

Table of contents

Foreword.....	V
Acknowledgements	VII
1 Introduction	1
1.1 The traditional doctrine of odious debt.....	4
1.1.1 War debts	4
1.1.2 Subjugation debts.....	6
1.1.3 Regime debts.....	7
1.1.4 A note on the doctrine.....	8
1.2 The literature.....	11
1.2.1 Legal proposals	11
1.2.2 Other proposals	13
1.3 Approach and outline of this book.....	13
2 Reputation and Odious Debt	17
2.1 The Legal Approach	18
2.1.1 Legal Rationales to Succession of Obligations.....	18
2.1.2 Lack of Explanatory Power	21
2.2 The Economic Approach	21
2.2.1 Why Does Sovereign Debt Exist?	21
2.2.1.1 The Reputation Theory	22
2.2.1.2 The Enforcement Theory	23
2.3 The Comeback of Reputation	25
2.3.1 Incomplete Information and Changing Preferences	25
2.3.2 Repayment Record and Diminishing Returns	28
2.3.3 Context.....	29
2.4 Implications for Odious Debt	30
2.4.1 Repayment Record.....	30
2.4.2 Context.....	32
2.4.3 Default and odious debt	33
2.4.4 Repayment and odious debt	35
2.5 Insights from the Economic Analysis of International Law.....	36
2.5.1 The Role of Law in the International Context	36
2.5.2 How law Implicates Reputation.....	38
2.5.3 Interpreting the Law: The Odious Debt Doctrine is Dead.....	39
2.6 Conclusion	41

3	A Focus on Creditors and Odious Debt	43
3.1	Particularities of Sovereign Debt.....	44
3.1.1	Principal-Agent Problem	44
3.1.2	Succession of Obligations.....	44
3.1.3	Limited Scope of Judicial Remedies	45
3.1.4	Lack of Bankruptcy Regime	45
3.2	Different Creditors, Different Incentives.....	46
3.2.1	Private Creditors – Bondholders.....	46
3.2.1.1	Brief Background to Bond Lending	46
3.2.1.2	Incentives to Lend.....	47
3.2.2	Private Creditors - Banks	48
3.2.2.1	Brief Background to Bank Lending.....	48
3.2.2.2	Incentives to Lend.....	48
3.2.3	Official Creditors: States	49
3.2.3.1	A Brief Background to State to State Lending	49
3.2.3.2	Incentives to Lend.....	49
3.2.3.3	Types of Official Lending	50
3.3	5 Factors Affecting the Dynamics of Sovereign Debt.....	52
3.3.1	Outside Influences	52
3.3.1.1	Private Creditors: Bondholders.....	53
3.3.1.2	Private Creditors: Banks	55
3.3.1.3	Official Creditors	57
3.3.2	Number of Different Transactions with Debtor Country.....	57
3.3.2.1	Private Creditors: Bondholders.....	57
3.3.2.2	Private Creditors: Banks	58
3.3.2.3	Official Creditors	58
3.3.3	Form and Substance	59
3.3.3.1	Private Creditors: Bondholders.....	59
3.3.3.2	Private Creditors: Banks	62
3.3.3.3	Official Creditors	62
3.3.4	Information	66
3.3.4.1	Private Creditors: Bondholders.....	67
3.3.4.2	Private Creditors-Banks.....	68
3.3.4.3	Official Creditors	69
3.3.5	Sovereign Debt Restructuring.....	69
3.3.5.1	Private Creditors: Bondholders.....	70
3.3.5.2	Private Creditors: Banks	72
3.3.5.3	Official Creditors	72
3.3.5.4	A Note on Inter-Creditor Equity.....	73

