An Ethical Approach to Public Debts

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The Need for a Global Discussion

Ricardo Farinha Thomas Reinert

Abstract

This paper asks in how far public debts can be categorized and on which ethical grounds their legitimacy is to be assessed. It attempts to construct a line of reasoning that has the harm principle as the nexus between two broad ethical schools of thought – communitarianism and cosmopolitanism – which are often depicted as mutually exclusive. However, by taking the harm principle as the theoretical linchpin, it is shown that both schools can concede to the idea that each country has the right to establish an audit commission in order to evaluate whether its debts are legitimate, odious, illegitimate, unsustainable, or simply illegal. Besides introducing such a taxonomy of debts, this paper (roughly) presents two possible ways of how to assess public debts via an audit commission. By doing so, it hopes to pave the way for a much needed discussion about the ethical evaluation of sovereign debts.

Keywords: public debts, taxonomy of debts, communitarianism, cosmopolitanism, audit commission

TABLE OF CONTENTS

Introduction

I don't believe in charity; I believe in solidarity.
Charity is vertical, so it's humiliating. It goes from top to bottom.
Solidarity is horizontal. It respects the other and learns from the other.
I have a lot to learn from other people.
Eduardo Galeano (in Barsamian 2004, 146)

At the time of writing most leading economists have commented on the recent elections in Greece, its implications for the Euro zone and on the 'nature' of public debts. So far, the overall consensus seems to suggest that "a debt is a debt and it is a contract [that one shall not break or cannot get rid of]" (Lagarde in Carswell 2015). Despite the particularities of the Greek scenario, and thus recognizing that the previous statement was put forward within a specific context, such a stance tells much on how debts are generally perceived by leading figures of the global financial system. If one follows an orthodox interpretation of the above mentioned assumption, one is led to conclude that neither the *conditions* on which debts were negotiated nor the *outcome*, even if economically, socially or environmentally disastrous, are taken into consideration. Even if it is well assumed and recognized that nobody likes to lose money, one may wonder though what the overall price to pay would be if this were to be followed word by word.

Interestingly, the history of default and debt restructuring is neither new nor a very uncommon experience. As a recently published article in *The Telegraph* points out, debt forgiveness is actually part of a long Judeo-Christian tradition and therefore part of 'our' (as two Europeans co-authoring this article) cultural roots. As the same article stresses, one of the most significant paragraphs on this issue saw the daylight in Babylon, in the so-called *Code of Hammurabi*: "If any one owe a debt for a loan, and a storm prostrates the grain, or the harvest fail, or the grain does not growth for lack of water, in that year he need not give his creditor any grain, he washes his debt-tablet in water and pays no rent for this year" (King Hammurabi in Khan 2015). The step taken afterwards was simply forgiveness to all citizens owing debts to the government and to numerous officials.

Today, it is rather puzzling that most experiences of default are *a priori* condemned without a careful examination of each case. For instance, it could be helpful to start out by asking under what circumstances the country in question has defaulted: That is to ask, whether it did so because of *political reasons only* or (mainly or partly) because of *economic* ones, i.e. whether a country defaulted on "debts that *should not* be repaid rather than debts that *cannot* be repaid" (Hanlon 2006a, 111; emphasis added). Unfortunately, up until now, not even that has been considered by many. This became particularly obvious just recently when eleven of the most developed economies opposed the General Assembly

resolution A/68/L.57/Rev.1, which is aimed at establishing a "multilateral legal framework for sovereign debt restructuring processes" (UN 2014). Eventually, it got adopted on 9 September 2014 by the votes of the G77 and China – i.e. "by almost all of the developing and newly industrialising countries" (Kaiser 2015, 1). So far, it can be regarded as one of the very few attempts on the international level to come to terms with the visible gaps that exist when dealing with sovereign debts and its respective restructuring. The US deputy representative, Terri Robl (2014), explained the opposition of his country by pointing towards alleged negative consequences for the debtor countries:

> "The United States cannot support the creation of a sovereign debt restructuring mechanism, as is envisioned in this resolution. The establishment of a statutory mechanism for debt restructurings would create uncertainty in financial markets. If lenders face higher uncertainty regarding repayment, they may be less likely to provide financing and will likely charge higher risk premiums, potentially stifling financing to developing countries."

In addition, as the German representatives made clear, negotiations concerning the international financial system are to be held within the framework of the IMF and not within the UN. On the other side, the supporting states, that had already met in Bolivia in June 2014, aimed at questioning and answering what has been around since (at least) the 1980s: "how can defaulting countries achieve a new beginning in an efficient way based on due process of law, just like is also possible for business enterprises in insolvency proceedings?" (Kaiser 2015, 1). Not surprisingly, no significant answer has been given so far – let alone that the reluctance of the aforementioned opposing countries to face these questions in a constructive manner has been faced with despair by many in the Global South.

Nevertheless, the discussions on sovereign debts have generated an ever-growing body of knowledge and yet much remains to be answered if not demystified, partly since, as Krugman disappointedly synthetises, "[n]obody understands [d]ebt" (2015). It is in fact these misunderstandings that got the authors engaged in such a discussion. Though, how to learn about a challenging subject that nobody really seems to clearly understand and that much has already been said about? In this regard, we follow the historian Eric Hobsbawm and his justification to the question 'how to study a (similarly controversial) topic such as nationalism': Borrowing his words, we claim that "*agnosticism* is the best initial posture of a student in this field" (1992, 8; emphasis added) so that a much more comprehensive and broad understanding of public debts may be given and eventually accepted. Thus, we decided to delve into the following research question:

How can public debts be categorized and on which ethical grounds is their legitimacy to be assessed?

This paper aims at contributing to this discussion[1] by presenting different understandings of what a public debt may be as explained throughout the section (1) on the taxonomy of debts – when necessary, historical evidence supporting such a categorization of debts will thereby be provided. In general, five types will be discussed: (1.1.) odious, (1.2.) illegal, (1.3.) illegitimate, (1.4.) unsustainable, and (1.5.) legitimate debts. The main assumption running throughout such a categorization follows a simple logic: debts can only be deemed legitimate if they are in accordance with both national and international law as well as (most importantly) with ethical principles and beneficial economic results. In addition, legitimate debts shall place both the creditor and the debtor in the same equal position by giving reasonable and sensible conditions to both, that is to say that for a debt to fall into this category it is necessary to take the conditions and the outcome into consideration as well when evaluating the overall scenario. Finally, such an evaluation must take primarily into consideration the interests of the population of the country by empirically assessing the actual benefit of a country's debts to its citizens. Thus, we do not consider such a proposal to be 'too demanding' as it is rather 'only' about strengthening democratic values.

In section (2) we start out by introducing the 'theoretical backbone' of this paper which mainly draws upon a certain definition of (global) justice, which tries to reconcile both cosmopolitan and communitarian strands of thought. In doing so, the 'harm principle' is employed as the theoretical linchpin, which equally contains and merges both negative and positive duties. In the following, we will explain in detail what this actually means for the handling of debts and what kind of ethical implications this contains for creditors and debtor countries. We eventually argue that – if the harm principle is applied appropriately – it is not enough to merely abstain from any further lending to states which might use this money to the potential harm of its own people. On top of this, there is also a positive duty which obliges the creditors to accept their responsibility towards 'odious', 'illegal', 'illegitimate', or even 'unsustainable' lending practices – that is to say, accepting default, debt restructuring or both by the debtor states.

The last part (3) explains why such a debate on debts is generally vital for the future of constitutional democracies, post-revolutionary countries and remaining authoritarian regimes. Here, an extensive discussion will not only show the differentiation between several types of debts but also their possible implications. By doing so, we will also examine possible counter-arguments to our main claims

[1] The first and third chapters of this paper owe very important insights to many grassroots movements' campaigning for default or debt restructuring. Respectively, the taxonomy of debts and the proposal of an audit commission have for long been touched upon by those movements coming from such different countries: from Greece to Brazil, from Argentina to Tunisia, from Portugal to South-Africa. Yet, they have not been given enough attention in academic writings up until now. By critically assessing some materials of these campaigns (unfortunately many sources are not available online whereas some others are no longer in our possession), let alone practical experiences and studies dealing with these topics (e.g. CAIC 2008; CADTM 2006), we reached the findings presented here which would have not been possible had we not known about some of these sources. Thus, we are very much indebted to the anonymous persons that have made our line of reasoning possible.

while proposing a conceivable alternative based on the idea of an audit commission. Given the tremendous complexity of these matters we do not aim to come up with final and clear-cut solutions. Nevertheless, we will introduce and investigate two potential ways to go about it: a unilateral solution (3.2.) and an international one (3.3.). In any case, while reinforcing the *agnostic* position that led us to reach the conclusion that some debts shall not be paid back (either fully or partly), it is simply of no plausible value to dismiss re-thinking 'our' understanding of debts and its potential consequences – if one is not to engage in the very facile, non-empirical, dogma of 'that is not likely to happen', or 'that is simply not possible'. At the end, we claim that there is the need for further research on these matters since a mere ignorance of what composes a state's public debts cannot be an excuse for any ethical wrongs. That shall be in fact the underlying notion for a case-by-case investigation of potential 'unethical' debts.

1. Taxonomy of debts

This section aims at exploring different concepts of debts and therefore questions whether any contracts or loans may be deemed legal or legitimate even if contradictions and clear violations of national and international law are at stake and/or the actual outcome turns out to be disastrous to the affected people. Here we differentiate between five types of debts: (1.1.) odious, (1.2.) illegal, (1.3.) illegitimate, (1.4.) unsustainable, and finally (1.5.) legitimate.

In sum, the doctrine of *odious* debts is solely to be applied in democratic sovereign states that are asked to pay back debts contracted under (previous ruling) authoritarian regimes. Nonetheless, some of the underlying logics in the concepts of *illegal*, *illegitimate* – and to some extent *unsustainable* – debts are indeed derived from the doctrine of 'odious debts'. In our view, some of its insights – for instance, the evaluation of a possible absence of consent by the citizens and/or the benefit of some loans to the people of a country as well as the creditors' awareness of the terms associated to the negotiation of the contracts and the usage of their money – shall not be neglected by any state if a stronger commitment to the rule of law, political and economic rights, let alone transparency and accountability, is to be attained.

