardless of the use made of the borrowed money.

A second insight we gain from looking at the actual reasons governments have to accrue debt is that invoking a general notion of the 'public interest' is more complicated than idealized examples, such as the waging of a just war or the building of dams, would initially suggest. Most decisions made by the state (over and above decisions such as the enforcement of the law) are not equally in the interest of all citizens. Behind the 'hidden abode' of a very vague and generic invocation of the 'public interest', we actually have three sorts of cases. At one end of the spectrum, we have cases such as the dam example, in which the government accrues and uses the debt for things that are truly in the public interest, where public interest is understood as the 'general interest' that stands above the particular interests of different sectors and classes. At the other end of the spectrum are those cases in which the government accrues and uses the debt for particular interests. Sitting in the middle are those cases in which the government accrues and uses the debt for things that are in the interest of all on some (minimal) level, but track the interests of some more than others, creating clear winners and losers.[25]

It is my contention that most of the things that the state does fall into this third category. Nearly everything that the state does, its actions and its omissions, inevitably creates

[25]Critics who are particularly sceptical of the existence of truly general interest may think that even idealized examples of common goods are actually cases that track the interests of some more than others. It can be argued, for instance, that even in the dam case there are clear winners, namely those sectors of society that are more dependent on water and electricity. My overall argument should still be convincing for those who reject the existence of a general interest as such. For I argue that states must act in the interest of different sectors and classes in a minimally just way.

winners and losers.[26] Beyond a very minimal provision of a general interest (in public safety, for instance), the state always positions itself to promote the particular interests of different sectors and classes.[27] This is true for decisions made regarding debt, and it is equally true for decisions concerning the other policy levers. The stabilization of the currency is a good example of this. On the face of it, a stable exchange rate is something that all sectors benefit from across the board. But if one looks behind this thin façade, there are clear winners and losers. If the currency is kept at a competitive rate, say, this will benefit the export sector, while harming those industries heavily relying on imports. Thus, keeping the currency competitive may benefit most, but some more than others, while also creating clear losers.

The suggestion that most of what the government does (when accruing debt as well as when using any of the other policy levers) leads to the creation of relative winners and losers is not a particularly contentious claim. So far, however, this basic insight has not been accounted for when specifying the second proviso. Recall that, according to the narrow interpretation of the second proviso of the odious-debt doctrine, citizens cease to have debt-servicing obligations if the money accrued by the debt was not used in the public interest.

[26]For a mathematical defence of the argument that sovereign debt will inevitably benefit some citizens more than others, see Reddy 2007. Reddy shows how the extent to which each individual citizen benefits from the resources gained by accruing the debt, as well as the extent to which they will have to carry the costs of debt repayment, differs depending on the timing of individual lives and variation in the extent to which individual persons experience increased advantage as a result of the resources gained through the acquisition of debt.

[27]Let me clarify how I use the different understandings of 'interests'. I use 'particular interests' for the interests of different groups of the citizenry, such as different classes or sectors. I use the term 'general interest' for those that stand above the particular interests of different sectors and classes and are truly shared by all groups of the citizenry. Finally, as will become clearer as I proceed, the notion of public interest I adopt is not to be conflated with general interest, but is a minimally, relationally just balance between the particular interests of different groups of the citizenry.

What I suggest by opening the black box of 'public interest' is that it is not enough to implicitly rely on a notion of public-interest-as-general interest—a public interest that stands above the particular interests of different classes and sectors of society. Instead, to determine whether citizens can be legitimately burdened with debt-servicing obligations, one also needs to look at the extent to which the state serves the particular interests of different sectors and classes.

Recognizing that it is a simplification to assume that the state can always act in the public-interest-as-general-interest leads me to propose the following standard to question the repayment norm. If the state systematically acts according to the interests of only a fraction of its citizenry, unless this class is those who are disadvantaged in society, the repayment norm can be challenged and citizens cease to have debt-servicing obligations in virtue of their membership in the state.

The addition 'unless this class is those who are disadvantaged in society' is important here. Without this clarification, following the logic of the revised proviso would force us to conclude that states that meet some more demanding standard of social justice—like the difference principle—actually fail to meet the standard of the proviso and are thus unable to legitimately burden their citizenry with debt-servicing obligations. Adding this caveat avoids us having to reach that implausible conclusion.