3.4	Reputation and Odious Debt.....	74
3.4.1	Private Creditors: Bonds	74
3.4.1.1	Reputation.....	74
3.4.1.2	Odious Debt	74
3.4.2	Private Creditors: Banks	75
3.4.2.1	Reputation.....	75
3.4.2.2	Odious Debt	76
3.4.3	Official Creditors	77
3.4.3.1	Reputation.....	77
3.4.3.2	Odious Debt	77
3.5	Conclusion	78
4	An International Solution to Odious Debt: An Ex Ante Ex Post Analysis.....	81
4.1	Applying Shavell's Analysis to the Odious Debt Context	82
4.2	Examination of Shavell's 4 Determinants	83
4.2.1	Difference in Knowledge about Risky Activities	83
4.2.1.1	Shavell's Analysis	83
4.2.1.2	The Odious Debt Context	84
4.2.2	Incapability of paying for full magnitude of harm done.....	89
4.2.2.1	Shavell's Analysis	89
4.2.2.2	The Odious Debt Context	89
4.2.3	Parties would not face the threat of suit for harm done	90
4.2.3.1	Shavell's Analysis	90
4.2.3.2	The Odious Debt Context	91
4.2.4	Administrative costs	92
4.2.4.1	Shavell's Analysis	92
4.2.4.2	The Odious Debt Context	92
4.3	General Advantages and Disadvantages of Ex Ante v Ex Post Approach to Odious Debt	93
4.4	Loan sanctions from an ex ante v. ex post perspective.....	94
4.4.1	Trade off between Information and Deterrence.....	96
4.4.2	Definitional Issues	97
4.4.3	Ex Ante Certainty	98
4.4.4	Expectations from Ex Post Designation	99
4.4.5	Risk of Bias.....	100
4.4.6	Action while Despot is Still in Power.....	100
4.4.7	Failure to Deal with Odious Debt already Created.....	101
4.4.8	Costs associated with the UNSC	101
4.4.9	Risk of Collision by "Rogue" States and Globalisation	103
4.5	Summary of trade offs and conclusion	104

5	Odious Debt: Driving Change in Sovereign Debt Governance.....	107
5.1	International Economic Governance: Odious Debt.....	108
5.1.1	The Official Sector	109
5.1.1.1	Strategic Interests – The Case of Iraqi Debt.....	110
5.1.1.2	Domestic Pressure – Norway as a Sympathetic Creditor.....	113
5.1.1.3	The Role of Competition.....	115
5.1.1.4	A Note on Debtor States – Not at the Forefront of Change	116
5.1.2	NGOs and Odious Debt.....	117
5.1.2.1	Improved Communication and Information.....	118
5.1.2.2	Increased Pressure on Developed Country Governments	119
5.1.2.3	Collaboration with the Global South.....	119
5.1.2.4	NGOs and Odious Debt.....	119
5.1.2.5	Comparative Advantages and Limitations of NGOs.....	120
5.1.3	The Epistemic/Academic Community	121
5.1.3.1	Informational Asymmetries.....	122
5.1.3.2	“Insiders” and “Outsiders”	122
5.1.3.3	The Epistemic Community on Odious Debt	123
5.2	A Comment on the Triple Helix and Odious Debt.....	124
5.3	Introducing Odious Debt into Debt Negotiations.....	126
5.3.1	Towards a Legal Solution to Odious Debt	126
5.3.2	Overview of the Paris Club	127
5.3.3	Key Characteristics of Official Debt Renegotiations	129
5.3.3.1	Negotiation versus Litigation	129
5.3.3.2	The Political Context versus the Legal Context.....	130
5.3.3.3	The Ex Post Nature of Debt Renegotiations	132
5.3.4	Key features of the Paris Club to address Odious Debt	133
5.3.4.1	Existing Institution	133
5.3.4.2	Least Developed Countries	133
5.3.4.3	Interests of the Official Sector.....	135
5.3.4.4	Ability of the Paris Club to “bail in” other Creditors.....	135
5.3.4.5	Ad Hoc Nature and Increased Flexibility in the Paris Club	138
5.3.4.6	Secrecy and Information	139
5.3.5	Potential obstacles in addressing odious debt via the Paris Club	141
5.3.5.1	Different Amounts of Debt Relief.....	141
5.3.5.2	Crowding Out Private Creditors?	142
5.4	Conclusion	143
6	Summary and Outlook	145
	Bibliography	151