1.1. Odious debts

The doctrine of odious debts dates back to 1927 and is attributed to the international law scholar Alexander Sack, a former tsarist minister. In fact, this is but a minor remark since his personal experience contributed greatly to the establishment of his clear-cut legal theory. In 1918, the Bolsheviks claimed that "[a]ll foreign loans are hereby annulled without reserve or exception of any kind

whatsoever", and "governments and systems that spring from revolution are not bound to respect the obligations of fallen governments" (in Adams 1991, 166). Yet, as Sack pointed out, this demand was not new at that time: already in 1898, shortly after the Spanish-American war, similar logics were used in Paris in a conference that aimed at resolving the conflict through a peace treaty between Spanish and North American representatives.

Two diametrically different stances were given here: one the one hand, the Spanish Crown proposed that all state obligations, despite the conditions behind its negotiation or possible unforeseen outcomes, belong to the people and their land, and not to the regime in power. On the other, the American representatives – not convinced by the argument that in spite of having gained sovereignty over Cuba and thus owning the debts accordingly – asked why the new sovereign should pay "all charges and obligations of every kind […] which the Crown of Spain […] may have contracted lawfully in the exercise of sovereignty" (Spanish Commission in Gentile 2010, 154) if the people of the country (Cuba) were not consulted whilst a repressive ruler (the Spanish Crown) financed its own caprices with that money. To this question, the U.S. responded by pointing out the following three essential criteria which (taken together) classify debts as 'odious', and which do not have to be paid back accordingly: debts that 1) are "imposed upon the people (…) without their consent", let alone coercive means used in the country to stop possible popular uprisings (US representatives in Adams 1991, 163); which 2) were furthermore created by those in power while benefiting primarily its own clients and purposes; and 3) are agreed upon even when lenders are perfectly aware of both the lack of consent and the harmful implications for the country. Up until today, there is no compelling historical evidence suggesting that the U.S. paid the Cuban 'debt'.

In any case, it is fair to say that the most illustrative example of the doctrine of odious debts – with particular reference to a change of government instead of state succession (Howse 2007, 11) – took place in a judicial dispute between Costa Rica and the Royal Bank of Canada in 1922. Federico Tinoco, the Costa Rican dictator that ruled the country from 1917 to 1919, came to power after overthrowing the Government of Costa Rica and held a consequent election shortly afterwards in order to claim legitimacy of his power. Whilst in office, a number of "bills of credit" were issued by the Banco International de Costa Rica to the Royal Bank of Canada – a private creditor (idem, 12). However, his ruling soon came to an end thus opening up the possibility for a newly elected government. When confronted with the possibility of paying the debts contracted under Tinoco's administration, the Costa Rican government refused to do so. In 1923, Chief Justice William Taft of the U.S. Supreme Court pointed out that since the bank knew with what and whom it was dealing with, let alone that Tinoco used the money solely for himself and his brother while repressing popular uprisings, there was no reason whatsoever to impose those debts on a new elected government.

After a thorough examination of the conditions and consequences that such decisions had for those involved, Sack wondered whether it would be possible to establish such a doctrine on an international level, one that would follow rigorous criteria so that abuses would not be permitted. Hence, he proposed that if this were to be introduced into international law it should be understood as comprising the following three-fold scheme: 1) "war debts", i.e. debts that are contracted by states merely for the purpose of waging war against other(s) (Sack in Bonilla 2011, 6); 2) "subjugation or imposed debts", i.e. those that primarily "subjugate the population of part of its territory or (…) colonize it by members of the dominant nationality" (idem); and 3) "regime debts", or in other words debts strengthening the interest of those in power. Accordingly, those kinds of debts are only to be considered as a "personal debt of the power that has incurred it" (idem). In addition, his proposal stressed that an odious debt, whatever the dimension one may be referring to, is one that does not bind the country itself (i.e. the people, the state, or the land belonging to a nation/country) but the regime, so that a democratic government does not have to bear the consequences of the abuses of previous regimes. Moreover, he pointed out that debts which do not benefit the nation (to the knowledge and with the connivance of the creditors) shall be repudiated.

However, Sack foresaw that this doctrine could easily be misused and misunderstood by countries facing economic and political difficulties. Therefore, he proposed that if debts were to be written off the new government would have to prove the validity of its claims – a clear "absence of consent" to undertake the loans by its citizens, either via parliamentary consensus or through referendum (Sack in Bonilla 2011, 5), and an "absence of benefit" by the citizens of the country[2] (idem, 10) shall be demonstrated before an international tribunal, let alone that creditors themselves would have to present their point of view on this issue by attesting that their money was spent in the interests of the nation – and not of only those in power (Howse 2007, 3). If this were to be confirmed, the conclusion would be simple: The new government would not only have the right to cancel the previously negotiated debts but also to hold creditors responsible for their actions thereafter.

[2] This was one of the questions which came up after the end of the South-African apartheid. Basically, the question at that time was whether the new government is responsible for the debts of a minority that "continued to borrow from private banks throughout the 1980s" (Howse 2007, 13) – even though the UN clearly suggested in 1973 that the apartheid was nothing other than a crime against humanity (for instance, the UN imposed an arms embargo in 1977 and trade sanctions in 1985). Today, and in spite of the then political discussion that led South Africa to not implement such doctrine in fear of (alleged) tremendously negative economic results, one may well ask whether it is plausible to assume that creditors did not know who or what they were financing.
Another interesting example concerns Argentina and the military junta that ruled the country between 1976 and 1983. During this period "foreign debt rose from $8 billion to $46 billion U.S., most of it owed to banks" (Hanlon 2006a, 120). In 2000, Federal Judge Dr. Ballesteros declared that the increase in both private and public debt was "excessive, harmful and with absolutely no justification from an economic, financial, or administrative point of view" since "[the] debt was contracted […] without parliamentary control as required by the national constitution" (in idem, 121). In addition, it was suggested that all parties included (e.g. international financial institutions, such as the IMF and the World Bank) should take responsibility once several warnings from the international community were sent, suggesting that they knew with what kind of regime they were dealing with.

Having arrived here, we need to point out that this doctrine still has neither "formal status in international law" (Jayachandran and Kremer 2006, 221) nor has it been clearly, or consequently, used in a large scale by many countries. When they did so, countries tended to avoid tagging debts as 'odious', 'illegitimate', and so on since they feared that other countries might follow suit. As an example, the US used similar logics while relieving a significant sum of Iraq's external debt (up to $130 billion)[3] after taking control of the country: a) the people "shouldn't be saddled with [...] debts incurred through the regime of the dictator who is now gone" (Treasury Secretary John Snow in Raffer 2007a, 233), b) the money borrowed was used solely to "buy weapons and to build palaces and to build instruments of oppression" (Undersecretary of Defence Paul Wolfowitz in Howse 2007, 15), and c) the debts were unsustainable (and not explicitly 'odious' or 'illegitimate' as many were claiming) and therefore these could affect the prosperity of the country.

Nonetheless, the reasoning used is very similar to the one presented above. Based on this one may wonder whether the following debts (as depicted in Table 1) shall be written off if it is empirically proven that they fall into the three-fold 'odious debts' scheme already mentioned. On what grounds can one defend consistency, coherence and fairness to all sovereign states on the international (financial and legal) level if we see double-standards on these topics?

[3] "This debt comprised four components: official Paris Club bilateral creditors ($42.5 billion), official non-Paris Club bilateral creditors ($67.4 billion), commercial creditors ($20 billion) and multilateral creditors ($0.5 billion)" (Weiss 2011, 1). Among the reasons why debt relief is a "priority for both the [US] Executive Branch and Congress" the same report suggests: "releasing funds to help support Iraq's budget, pay for Iraq's security, and reestablish Iraq's financial standing with international creditors and the financial markets" (idem).

Indonesia	Suharto	150
Iraq	Saddam Hussein	122
Brazil	military	100
Argentina	military	65
Philippines	Marcos	40
South Korea	military	30
Nigeria	Buhari/Abacha	30
Syria	Assad	22
South Africa	apartheid	22
Thailand	military	21
Morocco	Hassan II	19
Pakistan	military	19
Sudan	Nimeiry/al-Mahdi	17
Chile	Pinochet	13
Zaire/Congo	Mobutu	13
Peru	Fujimori	9
Ethiopia	Mengistu	8
Algeria	military	5
Iran	Shah Reza Pahlavi	5
Kenya	Moi	5
Mali	Tragore	3
Bolivia	military	3
Somalia	Siad Barre	2
Paraguay	Stroessner	2
Malawi	Banda	2
Nicaragua	Somoza	2
Rwanda	Habyarimana	1
El Salvador	military	1
Liberia	Doe	1
Haiti	Duvalier	1
Uganda	Amin	1
Togo	Eyadema	1

Table 1: "Debts which can be attributed to dictators (US$ billion)"[4]

(in Hanlon 2006b, 217)

1.2. Illegal debts

Briefly, one could describe illegal debts by pulling out the meaning from the word: A debt contracted by a country is not legal when it violates either the legal framework existent in the country or international law. Hence, all such debts shall be repudiated due to its illegality – citizens shall not be responsible for debts that are presumably negotiated without their consent, let alone when the benefits from these contracts are at stake. To this, the counter-argument often raised is that a constitutional democracy involves a stable institutional order, thus guaranteeing not only the stability of the regime but also the commitment to honour decisions previously taken (Brennan and Eusepi 2000, 9). As valid as this may be, on what grounds shall 'illegal' debts be honoured if these were proven to have been contracted beyond the law? Why shall alienated citizens bear responsibility when high-rank officials

[4] Interestingly, even the editorial board of the leading newspaper *Financial Times* stressed with regard to the Nigerian case that "[f]inancial institutions that knowingly channelled the funds have much to answer for, *acting not so much as bankers but as bagmen, complicit in the corruption that has crippled Nigeria*" (in Ndikumana and Boyce 2011, 165; emphasis added).

use their name in vain? Instead, we believe that recognizing this doctrine would not only raise awareness and henceforth democratic control in the midst of civil society but also restrain lenders from profiting from situations that cannot be the rule in constitutional democracies.