It also emphasizes the importance of keeping separate that which is required to meet the minimal standards of the proviso, and meeting more demanding social justice principles. Keeping these two standards separate is crucial for adopting a very demanding standard of social justice (such as 'everybody winning equally with every state action') and making debt repayment dependent on that would disregard the insight just won. It would simply be impossible to meet, since (nearly) all cases of state action or omission create winners and losers. Of course, this is not to say that it is undesirable for the state to meet more demanding

principles of social justice. But the obligation to service debts should not be dependent on the state meeting these more demanding principles. [28]

In sum, I therefore propose to revise the narrow public interest proviso of the odious-debt doctrine in the following way:

> *The narrow public interest proviso I revise*: citizens cease to have debt-servicing obligations whenever the state fails to contract the debt and use the money in the public interest.
>
> *The broad public interest proviso I defend*: citizens cease to have debt-servicing obligations when the state uses its available budget to systematically act in the particular interest of only a sub-group of its citizenry, unless this sub-group is those who are most disadvantaged in society.

Normatively trained scholars may rightly argue that more needs to be said to establish where exactly the boundary lies between cases where the promotion of particular interests is

[28]Those who maintain that the question of debt servicing is only a subset of the question of legitimate taxation would have reason to agree with this conclusion. They would accept that whatever standard one adopts for the narrower question of debt servicing also needs to be adopted as a standard for the broader question of legitimate taxation. Adopting a very demanding social justice standard for legitimate debt servicing would thus force us to conclude that a state can only tax if it meets a very demanding standard of social justice. To avoid this implausible conclusion, those who see the question of debt servicing as a subset of the question of legitimate taxation adopt a minimal standard to determine debt-servicing obligations, in line with what is argued here. In defence of his own theory of 'legitimate taxation', Wollner argues that the state only has a right to tax its citizens to repay debt if 'it effectively delivers at least minimal standards of social justice'; Wollner forthcoming.

sufficiently balanced to ground debt-servicing obligations and those where it is so unequal as to make debt non-binding. I think that this is a difficult but valuable exercise, and that there are potentially two (compatible) routes to do so. First, one could specify where the boundary lies by introducing a substantive standard. Using Walzer's distinction between monopoly and dominance could be one strategy. It could be argued, for instance, that the actual pattern of relative wins and losses of the different policies adopted by the state need to vary over time in such a manner that there are no dominant classes or sectors. A dominant class or sector would be one which can command control not only within one sphere of distribution (monopoly), but across different spheres (dominance).[29] What this substantive standard rightly emphasizes is that what is at stake here is not that the state meets some sufficientarian standard of distributive justice, but that it considers the particular interests of all classes and sectors of society. Secondly, one could specify where the boundary lies by introducing a procedural standard. According to such a procedural standard, a state could legitimately tax its citizens to service debt to the extent that the different classes and sectors have a fair opportunity to contest the use to which resources are put.[30]

What these two potential routes suggest is that the philosophical debate regarding how to distinguish cases where the state is sufficiently receptive to the interests of different sectors and classes of society to legitimately burden its citizens with debt-servicing obligations from those in which it cannot legitimately do so is far from settled. This does not, however, deprive us of the ability to recognize cases in the real world where the reformulated second proviso is being violated. There will be convergence of different standards in at least some

[29]Walzer 1983, p. 10.

[30]This could be modelled in line with Michelman's (1967) proposal; I am grateful to Steven Winter for this suggestion. A limitation of the procedural standard comes from the restricted ability of the lower and lower middle classes to actually impose their view, even when they are the majority. For a version of this argument, see Shapiro 2002; I thank this journal's anonymous referees for pointing this out.

negative sense. Enough empirical evidence exists to suspect that any plausible standard—whether substantive or procedural—would converge on ruling out the same set of (empirically significant) cases.

In recent years, political economists have gathered disheartening evidence that suggests several states are directly implicated in advancing the interests of a financial elite over those of the more vulnerable sectors and classes of society. According to Hacker and Pierson, the rising share of income for the wealthiest is explained by an 'organized combat' fought by the wealthiest. [31] Their main thesis is that there is a feedback loop in which the super-rich can use their capital to buy themselves political influence, which in turn generates further top income gains for them. Much of this 'organized combat' takes place outside the public gaze, where paid lobbyists use the money of the wealthiest to influence political decision making. Since backroom deals rather than elections secure policy agendas, voting today is devoid of meaning and becomes an 'electoral spectacle' at best.[32]

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[31]Hacker and Pierson 2010.