1.3. Illegitimate debts

Illegitimate debts, as the term already suggests, are debts which lack legitimate grounds. Accordingly, from an ethical point of view, they should be repudiated and written off. On this, the Ecuadorian case arises as the prime example since it was the first country ever to officially refuse servicing its debts due to the odiousness,[5] illegality and illegitimacy of parts of its debts. In 2008, the president of Ecuador, Rafael Correa, authorized the establishment of the so-called CAIC: *International Auditing Commission for Public Credit of Ecuador* (2008), an audit commission aiming at analysing the country's external debt from 1976 to 2006. Briefly, the final report showed strong evidence that the eventual economic outcome of some of the loans was disastrous – even if accepting that parts of them were (in official terms) lawfully contracted. A substantial sum of these were not admissible since they were "based on the lesion to the sovereignty of the State, violation of the human rights, collective and environmental rights, as well as the impact on people's living conditions" (CAIC 2008, 81). While the lack of people's consent could already be partly taken for granted due to the authoritarian, non-inclusive nature of the then ruling military regime, the report enumerates plenty of telling examples which show in what ways the money of the loans contracted within the studied period was spent for projects that were not only unsuccessful in improving the situation on the ground but also (and most importantly) turned out to be malicious and harmful by themselves. Accordingly, it appears questionable why the citizens should bear the main responsibility if, as preached by the main leading financial institutions, they lack expertise and the 'proper' know-how to change their environment. After all, why shouldn't the 'experts' bear additional responsibility if they have the personnel, the means, and the money to invest and implement policies in other peoples' countries when their projects result simply ruinous?

Yet, there is more than this. As already mentioned before, it is a common heard assumption that any default – but especially those due to political reasons – will almost certainly decrease international investors' trust in the defaulting nation's financial capabilities and creditworthiness. Interestingly, the Ecuadorian case seems to *not* confirm this (rather vague) hypothesis, as the indicators suggest that it has remained an attractive country to foreign investors after its default in 2008: In the aftermath of the

[5] The country faced political instability and military regimes from the 1960s up until 1979. As an example, between 1972 and 1979, an oppressive military junta ruled the country while contracting loans to finance its military expenditure. As stated in the final report of the audit commission: "The statistical data evidence that since 1976 the Ecuadorian external debt with the international private banking – from an initial amount of US$ 115.7 million – begins to increase since the government of the military dictatorship, until getting to an amount of US$ 4.163 million in 2006" (CAIC 2008, 25).

default, the international rating agency *Fitch* (2015) has in fact improved Ecuador's long term rating from a CCC (negative) in 2008 (17.11) to a B (stable) in 2014 (16.10). Similarly, the short term rating improved from C to B in the same time period (Fitch 2015). Moreover, there has been a steady growth in business confidence from around 400 points in the end of 2009 to an unprecedented high of 1179.30 points in 2015 (The Business Confidence Index in Trading Economics 2015),[6] let alone that the WTO considered that the country "weathered the crisis well, and growth rebounded to 3.6% in 2010" (WTO 2012, vii).

Generally, the country possesses abundant natural resources, including non-renewable resources such as oil and unexplored minerals and renewable resources such as bananas and flowers (UNCTAD 2001). Besides, its economy is often portrayed as small but open while enjoying considerable access to large regional and international markets including the Andean countries, MERCOSUR, the United States and the European Union for many of its export products (idem, 10; WTO 2012). In addition, despite being considered as one of the least competitive economies, especially when taking into consideration its neighboring non-dollarized economies, its human development performance has increased significantly since 2005: In 2009, it ranked 77th out of 169 countries whereas in 2005 it was only 89th out of 177 countries (WTO 2012, 3).

In this regard, the example of Ecuador at least shows that a default does not *necessarily* have to lead to a worsening of the overall situation. Quite the contrary, it *could* pave the way for an improvement of the economic situation – which depends very much on the actual handling of such a situation. However, one should avoid making the mistake to derive general statements from a single case. Instead, a case-by-case investigation of the impact of each default is needed. In this regard, a premature economic prejudgment and repudiation of any ethical reflection of debts – solely based on the claim of non-feasibility – is neither justified nor adequate at all.

Either way, these and other similar questions, due to their ethical dimensions and consequent implications, led the government of Norway in October 2006 to cancel nearly US$80 million due to disastrous results of some of its development policies in several countries, including Ecuador. The Norwegian government favoured not only cancelling such debts but also tried to push the UN forward in such matters by establishing a clear-cut framework so that developing countries would not have to bear the burden of financially unsound decisions taken by private creditors and rich countries. In addition, Norway proposed to establish an "international debt settlement court" so that matters concerning debt illegitimacy could be discussed on an equal footing (Norwegian Government in Raffer

[6] All in all, there is neither sufficient proof that investors took Ecuador's default as an indication of reduced creditworthiness nor that the overall business is expected to decline. In fact, one may very well question whether the opposite is not more likely, that is, if a country defaults or proceeds to debt restructuring fully conscious of the facts and what might be yet to come, investors might take this as a sign of seriousness and credibility by believing that a country shall *only* act in such a way when such debts are found.

2007a, 224). At the same time, the government was prudent when suggesting that it would not accept the claim that only creditors are responsible, thus forgetting about those who accepted them. Indeed, an important remark. But how is then an 'illegitimate' debt to be understood? In our view such a definition has to respect and contain the following three criteria: 1) all debts shall be negotiated in a mutually equal position, according to both national and international law, between the debtor and the creditor – debts shall be *accepted* and *not imposed* by external institutions or governments; 2) both the creditor and the debtor country shall present clear results concerning what investments were made including their consequences; and 3) when the creditor, through development programs, takes the responsibility for putting the projects into practice, it should be made liable due to its greater experience, expertise, and means.

In any case, if these or other criteria were to be implemented so that a common ground is to be reached, there are no reasons for assuming that fewer creditors would be willing to take a chance. On the one hand, only those who are uncertain about the conditions their contracts were designed and implemented would abstain from doing so. In fact, a stronger commitment to the particular terms and conditions (following the rule of international law) could be expected in order to achieve mutual assurance on both sides. Either way, the global financial system would benefit from an increasing transparency. On the other, creditors would be keener and more prudent in 'saving their name'. Thus competitiveness between these would eventually increase in the markets so that 'good' reputation could be guaranteed – a 'currency' which is of great importance to the market and to creditors themselves.

1.4. Unsustainable debts

The most debated term of all categories that constitute our taxonomy of debts is undoubtedly the one of 'unsustainable' debts. In a nutshell, they could be described as public debts that a) were "incurred under predatory repayment terms, including situations where original interest rates skyrocketed and compound interest made repayment possible" (Jubilee USA Network 2008, 3), and b) do neither lead to the creation of employment nor economic growth (IAC 2011).

Yet, this doctrine poses many questions to mainstream approaches to economics. As one of the defendants of the so-called 'adjustment programmes' (otherwise mistakenly known as austerity)[7] points out, these are (allegedly) appropriate because

> "a nation ought to be treated more favourably if it has undertaken internal economic reforms with some success, if it has tried to keep its payments current, if it has liberal trade policies, and if it is engaged in

[7] As Stiglitz and other leading economists have stressed when relating to the current Greek situation: "We believe it is important to distinguish austerity from reforms; *to condemn austerity does not entail being anti-reform*" (in Financial Times 2015; emphasis added).

privatization of government businesses. *But the irony is that when it has done all that, then we can say it only needs modest debt relief. The lesson is that debt relief will be greater when the debtor nation is less responsible*" (Gorton 1989, 88; emphasis added).

This passage demonstrates the ideological blindness that drives most of its proponents by a number of reasons: Firstly, they completely ignore that, as a recently published IMF working paper stresses (Reinhart and Sbrancia 2015), the faith in austerity measures is simply inappropriate if debt reduction is to be achieved. Other alternatives are indeed possible, plausible and foreseeable:

> "It apparently has been collectively forgotten that the widespread system of financial repression[8] prevailed worldwide from 1945 to the early 1980s [when the widespread financial liberalization began to play] an instrumental role in reducing or liquidating the massive stocks of debt accumulated during World War II in many of the advanced countries, United States inclusive" (Reinhart and Sbrancia 2015, 5).

At the same time, these authors acknowledge that "financial repression *may be necessary but probably not sufficient* to restore debts to more manageable level [as it] is best viewed as a *complement to restructuring* not a substitute for it" (idem, 41; emphasis added).

Secondly, those who follow the prevailing economic orthodoxy overlook that when countries are highly indebted they will most likely face tax evasion and capital flight – speculative capital comes in in times of prosperity and leaves as soon as a tiny sign of 'bad weather' is underway. As for the consequences, the most affected by those measures will most likely be the lowest and middle classes of the country under 'intervention'.

Thirdly, those who stick to the above doctrine miss out that precisely due to the indebtedness of a country it is *less likely* that creditors will risk putting their money in it – or otherwise major losses might come along. In any case, a voluntary agreement must hold responsible both the creditor and the debtor. Yet, it should be borne in mind that "creditors [are] arguably (…) *more* responsible: typically, they are sophisticated financial institutions, whereas borrowers frequently are far less attuned to market vicissitudes and the risks associated with different contractual arrangements" (Stiglitz 2015; emphasis in the original).

Fourthly, in an economy facing recession plus contractionary policies along with high levels of unemployment, high immigration rates due to lack of opportunities, and unbearable social dysfunctions,

[8] "One of the main goals of financial repression is to keep nominal interest rates lower than would otherwise prevail. This effect, other things being equal, reduces governments' interest expenses for a given stock of debt and contributes to deficit reduction. However, when financial repression produces negative real interest rates and reduces or liquidates existing debts, it is a transfer from creditors (savers) to borrowers and, in some cases, governments. (…) Given that deficit reduction usually involves highly unpopular spending cuts and/or tax increases, the "stealthier" financial-repression tax may be a more politically palatable alternative" (Reinhart 2012).

let alone human rights violations, it is not possible that the public debt of a country will miraculously fall down. Rather, it is in such scenarios that the vicious circle associated with debts[9] virtually shows its face, that is, the more the countries pay their debts (including high interest rates), the more they end up owing once they usually have to take up new loans in order to serve previous ones (Arruda 1994, 45). Following up on this, it seems to be forgotten all too often that neither economic growth nor inflation *alone*, not to mention austerity measures, did work out when solving the debt-problem in the past century since "World War I and Depression debts were importantly resolved by *widespread default and explicit restructurings* or predominantly forcible conversions of domestic and external debts in both the now-advanced economies, and the emerging markets" (Reinhart and Sbrancia 2015, 12; emphasis added). In fact, it is rather obvious that partly due to the incapacity to finance in the markets and consequent high interest rates, public debts tend to be much higher whilst the application of such measures and in the years to come. As Stiglitz points out, "the IMF has … forced countries into contractionary policies, which has only exacerbated economic downturns" (2003, 56).[10]

In addition, as the editorial board of *Bloomberg News* has suggested, "irresponsible borrowers can't exist without irresponsible lenders" (2012). In other words, it may be easier to attribute responsibility to those who have spent more money than they possibly had. However, a country can only do so when there is 'fresh' money coming in in large quantities, with a complete disinterest from the creditor to understand the purpose of the loan, raising questions of a potential moral hazard – it is very unfortunate that most people tend to forget that (mostly private) lenders are often the ones who are bailed out first, thus increasing the public debt of a country. Grossly put, the underlying logics represent a win-win situation for those involved. In times of crisis, unsurprisingly, both will see each other as the scapegoat for the failure of their contracts.