[32]For Piketty, inequality is not the result of organized combat, but the mechanical result of forces for divergence inherent to capitalism, which can be expressed by a series of 'fundamental laws' (most famously, r>g) that lead the share of capital to tend to rise, all else equal. This structural explanation is often combined with a more ideational explanation, where a particular set of ideas is set to drive the creation and instantiation of a particular set of structures, which benefits some more than others. Political ideas are deployed that favour unfettered markets. Over time, these ideas produce self-perpetuating structural advantages for the richest and these advantages are then justified by invoking the very same ideas that helped bring them about. The financialization of the British economy is explained in this manner; see Hopkin and Lynch 2016. Despite differences in their explanatory theories, contemporary political economists agree in their interpretation of the descriptive evidence that the wealthiest one percent is increasing its share of income at the expense of the rest and of the implication of the state therein.

The 'Winner Takes All' political landscape suggests that, in the radically unequal world in which we live today, there are cases in which the profile of state expenditures is such that it systematically tracks the interests of a particular class—the financial elite—failing to consider the interests of different sectors and classes of society. Proving this in concrete cases requires a level of empirical detail that would hijack the discussion that concerns us here.[33] The crucial takeaway point is that, whenever this can be proven empirically, there is a normatively important reason to question the state's ability to legitimately pass on debt-servicing obligations to the citizenry via the collection of taxes.

The two key claims defended in this section are thus the following. First, due to the fungibility of money, the relevant question to determine the citizens' obligation to service debt is not how the money raised via a concrete debt contract was used, but about the use of the state budget overall. Secondly, since the citizenry is composed of different sectors and classes with distinct particular interests, to determine the citizenry's debt-servicing obligation one needs to pay attention to the question of whose particular interest the state acted in. Taking these claims into account results in the following reformulation of the second proviso. Citizens cease to have debt-servicing obligations if the state budget as a whole, regardless of its source, is systematically used in the particular interests of any sub-group of the citizenry who are not the worst off.

III. HIGH SOVEREIGN INDEBTEDNESS AS A THREAT TO THE STATE'S ABILITY TO ACT IN THE PUBLIC INTEREST

Having argued for the broadening of the odious-debt doctrine's second proviso in line with the two modifications defended above, I now argue that an extra normative reason exists that justifies questioning the state's ability to legitimately burden its citizenry with debt-servicing

[33]For a discussion of the variations in how the Winner Takes All logic applies empirically to different advanced economies, see Matthijs 2016.

obligations. My starting point is the insight that high sovereign indebtedness may inhibit the state's ability to act in the public interest. Against this backdrop, I argue that, whenever the acquisition of further debt threatens the state's very ability to act in the public interest, this is a ground to question the citizens' obligation to service that debt.[34] Whereas the revised proviso defended in the preceding section focuses on the *actual use* the state makes of the state budget, the sufficient condition defended here draws attention to the state's *very ability* to act in the public interest.

Over the course of the postwar period, the state in advanced economies had assumed the responsibility for providing direction to the economy and for managing the social consequences of growth.[35] But as growth slumped and unemployment grew, fulfilling these obligations became ever more challenging and the state was threatened by the eruption of a 'triple crisis'.[36] First, a social crisis loomed large on the horizon, as distributional conflicts heightened over a pie that was no longer expanding at the same pace. Secondly, the state faced a fiscal crisis, as the state's tax revenues ceased to be sufficient to cover its expenditures. Thirdly, a legitimation crisis became ever more likely, as the state feared having to adopt politically costly austerity measures to bring expenditures in line with its revenues.[37]

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[34]The normatively interesting case is the one where state A at T1 is able to act in the public interest but, due to the acquisition of further debt, becomes unable to do so at T2. The case where state B is initially unable at time T1 to act in the public interest due to over-indebtedness is less interesting, since it is no other than state A at T2. It follows that if citizens of state A at T2 do not have debt-servicing obligations, the same applies for state B at T1.

[35]For an analysis of this argument for the US, see Krippner 2011. For a defence of this argument for Western Europe, see Streeck 2013.

[36]Krippner 2011.

[37]While for Marxist scholars the legitimation crisis exposed the real nature of the state as a servant to the interests of the capitalist class—a capitalist state that had to shield its role in supporting capitalist

Turning to finance offered a temporary way out of this triple crisis for advanced economies after the breakdown of the Bretton Woods agreement in August 1971. Wanting neither to put a more progressive tax system in place, nor to lower expenditure, the state saw the adoption of policies that allowed both the state and consumers to borrow on private financial markets as an attractive solution.[38] The choice to turn to finance to avoid the triple crisis, instead of increasing taxes for higher-income brackets, can already be interpreted as a political positioning in defence of the interests of the financial elite. Once the financial elites started extending credit to their own, and to other people's, governments, the grip they had on states' policy agendas was reinforced, for they attained a new form of claim on states; one based on commercial contractual agreements.

The turn to finance thus comes hand-in-hand with the rise of what Streeck calls a 'second constituency' of the modern state. This second constituency is the untaxed financial elite that became the state's creditors.[39] As a second constituency, the financial elite attains contractual claims that the debtor state must consider, and whose interests may stand in

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accumulation by engaging in various forms of social spending (Habermas 1973; Offe 1974)—non-Marxist scholars held that the origins of the legitimation crisis lay in the democratic polity; Bell 1976.

[38]Interestingly, the turn to finance and the move away from a 'tax' to a 'debt' state was a choice made across partisan divisions and by political leaders across the political spectrum. Hopkin and Lynch (2016) show, for instance, how financialization in Britain was not only the outcome of policies adopted under the Thatcher government, but continued under New Labour. For an analysis of the variation in the extent and manner in which advanced economies turned to finance, see Matthijs 2016; Solt 2016Sorry, this was my mistake. I checked again and they ask to cite it as "2016"I have also changed the reference below. . For an account explaining the distribution of income and political influence in Europe from a traditional 'varieties of capitalism' perspective, see Hall and Soskice 2001. For different accounts explaining the variation within Europe in today's Winner-Takes-All political scenario, see the special issue of *Politics and Society* (2016) entitled 'The New Politics of Inequality in Europe'.

[39]Streeck 2013.

conflict with the state's citizenry, whose claims on public policy are predicated, not on a commercial contract, but on their membership of the state as a political community. The dilemma that the debtor state may face, then, is trying to satisfy these two different constituencies at the same time, both of which operate on the basis of incompatible logics.

What the most recent crises in advanced economies revealed is that, in moments in which the state is no longer able to satisfy both constituencies, it chooses to prioritize the interest of the financial elite, as the state's domestic and international creditors, over that of its citizenry.[40] This prioritization is manifested in policy, through the implementation of austerity measures in the debtor state, the full repayment of creditors, and the acquisition of further debts to pay off old, maturing loans and bonds.

One important insight that this analysis reveals, then, is that in order to defend the repayment norm—in order to insist, that is, that sovereign debts must always be serviced by the citizenry of the debtor state—it is not enough to simply point to the sanctity of contracts. Rather, the contractual claim that the creditors hold must be seen in relation to, and weighted against, the claim that citizens have, in virtue of being part of the state as a political community. The conflict of interests between the first and the second constituency of the state highlights the importance of not seeing the contractual claim of creditors in a vacuum, but of considering the weight of such claims in today's real political landscape, one in which the interests of the citizenry may be opposed to those of an international financial elite.

The concern that heavy indebtedness by a sovereign state may be inimical to the state's responsiveness to the interests of its citizenry is not a distinctly contemporary contention. Several Enlightenment thinkers voiced these concerns very explicitly. Hume famously stated that 'either the nation must destroy public credit, or public credit will destroy the

[40]Streeck refers to this prioritization of the second over the first constituency as the transition from the 'debt state' to the 'consolidation state', the main objective of the consolidation state being to reassure creditors that they will be repaid; ibid., p. 154.

nation'.[41]Sieyès was hostile to the entire idea of sovereign debt and favoured a stronger system of taxation to finance public expenditure.[42] He considered the rejection of public credit fundamental to a truly responsive constitutional government. The concern that Hume and Sieyès shared was that sovereign debt 'could make government officials over-attentive to the needs and desires of creditors … This dependence would render the state less responsive to true public need and neglectful of the greater national interest'.[43]