But there is more: Undeniably, the most important point – and interestingly one of the most often overlooked when covering economic crises – is that "deficits are as much [the] fault of surplus countries as they are of deficit countries" (Stiglitz 2003, 57). Hence, "[t]hese deficits are like hot potatoes: if one country manages to get rid of its deficit, it must show up elsewhere" (idem). How to go about it, one may well wonder? Instead of punishing the perpetrators due to their alleged 'sins' and 'guilt', it might be better to follow the Judeo-Christian tradition of debt forgiveness – either via default, debt restructuring or both if needed – as the same author has proposed:

[9] As an example, a study concerning capital flight and potential 'odious' and 'illegitimate' debts in 33 sub-Saharan African countries from 1970 to 2004 led Ndikumana and Boyce to conclude that "many African countries currently receive little in terms of new loans; indeed many are experiencing negative net transfers, *paying more in debt service than they receive in new money*. Such debtor countries can rather easily endure the 'punishment' of credit rationing" (2011, 165; emphasis added).

[10] The disastrous interventions and consequent results are empirically abundant: from Brazil to Jamaica (Körner et al. 1986), not to mention East Asia (Stiglitz 2002).

> "through an orderly bankruptcy procedure [and thus not an unilateral decision], a well-functioning global financial system would grant a fresh start to those who cannot meet their debt obligations, giving creditors an incentive to pursue good lending practices, while ensuring that borrowers able to repay loans do so" (Stiglitz 2003, 54).

Therefore, if this were to be applied, one would side with those who are defending that "[a]n ethical approach to global finance that prohibited rich countries from profiting at the expense of the poor would demand debt forgiveness where servicing debt conflicts directly with providing basic social services to a poor populace" (Stiglitz 2006, 164-165).

1.5. Legitimate debts

At this point the reader may argue that, due to the different classification of debts, any debt could be potentially rendered illegal, illegitimate, unsustainable, or even odious. Indeed, there are real possibilities that the above mentioned doctrines might be put into practice exhaustively and extensively meaninglessly. As the Norwegian government pointed out when cancelling the Ecuadorian debts, any categorization of debts is so highly debatable that it may sound as if it were "a recommendation to *cancel all developing countries' debt* [or any debt in general]. This can hardly be regarded as either appropriate or desirable" (in Raffer 2007a, 225; emphasis in the original).

However, in a democratic state which is strongly committed to the protection of its citizens and to the rule of law, there is little reason to think that a simple definition such as the following is to be naively dismissed: Debts are to be considered legitimate when they were contracted in accordance to both national and international law. In addition, during the negotiation process both the creditor and the debtor shall enjoy not only the same equal position but also reasonable and sensible conditions (i.e. usury is not admissible). Either way, the outcome of the negotiations shall be committed to the interests of the population of the country. In fact, "[a]llowing basic legal principles and economic sense to prevail by differentiating debts and introducing creditor liability is also in the interest of bona fide creditors, who would lose less or nothing if all debtors were equal before the law" (Raffer 2007a, 245). If this were impossible to be applied, one may well wonder whether constitutional democracies are in fact doing their job as it does not seem reasonable in any way why citizens, in theory those protected by the law, shall bear the consequences for illegal and doubtful lending practices.

2. The harm principle: an 'ethical yardstick' to achieve global justice

Before discussing the ethical considerations when critically assessing the concepts of debts, it is necessary to elaborate further on the 'theoretical backbone' of this paper. Mainly, it draws upon a definition of (global) justice which tries to reconcile both cosmopolitan and communitarian strands of thought. In doing so, the 'harm principle' is taken as the theoretical linchpin, which equally contains and merges both negative and positive duties.[11] At the same time, this is an attempt to reach a common denominator between these two ethical schools of thought so that an achievable and attainable goal can be conceived, i.e. coming up with an ethical justification for why some debts can and should be (partly or fully) re-negotiated or not paid back, and why each country has the right to establish an audit commission. We simply aim to show that it is possible for both communitarians and cosmopolitans to agree on the need for a fundamental and much needed rethinking about the nature of debts and the way they are incurred and eventually dealt with.

But first we will provide the reader with a brief introduction to the 'harm principle' and to negative and positive duties – the latter thereby often understood as constituting the main fault line between cosmopolitans and communitarians. The reader should be aware, however, that even though we depict 'communitarians' and 'cosmopolitans' as more or less homogeneous groups, many differences exist within each group (Kleingeld and Brown 2014). Since a thorough depiction of the individual discrepancies between individual scholars and strands of thoughts would stress the scope of this paper too much, we rather restrict ourselves to 'ideal cases' of both ethical schools. In doing so, we believe that we are still able to depict the most important points of both. Afterwards, we proceed to show the common ground between both schools as to what the harm principle is concerned.

2.1. An 'ideal' account of cosmopolitanism – the case for a universal moral code

Cosmopolitanism, as its roots from the Greek word *kosmopolitês* ('citizen of the world') already suggest, takes the world as one community. Accordingly, it assumes that there exists (at least a minimal consensus of) a universal ethics, which equally applies to all individual beings (Shapcott 2008). Thus, cosmopolitanism takes *humanity* as its reference point – rather than certain different *communities* as in the case of communitarianism. What follows from this is the characteristic commitment to "egalitarian

[11] The reader should bear in mind that the discussion of negative and positive (moral) duties is different from a strictly legal reflection on this issue. While legal duties most often constitute corresponding (legally) enforceable rights, moral duties often remain exclusively in the personal, i.e. non-official/non-legal realm of individuals and/or communities. Hence, the talk about what 'ought to' and 'should be' is not the same as arguing for and about legal rights and duties. Even though a breach of law can also be considered immoral (e.g. if the community as a whole has agreed upon certain rules), the implications of a legal study are different and usually touch upon issues like the actual enforceability, procedural rights and the like. Due to the scope of this paper, such a study is left out while rather focusing on a thorough ethical reflection on these matters. However, this might serve well as a starting point for further legal reasoning on these matters.

norms which affirm the value of the ordinary lives of 'insiders' and 'outsiders'" (Linklater 2006, 336). In other words, cosmopolitans do not distinguish between the members of one community and of another. Accordingly, the talk of rights and duties also equally concerns every individual human being. While cosmopolitans also take negative duties into account (e.g. refraining from any violent behavior towards others), they usually stress the importance of positive duties, i.e. the active promotion and implementation of certain behavior based on the notion of a universal ethics (e.g. the duty of benevolence towards all individual beings). As Linklater eloquently summarizes, "the key point is that it is wrong to promote the interest of our own society or our own personal advantage by exporting suffering to others, colluding in their suffering, or benefiting from the ways in which others exploit the weaknesses of the vulnerable" (2002a, 145).

Be that as it may, the actual scope and extent of such duties is thereby subject of ongoing discussions between all sorts of cosmopolitans, some of them leaning more towards a utilitarian approach (e.g. Peter Singer [1993] and his account for the eradication of world poverty) and others being more inclined towards deontologist positions (most prominently Kant and the universal claim of his categorical imperative).

2.2. An 'ideal' account of communitarianism – the case for moral pluralism

Communitarianism views the world as consisting of many different (self-sufficient and autonomous) communities, each one of them possessing their own moral codes and very different perceptions of what 'good' and 'bad' behavior may be like. In general, morality is thus "'local' to particular cultures, times and places" (Shapcott 2008, 189). Since there is no common or overarching sovereign judge in this regard, all these moral codes are of equal weight and importance.

The attempt by one community to impose its values upon another one is therefore deemed as ethically 'wrong'. In this regard, the cosmopolitan approach (with its idea of universal ethics applying to humanity as a whole) is often accused of promoting and imposing a specific set of (e.g. Western) ideas and values upon other communities and thereby violating the sovereign right of other autonomous (e.g. non-Western) communities to decide about their moral codes on their own. In contrast to this, communitarianism emphasizes "moral pluralism and communal autonomy" (Shapcott 2008, 186). According to the well-known communitarian Michael Walzer, ethics in terms of moral codes is essentially the product of "thick cultures" (1994, 5), while humanity is regarded as possessing (at best) only a 'thin layer' of universal ethics and (almost no) shared understanding of morality since it has "members but no memory, so it has no history and no culture, no customary practices, no familiar life-ways, no festivals, no shared understanding of social goods" (idem, 8). This also implies a differentiation between duties towards members of one's own community and those who are outside,

while each community and its members owe moral priority to their own society (Shapcott 2008). This is not to say, however, that there are no duties towards outsiders *at all*. In fact, many communitarians acknowledge a minimal core of moral duties (in terms of a duty to assist and help) towards those 'outsiders' who are in dire need. Victims of genocide, famines, natural catastrophes and the like are such cases in point.[12] The question of the existence and the scope of such duties is also the distinguishing characteristic of many "different perspectives, including Marxists, realists, postmodernists, liberals and conservatives" (Shapcott, 186).

In any case, most communitarians agree in their rejection of cosmopolitanism as being based on the idea of a single world community (or even a single world state), which is regarded as being non-existent and contrary to the principles of cultural diversity and moral pluralism. On these grounds, communitarians also reject the notion of positive duties since those are perceived to do more harm than good: Eventually, so the argument goes, they violate the sovereign right to live autonomously by allowing each community to infer into other communities' internal affairs. As a consequence, communitarians elevate the principle of non-intervention to their prime precept.

2.3. The harm principle – serving as the nexus for both schools of thought

At first glance, communitarianism and cosmopolitanism appear to be rather irreconcilable given their fundamentally different view of humanity as either being a whole or as consisting of many different societies with particularly different moral codes. Nevertheless, it remains questionable whether their disagreement is necessarily that exclusive or whether both schools of thought (if taken seriously) can actually share a common ethical ground. We argue that this common ground can be found in terms of a *global harm principle* that implies both negative and positive duties.