The arguments of such diverse scholars as Hume, Sieyès, and Streeck highlight that there are no coincidental reasons why highly indebted states may be unable to act with the interest of the first constituency at heart, for the acquisition of sovereign debt may progressively undermine their ability to do so. This is partly a matter of distribution. It concerns the question of how much of the state's budget is devoted to honouring contractual obligations to its creditors, and how much is devoted to meeting the legitimate claims of its citizenry. The more indebted the state is, the larger will be the portion of the budget that will have to be devoted to repaying its creditors, and the more difficult it may become for the state to meet the legitimate claims of its citizenry. The central worry is not a distributive one, however, but speaks to the state's responsiveness to the interests of its citizenry. The main concern seems to be that the highly indebted state will lose its ability to act in the name of the citizenry it allegedly represents; the dependence on its 'second constituency' thus threatening the state's very raison d'être.

The insight that high sovereign indebtedness may inhibit the state's ability to act in the public interest points to an additional normative reason which justifies challenging the legitimacy of the state to pass on debt-servicing obligations to its citizenry. The idea is that

[41]Hume,1752, in Hont 2005, p. 325.

[42]Sieyès 2003. ORIGINAL PUBLICATION DATE IS JANUARY 1789, but I have read and worked with the cited version

[43]Lienau 2014, p. 47.

whenever the acquisition of further debt threatens the state's ability to act in the public interest—as understood here—this is a ground to question the citizens' obligation to service that debt.[44] While the revised proviso of the odious-debt doctrine thus focuses on the *actual use* the state makes of its budget, the sufficient condition defended here draws attention to the state's *very ability* to act in the public interest.

Let me make three additional clarifications to avoid possible objections. First, arguing that the acquisition of sovereign debt may progressively undermine the ability of the state to act in the interest of its citizenry does not entail that the acquisition of sovereign debt is problematic as such. This is where my argument comes apart from that of Hume and Sieyès. From a normative perspective, borrowing might be justified in terms of distributive justice, the same way discounting is—if the future will be richer than the present, debt is a way of transferring money from the rich to the poor. From an economic perspective, debt contracts can be justified, since they mobilize credit. In contrast to equity contracts, in which the returns of the investor depend on the success of the enterprise being invested in, debt contracts promise a fixed return. Without this promise, not enough capital would be available.[45] It is difficult, for instance, to imagine the development of the British railway system, as well as the industrial development that was fuelled by it, without debt contracts.[46] Similarly, developing states can be said to accrue debt today, to make the large investments needed to change the structure of their economy, climb up the value chain of production and service provision, and generate greater economic growth. The problem, then, is not one with debt and credit per se, for debt

[44]To be clear, this is not a question of debt sustainability—of how much debt a state can accrue before it will be unable to service it—but a question of how much debt the state can accrue without losing its ability to act in the public interest of its citizenry.

[45]Turner 2016, p .6.

[46]Ibid., p. 35.

may be economically productive and normatively defensible. The problem, instead, seems to be with the quantity and the allocation of debt.

Secondly, one important aspect of Streeck's account that needs to be emphasized is the class-specific nature of his analysis. Although Streeck talks about 'constituencies', it would be an oversimplification to think about the first constituency as a homogenous citizenry. If the discussion surrounding 'public interest' revealed anything at all, it is that it is misleading to assume that a robust general interest of the state's 'first constituency' exists that can be sacrificed in the name of the state's 'second constituency'. What we witness in the cases that Streeck describes is a prioritization of the interests of that portion of the financial elite that became the creditors of that particular state over the interests of that portion of the state's citizenry that is most reliant on public services.[47]

Thirdly, the alleged opposition between the particular interests of the financial elite qua creditors and the middle- and lower-income classes of the debtor state needs to be qualified. In the same way as I did not intend to suggest that there is no such thing as a general interest, but simply argued that, in most cases, whatever the state does creates relative winners and losers, it would be an oversimplification to maintain that the interests of the financial elite and the debtor state's middle- and lower-income classes are always opposed to one another in

[47]For an excellent account of how and why adjustment policies are class-specific policies, see Blyth 2015. The policy of cutting inflation, for instance, is best thought of as a class-specific tax, since it targets the interest of creditors over that of debtors. 'When "too much money" chases "too few goods"—an inflation—it benefits debtors over creditors since the greater the inflation, the less real income is needed to pay back the debt accrued … The politics of cutting inflation therefore take of the form of restoring the "real" value of money by pushing the inflation rate down through "independent" (from the rest of us) central banks. YOU WERE RIGHT ABOUT EVERYTHING EXCEPT THE "TAKE OF", WHICH FOR WHATEVER REASON SEEMS TO EB WRONG IN THE BOOK… Creditors win, debtors lose. One can argue about the balance of benefits, but it's still a class-specific tax'; Blyth 2015, p. 19.

a zero-sum logic. Austerity policies, for instance, are not only adopted to meet the conditions of the multilateral creditors, but also because of the belief that reducing the deficit via cutting expenses is necessary to boost growth in the long term. Similarly, the prioritization of creditor repayment in moments of crisis could be interpreted as an attempt to maintain creditworthiness and ensure future access to credit, something which may well be in the interest of the citizenry more generally.

What I am suggesting, then, is not that no policies exist that can serve the general interest, but that this in itself may not be enough to justify burdening citizens with debt-servicing obligations. What is needed, additionally, is for the state to consider the relative impact its policies can have on its citizenry. If the state acts in a way that systematically benefits the financial elite, relatively speaking, then arguing that certain policies are in the general interest of the citizenry as a whole may not be enough to ground the citizenry's debt-servicing obligations.

IV. EX ANTE VERSUS EX POST INTERPRETATIONS

In short, in this and in the preceding section, I proposed and defended two sufficient conditions that allow us to challenge the repayment norm, one which relates to the use made of the state budget, the second to the state's ability to act in its citizenry's interest. In principle, both of these conditions can be interpreted from an ex ante and an ex post perspective. Adopting the ex ante perspective, one asks whether a debt contract would be binding for the state's citizenry, were the sovereign to accrue debt at that point in time. It is an ex ante perspective, because the question of the bindingness of debt is asked *before* the debt is actually accrued. In contrast, the ex post perspective asks the question of debt bindingness *after* the debt was accrued.

The great advantage of adopting an ex ante perspective when interpreting these two sufficient conditions is that the legitimate claims of repayment of creditors are also

considered. The relevant questions here would be whether, at the time of forming the debt contract, it was clear or should have been clear to the creditor, first, that the debtor state does not act in the public interest and, secondly, that fulfilling that debt contract would undermine the state's ability to act in its citizenry's name. If the answers to these questions are negative, creditors have a legitimate claim to repayment and citizens have debt-servicing obligations. If the answer to either is affirmative, creditors do not have legitimate claims to repayment and citizens do not have debt-servicing obligations. Adopting an ex ante perspective to interpret these two sufficient conditions to challenge the repayment norm makes it easier to translate the purely philosophical answer provided so far to a public standard.

There are cases, moreover, in which creditors will undoubtedly be able to establish this in an ex ante manner. Especially after having revised the first sufficient condition in a way that makes the use of the state budget and not of the money raised via the acquisition of a particular debt contract the relevant question to ask, answering it becomes easier from an ex ante perspective. In addition, as we saw in the preceding section, there are cases in which the empirical evidence is robust enough to be able to know in an ex ante manner that the state's ability to act in the interest of its citizenry is being undermined by the acquisition of further debt. Whenever the empirical evidence suffices to establish that creditors knew or should have known that the two sufficient conditions for the legitimate extension of debt were not met, then these two conditions can be interpreted in an ex ante perspective.

One way in which these two philosophical conditions could be turned into a public standard from an ex ante perspective is via the formulation of rules for lenders. Indexes would have to be found that serve as a good proxy for the two sufficient conditions. The rules for lenders would then entail that they can only expect to be repaid if they lend to states with a score lower/higher than X in index Y. If they choose to lend to a sovereign state with an index score lower/higher than that under which citizens have debt-servicing obligations, creditors

cannot legitimately expect to be repaid. Naturally, this would discourage creditors from extending credit to states that do not meet the two sufficient conditions.

Although developing and defending the precise indexes serving as proxies for both sufficient conditions goes way beyond the scope of this article, let me make two tentative suggestions to illustrate the type of indexes I have in mind. For the first sufficient condition, a composite index could be developed that combines in a standardized way the GINI index with the democracy index.[48] A creditor lending to a country that exhibits a score Y in the composite GINI–democracy index should not expect to be reimbursed. For the second sufficient condition, another composite index would have to be developed based on the debt to GDP ratio and the country risk.[49]

Developing such indexes to turn the sufficient conditions into rules for lenders is a highly ambitious enterprise. Specifying when the point has been reached where the acquisition of another debt contract results in the state's inability to pursue the public interest in an ex ante manner is extremely challenging. Just how difficult it can be to identify where this threshold lies is illustrated by the analogous debate surrounding debt sustainability.