As already mentioned above, most communitarians (as summarized in their particular stance against cosmopolitanism)[13] emphasize the importance of the negative duty of non-intervention. However, this principle applies *globally:* In fact, the very essence of ethics (of whatever sort) is a universal matter. Even if we assume that there is no such thing as a universal moral code shared by *all* communities around the globe, we are still able to identify certain rules of behavior and/or practices which ought to apply equally to all communities, thus being universal. In a similar vein, neglecting a universal moral code is no other than a universal thought *in itself* which inevitably implies certain

[12] In this regard, "communities are not morally free to cause unjustifiable harm to outsiders and have at least *humanitarian* duties to individuals everywhere" (Shapcott 2008, 187; emphasis added).

[13] With regard to the numerous different branches within communitarianism and their particular different views and standpoints on certain issues, Shapcott tries to single out a common ground of all communitarians, which he finds in their shared rejection of cosmopolitanism. Hence, he proceeds to use the term "anti-cosmopolitans" (2008, 186) in order to depict the most important differences between the two schools of thought.

(equally universal) rules of moral prescription (e.g. the principle of non-intervention and sovereignty) and could thus be called ethics. In other words, the fact that certain rules or views of the world could and ought to be shared by all shows that there must be a certain universal consensus inherent in all ethical thinking – including communitarianism. Despite all differences, all advocates of moral pluralism agree on this particularly universal moral principle (Shapcott 2008). The question is now whether this principle only enables and allows for strictly negative duties (*do no harm as such*) or whether it also implies positive duties (*prevent and do not allow for harm*).

Despite the non-intervention principle, communitarians usually also stress the importance of cultural diversity and moral autonomy as universally valid principles. Most of them regard these principles as being best preserved and protected by a principle of non-interference towards other communities, i.e. refraining from interfering in their domestic affairs. This specific view, in turn, depicts moral communities and states[14] not only as autonomous but furthermore regards them as equally independent and self-sufficient agents. Given the increasing level of global interconnectedness and mutual interdependencies in our current world order, it can be stated that (at least the extreme version of) this view is at best naïve: Even though states are (theoretically) equal in ethical terms, they are *not* actually *treated* so in practice. However, for any existing differences among states to be justified it is necessary to have an even 'playing field' in the first place, which allows each 'player' equal chances and opportunities to develop oneself while all have to stick to the same rules. With regard to our current international 'playing field', one might argue that it is unjust in its very own nature since it has been built up in colonial times and upon the shoulders of many who were treated by others "like cattle, destroying their political institutions and cultures, taking their lands and natural resources, and forcing products and customs upon them" (Pogge 2005, 2). With this in mind, current inequalities appear to be remainders of the past, which ought to remind most of today's successful industrial states of their historical responsibility. Be that as it may, we decided to leave this discussion aside for further research.

For our purposes, however, it is already enough to state that different communities have had different opportunities and chances to develop. Following up on this, it remains doubtful whether states are *only* obliged to refrain from any kind of *direct* interference (as proscribed by negative duties) or if the passive allowance and maintenance of these unequal power positions might not also lead to a further imposition of harm, which is not covered by negative but by positive duties. In our current international system, states cannot refrain from interacting with each other, especially with regard to common goods such as the use of sea or air. Air pollution through fabric production is such a case in point where the harmful corollaries of someone's action are also felt by others. Moreover, some states (endowed with an already highly industrialized infrastructure) even enjoy a greater advantage over others by, for

[14] The terms 'moral communities', 'states', 'people' and 'societies' are used synonymously – if not being stated otherwise.

instance, exploiting natural resources in such a way that only they themselves reap the benefits while the costs (in terms of environmental pollution) are shared by all — while even furthermore hampering less-industrialized countries to develop. Thus, even though we might not *intend* to hurt others, we still do so by the way we live and economically produce (otherwise also referred to as the problem of 'negative externalities').

Eventually, the harm principle creates the positive duty to avoid and prevent further harm, which results not only from 'our' direct behavior but also from the costs that the maintenance of 'our' community imposes on others. In this regard, we differentiate (along with Linklater [2002b]) between three types of harm: a) harm that is caused on *purpose* and with an actual intention, b) harm that is caused due to *indifference*, and c) harm that is caused due to *negligence*. The first type of harm is thereby self-explanatory and has already been covered by the negative duty to refrain from any harmful behavior towards others. The second type refers to the "core moral issue [of] complicity in the misery of others" (Linklater 2002b, 330): One might not intend to harm others but still remains indifferent while actually profiting from it. An illustrative example relates to high-tech products of which production requires certain kinds of minerals and other precious materials (e.g. rare earths), which in some cases lead to severe environmental and social implications for local communities (EPA 2012). Even though we might not want the actual mine workers to suffer, we still accept their particular suffering by remaining indifferent to it (e.g. by continuing to buy these products without demanding any change in the actual production of them). The third type of harm is negligence, i.e. "the failure to take reasonable precautions to prevent the risk of harm to others" (Linklater 2002b, 330). While indifference to harm could both be deliberate or unintentional, harm caused by negligence means that damage is done without the *explicit* knowledge of the perpetrator even though he/she *should* have known. In the case of lending, this is also reflected in the doctrines we propose when arguing that creditors should have been aware of both the conditions and of the potential harmful implications of their loans. In this regard, a creditor has to bear responsibility for the actual outcome by ensuring (e.g. through certain loan stipulations) that his/her money will not be used against the people (for instance, by proscribing any human rights violations).

Regardless of what 'our' intention is and no matter if we are aware or unaware of the harm caused, the actual imposition of *any* harm as such can never be justified. Thus, we are not only responsible for deliberately causing harm but for *any harm* which is connected to and results from our own behavior.

In addition to this, Linklater (2006) has rightly mentioned that there is at least a minimal consensus on the nature of harm across all human societies, even though he tends to restrict it to physical/bodily harm, which can be equally felt by all human beings. Nevertheless, this thought can be extended, or rather transferred, to the communitarian idea which stresses the universal importance of certain values like sovereignty and (local) autonomy. Accordingly, harming those principles has to be

a universal issue as well. In this regard, a violation of those values is not only globally prohibited but the *nature of the harm as such* is a concern of equal weight to each community.

The essential question is now how 'harm' is actually defined and what kinds of practices and actions count as 'harmful'. This is a crucial task in order to be able to assess what kinds of (negative and/or positive) duties follow from this. For our purposes, nonetheless, it is more important to ask *when* a particular action or omission can be regarded as 'harmful' and thus seen as *ethically prohibited* – instead of trying to enumerate an exhaustive catalogue of particular harmful practices.

Hence, what makes an act prohibited is thereby not the fact that it is in itself harmful but that *harm is inflicted or imposed* – rather than chosen (Miller in Shapcott 2008, 198). This is to say that states (deriving from their moral autonomy) also have the right to *voluntarily* engage in any kind of practices (e.g. due to specific cultural, religious or economic reasons) – even though those might be considered by others as 'harm'. Any potential 'damage' that occurs in the following is thereby knowingly taken by the community as a *(voluntary) cost* of its freedom to choose this particular action. If, however, the damage is imposed *involuntarily* on other communities *against their will* they are now denied the freedom of choice and thus the damage arises as harm. It is important to stress this point with regard to the difficult issue of defining what counts as a harmful practice and what does not. Since some people might have different opinions on the particular nature of harm, the *requirement of consent* can serve as a starting point in order to differentiate between 'harm' and 'costs'.

The difference between 'costs' and 'harm' is also the nexus where communitarians can agree with cosmopolitans by generally condemning the *external and involuntary imposition of harm* which does not only do damage to other people but also bereaves them of their sovereign right to choose their own way of life. Both schools of thought cannot allow for such a harm to occur.

If we assume that this is right, it still remains arguable how we should find out if a certain people actually gave its consent to certain practices towards others. On the one hand, the required consent could thereby be based on a clear affirmation of the practice in question by the people (e.g. through democratic means) or be seen as lacking by a clear collective refusal as being expressed through popular protest or other form of popular expression. However, the case may not always be so clear at all – for instance, there might exist different understandings of certain practices, rituals and the like between the actors involved and therefore also a different understanding of what is considered to be 'harm'. Even though this question cannot be answered that easily, it can at least be stated that there is a *positive duty of engaging in a dialogue* with other communities as to *find out whether a certain practice turned out to be 'harmful'* for a community or not (Shapcott 2008). Of course, there might be differences in assessing the actual harmful nature of the practice in question. Yet, a global (i.e. universal) harm principle can only be effectively applied and implemented if moral communities do not only refrain from any potential harmful practices but also respect each other by taking care of the implications of

one's own practices towards others. That is to say that it is not enough to refrain from any purposeful interference into other communities but also *to consider the harm that 'we' might unwarily impose on others due to 'our' ignorance or indifference of what others might regard as harmful*. Accordingly, we cannot avoid engaging with each other in a *minimal set of dialogue in order to determine a common bottom line* about the nature of harm and whether certain communities suffer more than others. Obviously, this dialogue has to be based on an equal footing and with mutual respect to each other's autonomy and sovereignty. At the same time, however, and considering the globalized and interdependent world order we nowadays live in, we cannot abstain from taking part in such a dialogue if we want to effectively account for *both* the harm principle and the preservation of local autonomy. Especially with regard to the latter, communitarians ought to consent to this *minimal core of positive duties* as contained in and proscribed by a harm principle. Thus, a global harm principle does not only contain negative duties in terms of avoiding harmful behavior but also the positive duty to assess the potential harm of one's own behavior towards others.

To sum up, the harm principle is set on the idea of eliminating all kinds of involuntary and externally imposed damage done by one community to another. In order to achieve this, a minimal set of both negative and positive duties mandates us all to both abstain from purposefully doing any harm as well as to prevent any harmful implications of our own actions. For the latter, it is necessary to engage in a dialogue with other communities as to see what kinds of harm one might warily or unwarily do to each other as well as to reach a broad consensus about the particular nature of different kinds of harms.

2.4. Implications of the previous discussion for the taxonomy of public debts

The question is now what sorts of implications the harm principle brings along when dealing with debts that may be claimed to be odious, illegitimate, illegal and/or unsustainable. First, we will have to show that the categories of debts, as described in the first section, can be classified as 'harm' – and not as 'costs'. In any case, as emphasized throughout the paper, a subject that touches all shall be *discussed by all* so that harm is not only avoided intentionally but also unintentionally. If one is to follow this principle seriously, both the more powerful (by an equal application of stricter rules for all those involved) and the more vulnerable (by getting a stronger voice in the international community) can benefit.

At this point it is useful to remind that 'harm' is also a damage that is involuntarily and/or unknowingly imposed on people. While debts always lead to some degree of dependency from the creditor side and/or could be used in ways which eventually turn out to be economically unsound, all aforementioned types of debts – with the exception of legitimate ones – differentiate from 'costs' due to the *involuntary suffering*, which eventually constitutes the harmful nature of those debts as such:

Either people have not agreed to the very contraction of debts as such (e.g. in the case of odious debts) or to the particularly harmful outcome (e.g. in the case of unsustainable debts).

The following question is now what kinds of ethical implications (in terms of duties) such a qualification of debts as 'harm' implies: While it appears to be self-evident *in abstract terms* that all creditors should refrain from lending towards countries of which governments tend to suppress its people and/or do not take their consent into consideration at all, it remains arguable what this *exactly* means and implies.

At first glance, this might appear as a 'mere' negative duty in terms of general non-intervention. Yet, the *universal* duty to respect the autonomy of each moral community implies a certain core of *global solidarity*: If we ought to respect each other values and beliefs, we cannot deny other peoples' sovereign right of self-determination and (political) autonomy. Solidarity hereby always entails a certain form of collective responsibility in terms of not allowing for the harm of others. Most importantly, the idea of solidarity also implies the respect of autonomy: With regard to democratizing states (i.e. countries of which people just regained democratic control over their own territory) this obliges creditors to consider their particular responsibility for the harm which has been done via their loans – and which have thus violated other communities', or rather peoples', sovereign rights. Moreover, it obliges them to accept the particular people's decision to default and/or to proceed to a debt restructuring of those harmful debts. Many states which have suffered from irresponsible borrowing and lending practices are heavily indebted and would remain seriously hampered in their development capacities if one denied them the right to get rid of those parts of their debts which were contracted under odious, illegitimate and illegal conditions – not to mention those that might be seen as unsustainable. To do so would eventually mean denying their right to autonomously decide about their own future.[15]

As the introductory quote already mentions, solidarity[16] is thereby different from charity since it is not about giving something from the top to the bottom but about accepting one's responsibilities towards each other equally. Those responsibilities, of course, vary among creditors and borrowers according to particular (political and economic) power positions. However, a universal ethics based on the harm principle does not only mandate us all to carefully consider lending and borrowing practices

[15] Furthermore, many creditors (public ones like states as well as private ones such as credit institutes, businesses and private persons) directly profit from issuing loans with high interest rates to all kinds of dubious governments and individual rulers. Even though they might not intend to cause any harm as such, they (knowingly or indifferently) accept the harmful consequences of their lending practices.

[16] Solidarity is taken in this context as the way the 'judge' and the 'judged' understand each other horizontally. They are equals, if not one and the same, when judging each other. Only then the context is common to both – by affecting and therefore challenging the existence of both.

but also imposes the positive duty to (help to) get rid of the aforementioned types of debts so that the principles of equal sovereignty and autonomy (together with the principle of 'do no harm') are restored.

3. To the benefit of all: a much needed discussion on public debts

Theoretical and practical answers to the complex subject under discussion may seem hard to give. Yet, we consider that the superior relevance of this topic deserves better than the non-empirical assumption that 'this is not likely to happen', or 'this is not possible'. In the following, we try to conceive of some possible counter-arguments while evaluating them subsequently.

The reasoning presented throughout the paper is often dismissed since it is accused of scaring off both creditors and borrowers. If the latter fear that less investment and more difficulties in accessing the markets would eventually arise after declaring part of its debts illegal, illegitimate, unsustainable or even odious,[17] the former are easily alarmed of an eventual, though real, possibility of losing their money. But this is not *necessarily* true. In other words, it is true only in a system that remains indifferent to unethical circumstances. In fact, we believe that if a strict solution were to be found both borrowers and lenders would benefit from it immediately. On the one hand, in terms of debts that shall be deemed *odious*, "resistance to the reforms should be relatively muted" if the latter are "assured that a new policy both makes clear what they must do to ensure that their loans are granted legitimate status and demonstrates that the costs of that process are not so burdensome as to unreasonably impact the return on capital earned in sovereign lending" (Shafter 2007, 55).

On the other, for borrowers clarity in these matters is fundamental. They would only restrain from applying such a doctrine if they fear losing credibility in the markets. And yet, as repeated exhaustively, what we see is that countries refuse doing so due to the fear of being excluded from the markets. That is in fact a symptom of a very unjust system which facilitates

> "borrowing by destructive rulers who can borrow more money and can do so more cheaply than they could if they alone, rather than the whole country, were obliged to repay. In this way, the borrowing privilege helps such rulers maintain themselves in power even against near-universal popular discontent and opposition" (Pogge 2004, 272).

[17] As the already presented example of post-apartheid South Africa confirms. Tunisia is also a very interesting case since social movements and NGOs were pushing the post-revolutionary government to implement this doctrine. Yet, as the rating agency Fitch declared "Tunisia benefits from strong support from international financial institutions and bilateral creditors" and therefore its external debts need not be repudiated (in Chmaytelli 2014). The reader should note the pressure exercised by the agency on the country in order to reach such a decision.

Hence, only a strict solution – allowing for a 'fresh' start for those coming in in a post-revolutionary country – would benefit 'us' all, in the sense of a global ethical society, since it could very well

> "prevent state failure by limiting the spoils available to a potential autocrat from looting the state (…) and it [could] also free resources for the use of postauthoritarian governments. These additional resources might in some cases make the difference between sustainable democratic redevelopment or a relapse into chaotic autocratic state failure" (Shafter 2007, 50).

It is then, in fact, as much a priority for the citizens of these countries as it is for those of others if a true global civil society is to emerge since they would profit from a more stable world order. To apply this doctrine is to guarantee that neither 'our' government harm 'theirs', either by actively doing so or restraining from acting at all, nor that the other citizens suffer due to 'our' indifference and negligence. In the end, this means nothing else than respecting their autonomy as part of a global solidarity.

Yet, many people remain living in an economically precarious (and thus continuously harming) environment. This, however, cannot be attributed to the fact that they govern themselves poorly, "but [that they] are very poorly governed [by a certain suppressive elite]" (Pogge 2005, 7). By giving out loans towards these elites, creditors bear responsibility for the harmful practices committed with regard to the use of their money as well. Hence, this doctrine (if taken seriously) can send a message to potential candidates of, yet to come, nondemocratic regimes by discouraging their political willingness: Greater difficulties of credit assessment would expectedly emerge – creditors are aware that they may lose their money afterwards so they will seek better practices than those chosen so far. Moreover, potential autocrats and their allies cannot reckon with any significant financial support from the international market anymore, thus diminishing the incentives for potential supporters to cooperate with such regimes. At the same time, these same creditors are now aware of a number of strict conditions that they have to rigorously follow. Expectedly, competitiveness between them would take care of finding 'better' creditors and drop those that do not play along strict rules. Eventually, creditors would benefit from this doctrine by establishing their names in the international markets with higher or lower reputation.

In terms of illegal and illegitimate debts, similar logics are to be followed. To start with, *illegitimate* debts are most likely to be found in countries that might be still in a process towards democratization, and in which therefore the rule of law is at times still at stake, and financial and economic stability.[18] Thus, by highlighting the consequences of potentially risky and unthoughtful

[18] That is not to say, however, that illegitimacy cannot be found anywhere else. If the above mentioned criteria are simply not met in countries that are able to provide sound economic and social benefits to its citizens, and

projects or investments in such countries one is in fact guaranteeing a deeper commitment to the necessary economic and political stability of the world order based on a strong commitment towards global solidarity and a fundamental respect for each other's autonomy. In any case, it shall be expected that creditors will only intervene when a high percentage of success is predicted. But this can only happen if there is mutual cooperation between those coming in and those who are already living there.

As for the debts known as *illegal* not much has to be said: It is of no ethical justification to demand the taxpayers of a country to pay for the legal failures of those who govern them. If governments are politically and legally accountable to their citizens is precisely due to their alleged commitment towards the implementation of the rule of law. Thus, if any of this is to be accepted one should push those countries, which claim to be historically guided by democratic principles, forward so that they do not only accept such a doctrine but also promote it throughout.

Concerning *unsustainable* debts, the reasoning is slightly different. In this case, it is not a matter of legality (at times it may happen, however, especially when human rights are at stake) or of absence of consent (which, of course, can be the case in specific circumstances). Rather, it is to recognize that a 'fresh' start – that in the past was associated with the revolutionary consciousness of a new beginning[19] – for any country is desirable, since after all that is very much the lesson that history in this regard carries to tell us. In fact, "[t]he 1930s and 1940s are littered with default and debt conversions, while the post WWII era tilted toward a heavier reliance on financial repression to deal with the legacy of high war debts" (Reinhardt and Sbrancia 2015, 8). Either through debt restructuring or clear default (the solution shall be assessed case-by-case) a sovereign state may be given the opportunity to get itself together while committing itself to significant changes in the near future – this being common to any categorization of debt.

To close this debate, there is one criticism that runs against any debt cancelation or restructuring, that is the principle of *pacta sund servanda*: Pacts, as contracts, are to be respected. Nonetheless, this sound economic, legal, and ethical principle, as Raffer (2007b) puts it, may face severe limitations. To start with, any legal system recognizes special, often sensitive, "circumstances where contractual rights can no longer be enforced, or indeed cease to exist" (idem, 85). In this regard, "[g]uaranteeing human rights enjoys preference over perfectly legal claims and might make them unenforceable, thus overruling *pacta sunt servanda* – except [so it seems] when the borrower is a developing country" (idem). Though, it is not justifiable that these countries should not enjoy the same rights as others. Additionally, shifting responsibility only to debtors demonstrates a very narrow

where democracy and the rule of law have been established for long, then any country should have the right to undertake a sound empirical study in order to know what they are really paying for.