[48]A composite index combines in a standardized way different indexes of factors to provide a useful statistical measure of an overall performance over time. The GINI index is a statistical measure of distribution most commonly used to measure income or wealth distribution among a population. It is the most common coefficient used to measure inequality. The democracy index is a figure developed by the Economist Intelligence Unit based on given categories, namely electoral process and pluralism, civil liberties, the functioning of government, political participation, and political culture.

[49]Country risk is an index that captures the risks associated with investing in a foreign country, including political risks, exchange rate risks, sovereign risks, and transfer risks. Combining the debt-to-GDP ratio with the country risk is important to capture the fact that a debt level that is sustainable for a state with a low country risk is not sustainable for a state with a higher country risk. This is important, since the state's ability to act in the interest of the citizenry is undermined when the debt threatens to become unsustainable or is sustainable only at a very high price for the state's citizenry.

Establishing the point at which the acquisition of further debt will make the sovereign unable to service its maturing contracts continues to be a topic of heated discussion among economists.[50] If it is difficult to find a sustainability threshold for this fairly technical question, it will prove even more difficult to find an analogous threshold to establish ex ante when the state will be so indebted as to become unable to satisfy its citizenry's interests. Moreover, many sources of uncertainty remain, and contingent factors that one may not have been able to reasonably predict from an ex ante perspective may impact the state's ability to act in the public interest.[51]

In the light of these difficulties, the ex ante approach needs to be complemented with an ex post perspective. From an ex post perspective, all we need to know in order to be able to challenge the debt-servicing obligations of the citizenry is that the state does not act according to the public interest as understood here, and/or that it does not have the ability to do so, due to its high indebtedness. Adopting this ex post perspective does not track the claims of creditors in the same way that the ex ante perspective does, since it may be due to contingent factors that the state does not meet these sufficient conditions. In the light of this, it is unsurprising that scholars with the ambition of defending a public standard that is readily applicable have resisted a broader interpretation of the odious-debt doctrine's second proviso and have failed to consider the second sufficient condition I propose here. For it would prove difficult to formalize these conditions into a doctrine that seeks to serve as a public standard.

That it cannot be formalized into a legal doctrine does not entail, however, that it is normatively insignificant. Recall that the ambition of this article is to answer the philosophical question of when the repayment norm ought to be challenged from the perspective of the

[50]For an excellent overview of the persistent difficulties in assessing debt-sustainability levels, see Buchheit et al. 2013.

[51]Some such contingent and difficult-to-predict factors may be the economic policy of other countries or extreme market developments.

citizenry's obligations. Given this limited aim, the failure to find definitive answers to questions such as the threshold question does not dilute the force of the argument made that the undermining of the state's ability to act in the citizenry's interest is a relevant normative consideration. Whenever it can be established in an ex post manner, first, that the state does not use its budget to serve the public interest and, secondly, that its high indebtedness erodes its ability to act in the public interest, these two are sufficient normative reasons to challenge the repayment norm and citizens' obligation to service debt accrued in their name.

V. CONCLUSION

One background rule governs the practice of sovereign borrowing and lending: that 'sovereign borrowers must repay regardless of the circumstances of the initial debt contract, the actual use of the loan proceeds, or the exigencies of any potential default'.[52] It is so entrenched in the sovereign debt and credit regime that any reduction in the claims of creditors is described in terms of 'relief', 'assistance', and 'forgiveness'.[53]

In this article, I have defended two sufficient conditions that justify challenging this repayment norm. Taking the second proviso of the odious-debt doctrine as my starting point, I argued, first, that whenever the state uses its available budget (regardless of its source) to systematically act in the interests of any sub-group who are not the worst off, the state can no longer legitimately pass on debt-servicing obligations to its citizenry. Secondly, I argued that whenever the acquisition of further debt threatens the state's ability to act in the public interest, this is a ground on which to question the citizens' obligation to service that debt.

[52]Lienau 2014, p. 1.

[53]Barry and Tomitova 2006, p. 53.

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