[19] As Habermas suggests, it was this, a legacy inherited from the French Revolution, that allowed individuals to see themselves as emancipated while believing that they were able to command (alone) their own destiny (1999, 468).

understanding of contracts as such since they can only be defended in legal terms if both parts act in accordance with the rules. As it has been stressed throughout the paper, lenders should care about the contracts they got themselves into – either by reflecting on whether those on the other side hold the authority to do so or by guaranteeing that what they are proposing is feasible and respects the environment they live in. Otherwise, "[t]ortious or illegal behavior makes them liable to compensate for damages, and may void contracts" (Raffer 2007b, 85). In any case, if they are unware of the conditions associated to their contracts – either because they did not bother to know or because they did not collect all the information necessary to proceed such a risky path – then they should assume so. Eventually, this is nothing else than respecting the decision of the debtor. Today, when creditors claim to not have known about the particular illegal, odious, etc., circumstances, they can simply get away with it. The question remains, however, on what ethical grounds this can be considered reasonable. We believe that there is no such justification whatsoever.

Either way, we consider these doctrines to be as much a restriction as they are an opportunity for creditors: Either they revise the conditions of their loans by toughening the conditions to credit if no significant answers are given or they risk facing severe loses in potential crises. Against this, authors claim that "[w]hen you sit down to have a few hands of bridge, you want to play bridge – not play the quite different game of determining good rules for bridge" (Brennan and Eusepi 2000, 4). But that is fundamentally misleading: Despite the question whether it is even appropriate to compare the act of lending and borrowing money to a 'game', it is noteworthy that in the latter "[e]veryone knows exactly what the rules are. And not only that, people actually *do* follow them. And by following them, it is even possible to win!" (Graeber 2015, 191; emphasis in the original). Hence, confusion or misunderstandings – and potential conflict accordingly – can only be avoided if both players share the same understanding of the 'terms and conditions' of the particular game. This includes an awareness about inherent potential opportunities and risks *for both sides*. Most often, it is implied that if one wants to win, one has to take risks – however, one should also be able to cope with the losses since those risks are an integral part of the game as such. Translated into our topic, it is of utter significance to determine the most fitting rules in terms of borrowing and lending or otherwise tremendous negative effects and implications for both 'players' – creditors and borrowers – are likely to follow. Therefore, it is vital to establish an *ethical framework* for (public) debts which applies equally to both creditors and borrowers.[20]

Moreover, one can also (quite simply) argue that if countries always repaid its debts, no risks would exist. Following up on that, it should also be reminded that in face of a likely default a risk premium is usually included in the rate of return (in order to 'even out' the risk as it is included in the

[20] Yet, it is *not* the aim of our paper to define the 'game' *as such*, i.e. to stipulate concrete terms and conditions for each single loan. Rather, we believe that it is of fundamental importance to reconsider the overall 'rules of lending/borrowing' and to test whether they are based on a fair and equal understanding of the 'game' between all actors involved.

'game' metaphor). These risk premiums, in turn, would not exist if a risk of default did not exist. Thus, bondholders can be expected to have known about the potential risks – which at times may be caused by dubious choices by creditors or by unexpected events such as natural catastrophes (Raffer 2007b, 85-86) – and losses, which are precisely reflected in higher risk premiums and interests rates. Considering that creditors usually demand higher risk premiums for loans (based on the assumption that their actual repayment is not taken for granted), it appears questionable why they should be fully serviced in case of a default or of debt restructuring if they had known about the risk beforehand – and still proceeded to issue loans. Referring to the gambling example above, one may wonder why creditors, who demand a higher amount of money (e.g. in terms of interest or risk premium rates) in order to account for the risk of 'losing the game', should then *in addition* also be *fully* paid back if the risk was happening to become real: If they had wanted to avoid those risks, they should not have participated in the game in the first place. This is not to say, however, that creditors should lose all their rights and claims on repayment just because they demand a certain risk premium and/or interest rate.[21] Surely, it depends first and foremost on the particular 'harmful' nature of the debt in order to rightfully default on them. We do not deny that creditors are generally entitled to get their money back. Though, it is worth reminding on the idea of risk premium rates in order to counter the common assumption that creditors should *always expect* the full repayment of their loans – otherwise, a risk premium would not be necessary but rather constituting another means of getting more money for the same loan service.

At this point, one might tend to argue that the allowance for such a default would unnecessarily, or rather disproportionally, hurt the creditor side in a very harsh way by shifting the whole losses on their side. In making the case for a full, or at least partial, repayment of debts, it is quite often stressed that creditors are the ones who are actually enabling general investment and thus economic growth (which is eventually supposed to benefit all). Accordingly, so the argument goes, they should not be punished just for the fact that they lend money to different states – at least if they did not know about the actual conditions. Eventually, it is claimed, it was the borrower states' governments and not the creditors who caused the harm. Considering the actual harmful ways in which the borrowed money is used, it should become clear, however, that an ethics which takes the harm principle as its point of departure cannot ignore this harm but has to account for it in a way that equally concerns each single nation and/or moral community. While it appears to be self-evident that countries should refrain from doing harm to each other, this principle is *not based on a specific knowledge about the actual harm* but

[21] One might counter this argument by saying that the debtor countries (by incurring debts) have also agreed on the particular loan conditions – including the percentage of interest rates – and are thus still obliged to pay back the full amount. With regard to the current international financial system with its important role of rating agencies, their particular assessment of states and its respective influence on interests rates for public bonds and the like, this argument is not convincing since most states do not have a choice as to borrow money for conditions which are externally established by third-parties like central banks, rating agencies, etc. Hence, a considerate and responsible handling of the particular fixation of interest rates is first and foremost a positive duty of those actors as well.

rather on *the very fact that harm has been imposed to another community*. This could also happen accidently or unknowingly, of course, but the harm (e.g. violent suppression of a people) has still been done. The harm as such, however, has only been made able by providing the perpetrators – for instance in terms of 'odious debts' – with a sufficient amount of money to carry out their acts (i.e. financial support for suppressive governments).

Another question concerns the handling of loans which have not been issued by the current government but by previous ones which the people either did not approve or even did not experience at all. One might argue that then the citizens of a country cannot be held responsible for what *their predecessors* did to other communities. Even though it might seem logical that they cannot inherit responsibility for the harm and damage done by these loans, they are altogether still responsible for the *ongoing* harm while it also seems unjustifiable why some should be entitled to "claim the fruits of [those] sins" (Pogge 2005, 2) in terms of competitive advantages that they got from their better starting point; let alone the fact that other countries had been hampered in their development, which "has allowed [them] to dominate and shape the world" (idem, 2-3) according to their own convictions, beliefs and demands.

We are well aware that strong criticism might arise both from the Right and from the Left when dealing with this issue. Some branches of the Right as well as of the Left will certainly claim that global financial markets and ethics are two separate worlds and thus they cannot be assessed together. If the latter do so due to their skepticism of a reformed capitalism (i.e. a type of social and economic organization dressed up with a 'human face') let alone their critique towards capital and its conflicting nature with social relations, the former would expectedly argue that the world is unfair by its nature and any attempt to change it is a task which can only be successful in a world inhabited by 'angels'. However, their critiques can be mitigated if one engages in a rational discussion on these very sensitive matters.

As we have been emphasizing, our proposal is one that aims at reaching attainable goals in spite of complex negotiations. To start with, the argument presented here is minimal. Thus, some more skeptical or conservative forces do not have to give much away since the proposal does not only aim at guaranteeing a stronger autonomy for different communities by reinforcing state sovereignty and treating all states equally, but also at assuring an increasing interdependence between countries as well as a widespread democratization throughout the world. Such a proposal is in fact running along the theoretical foundations of the international community by emphasizing a stronger commitment to political and economic stability, and therefore an ever increasing interdependence between countries, as well as striving for worldwide respect for human rights. At the same time, as demonstrated before, it rescues 1) the liberal teachings that have helped building the world as 'we' know it – it would be, to say

the least, imprudent to deny to others what has been tremendously useful to us; and 2) the roots of part of the Western world in terms of the Judeo-Christian tradition of debt forgiveness.

Nevertheless, if such doctrines are to be put into practice, we recognize that a stronger and deeper dialogue between social movements in many countries may arise, therefore gaining support of the most progressive forces. In fact, only a robust and stubborn popular pressure can lobby states to change their practices in debt-related topics while striving for global awareness in such matters. Here, a new internationalism may seem plausible, and indeed necessary, since the economically weaker countries will need to cooperate so that discussions (e.g. world convention on debts as such) can finally take place. But that is not all: The ground will be open for an emerging solidarity built upon a solid self-interestedness of the citizens from the most indebted countries since one may well wonder whether the debts of their states ought to be paid back according to legal and moral principles, let alone disastrous economic and environmental results. Thus, the fear of pure indifference as "the worst attitude" to life in general, as bitterly stressed by Stéphane Hessel (2011, 17), would (presumably) progressively diminish while each one of us recognize the need for a sound empirical study. In any case, to predict the outcome of such negotiations is no other than speculation but one shall hope for an increasing, and much needed, democratic control over state's debts.

Having outlined the most important arguments and counter-arguments to our main theses, let us now turn briefly to some possible solutions on what could and ought to be done. We propose that an audit commission shall be formed (3.1.). In this regard, its decision might either be followed by a unilateral solution (3.2.) or an international one (3.3.). These are in any case rough sketches of the existent literature. Therefore, they should be seen as a first start that needs to be further discussed and accorded between state leaders and other members of the international community.

3.1. Auditing public debt

Before entering into a more technical discussion, it is of great importance to briefly present how the study is to be carried out. A sound empirical evaluation of state's public debts shall be conducted by an audit commission, i.e. an *independent* (non-partisan) and *external* (non-state-related body) authority composed by a wide range of national[22] and international experts in economic, legal and ethical matters – getting active only on request of a democratic, or post-revolutionary, state so that internal majorities

[22] For clarity's sake, it should be re-emphasized that these nationals cannot have any connection to the state itself, either by being attached to the parliament, a ministry or any other state bureaucracy (only representatives of the main courts of the country directly dealing with this issue as well as representatives of the central bank of the country shall be given authority). Civil servants shall be excluded from the negotiations. Also, any national belonging to a political party or directly participating in organizations dealing with these matters, either in favor or against such a study, shall not be accepted on grounds of impartiality and transparency.

are reached within the country on these issues. Such a commission should include, as formal members, representatives of the main courts and of the central bank of the country as well as elements of NGO's and international organizations with sound and proved experience on these matters, which could be given either full membership or observatory status – such as the Committee for the Abolition of Third World Debt (CADTM), the Jubilee Campaign, the European Network on Debt and Development (EURODAD), and others. Besides, it may be important to hear the opinion of the main creditors, especially on reports about the application and usage of their money, as well as of already existent external auditors (e.g. Deloitte or Ernst & Young). Yet, due to their own political and economic agenda and therefore to a potential clash of interests, these groups shall not be given full membership of such a commission. In order to guarantee a transparent, impartial and non-biased auditing commission, both the debtors and the creditors, and others with direct association to these two, shall not be given full membership as well.

Hence, such a variety of members can guarantee not only a stable body composed of national and internationals members and observers with no obvious political affiliations or goals, but it can furthermore assure transparency and accountability to those who owe the money and to those the money is owed. In addition, the actors shall be granted enough power "to demand public documents, call upon civil servants and others to give evidence, and even access bank accounts" (Lapavitsas 2011). The study shall first and foremost aim at assessing the a) odiousness, b) (national and international) legality, c) legitimacy, and d) sustainability of the contracts assumed by the state while taking a cross-disciplinary approach into account. Nonetheless, it may happen at times that a country finds part of its debts to be a combination of different types of debts (e.g. illegitimate, illegal *and* unstainable; sustainable, illegal *and* illegitimate; and so on). The possibility of combinations shall be discussed on a case-by-case basis so that a strong political solution is guaranteed (e.g. a unilateral and an international solution can be reached by 'mixing' both strategies).

Last but not least, the described commission shall not be given any legal, economic or political powers whatever the result may be, thus the state being the ultimate agent to apply or to reject the findings of an audit commission. In any case, it is the positive duty of all other states (including both parties) to accept the final result of such a commission (as arising from the harm principle).

3.2. A unilateral solution

This proposal is undoubtedly the most convenient for the debtor state in question since it could simply default unilaterally on the debt branches considered odious, illegal, illegitimate or unsustainable. Presumably, this decision may well get the support of the civil society within the state once it increases state autonomy and sovereignty – by taking a path led by the nationals of the country and not by some

distant and unaccountable bureaucrats without any connection to the country – while sending out a message of effective control in a globalized world.

Yet, this proposal also carries risks, especially in countries where the rule of law and a strong commitment to constitutional principles is not yet implemented. For instance, let us now imagine a country that has just overthrown its dictator. A fresh post-revolutionary country, that may be either authoritarian (for instance, if a military junta replaces a previous dictatorship and consequently aims at getting rid of its debts) or committed to democratic values and principles, may well desire to declare – rightfully, let us make this point clear – its own debts as 'odious'. However, due to the still ongoing instability in the country, let alone the unpredictability of the consequences that such decision might bring along, a couple of questions remain: How can one assure that the necessary domestic conditions to rightfully default on these debts unilaterally are established? How can one guarantee whether a sound empirical analysis did actually take place – or rather mere ideological statements instead, that blurred one's rational? For reasons of neutrality, we believe that an audit commission shall indeed take place but on an international level and thus guided by an international body so that transparency and justice are in fact reached. On this point, we follow Pogge's reasoning to the extent that only such a debt auditing is possible when an international panel clearly assesses the 'conditions' of the country at that particular point in time. Thus, such a panel shall be "composed of reputable, independent jurists living abroad who understand [the country's] constitution and political system well enough to judge whether some particular group's acquisition and exercise of political power is or is not constitutionally legitimate" (Pogge 2007, 259).

Although the above example might be considered inadequate for 'transition' countries, one may well wonder whether these logics shall be applied to any country. For instance, if a strong constitutional democracy is in place why should such a state need to act according to a decision taken outside the country? Let us now imagine a democratic country that decides to ask for a such a study, and consequently proceeds to claim that parts of its debts shall be deemed odious, illegal, illegitimate, or unsustainable if clear violations of national and/or international law are significantly found. Despite the need to prove such results on the international level (creditors might be national or international and so transparent discussions must take place between the parts involved), why shall such a state not be given the opportunity to either default or proceed to a restructuring of its public debt after negotiating with its creditors? On the one hand, that would reinforce democratic values as well transparency and accountability within the country. On the other, such a decision would raise awareness throughout the international arena, let alone sending out a message to private and public creditors so that both the *conditions* and the *outcomes* of such contracts are from then on taken into account. At the same time, such a country could also be expected to cope better with the consequences of such a default or debt restructuring since the high level of transparency already guarantees to provide a clear-cut picture for

each (potential) creditor so that both sides know about the exact circumstances of the default and/or debt restructuring, and of the country's current situation.

3.3. An international solution

This proposal aims at categorizing the debts of a country by an international institution, either by a new or an already existent one – for instance, within the framework of the UN. This solution may indeed be better fitting for debts that are to be considered 'odious'. On the one hand, an international arbitrator decides whether a country falls into the category of 'odious'. If so,

> "[s]uccessor governments not only can repudiate any such loans, but in fact would be *required* to repudiate all debts subsequently issued to the odious government, so as to prevent new loans and aid from being squandered on servicing odious debts" (Ndikumana and Boyce 2011, 166; emphasis in the original).

Yet, the defenders of this and similar ideas argue as well that "only debts incurred after [such an odious debt prone] declaration would be eligible" (Shafter 2007, 50). Though, if the country continues to be seen as 'odious', even if after such a declaration, why do the citizens in the future have to bear the consequences for such contracts? This would be against the same ethical claims that allow one to think of other possible solutions for countries governed by authoritarian regimes. Rather, it would be much more reasonable – from an ethical point of view – to accept part of the mechanism to the extent that declares a regime 'odious' but to reject that possible loans after such a declaration may be considered legitimate, let alone that despotic rulers may borrow extensively after having been given the 'allowance' to do so. What one shall rather aim at is securing that – after such a declaration – creditors may put their money into it but only *at their own risk*. After all, as already mentioned above, high interest rates thereby already comport high risks.

As for illegitimate debts in developing countries, this proposal is also better fitting. Due to the extreme difficulty in assessing the outcome of various investments and development projects – which are primarily implemented in developing countries, in which the commitment to the rule of law may be present more in rhetorical terms than in practice and institutional weaknesses may be greater (once again, a case-by-case approach is needed in order to assess these issues properly) – a unilateral solution is surely not sufficient. National and international specialists, following the audit commission proposed above, shall sit down and discuss what may be a better solution for a problem found at a particular point in time. By doing so, new agreements are most likely to lead not only to better conditions for those who borrow but also for those who lend. In any case, the interest of those who are directly affected by this money shall be the primary motivation for such an agreement.

Generally, it seems all the more important "for a broad alliance made up of civil society, parliaments and scholarly research" (Kaiser 2015, 4) to finally tackle the issue of debt restructuring and default on the international level. The inclusive and global nature of any such mechanism is thereby of utmost importance. In this regard, the current international framework for debt settlement – mainly consisting of the World Bank and IMF (and thus rather dominated by the 'richer' industrialized countries) – has to be balanced (or rather substituted) by an international framework which equally takes into account the perspectives of both creditors and debtors. As an example, it is quite telling that today the current institutions are rather dependent "on the voluntary participation of creditors" (Ellmers 2014). Hence, it must be ensured that all decisions by an international body must be legally binding and enforceable for all creditors as well. In other words, "instead of creditors deciding over their own matters as has been the case down to the present, the decision on debt cancellation, restructuring or the further servicing of debt must be made on a non-partisan basis" (Kaiser 2015, 4).

Conclusion

The paper aimed at raising awareness for a sound categorization and consequent assessment of the ethical implications of (public) debts. In doing so, we first provided a taxonomy of debts in order to show that they are not always of the same sort. Against the common claim that a debt is *always and without exception* a (financial) obligation owed by the debtor country to a creditor, we claim that it in fact depends very much on the particular nature, circumstances, content and implications of that debt in order to see of what kind the ethical obligations are actually about. In a second step, we developed an 'ethical yardstick' according to which public debts should be measured against, based on the principle of 'do no harm'. At the same time, it was shown that such a principle is able to find a common ground between two important ethical schools of thought – communitarianism and cosmopolitanism – which have often been depicted as mutually exclusive. The reason behind this is to show that there is not only a *general* need but also a (positive) duty to (re)address the ethical issue of public debts. After elaborating on the different natures and characteristics of public debts, it was shown that the harm principle equally obliges *all* (no matter whether of communitarian or cosmopolitan sort) to consider the actual implications and outcomes of one's debts and loans to countries where one's money might have been used and spent in illegal, odious, illegitimate or unsustainable ways. At first glance, this might sound 'revolutionary' to many people while it is likely to initially face much criticism concerning the actual feasibility and possible chances to implement such a 'reconsideration' into practice – a critique which is likely to be uttered by those who might fear a loss of their own (financial and economic) power positions based on their very shares and possessions of (at least 'dubious') loans.

Be that as it may, we proposed a first (preliminary) practical strategy of how to assess and go about those loans based on the idea of an impartial audit commission which exactly does this – in lieu

of any one-sided and biased investigation. By doing so, we highlighted the particular pros and cons of an either unilateral or international auditing model. However, the reader should bear in mind that these are mere rough sketches: The decision for one of the two proposals presented above – considering that up until now no other was put forward – remains a political and legal task which has to be solved by the involved decision-makers. For the ethical part, though, we are concerned to point out that a universal ethics based on a global harm principle mandates to finally take action on these matters since it is simply not enough to refrain from any further 'bad', i.e. harmful, lending. In fact, there is a positive duty to revise the current and previous debts of a whole range of countries. Such an ethics aims at giving back autonomy to the people on grounds of a global solidarity which contains mutual respect and support for those who suffer from harmful practices.

We are well aware that this discussion can only be a first step towards many other investigations and significant decisions yet to come and yet to be taken. Hence, a whole range of questions have been (deliberately) left out, such as the economic and legal implications after the introduction of such a categorization and consequent revision of public debts. It is absolutely necessary to think about these issues in order to ensure a considerate and fair outcome for all parties involved. Yet, these tasks are rather about concrete policy measures and should therefore be dealt with by experts, politicians, legal and economic practitioners and other authorities on these matters. These tasks i.a. may well include questions such as how an audit commission could be implemented within the framework of international law or how such an audit commission could adapt to the increasingly complex international financial system. At the same time, it provides rich grounds for further research which could deal and start with the following questions: How could democratic control over public debts be put into practice? Would this undermine the essence of representative democracies, especially due to the increasing engagement of social movements in the subject, or would it rather deepen the former through an ever improving system of 'checks and balances'? In how far would the economic system have to change so that any of this could become real? Are ethical principles compatible with an economic system which is mainly concerned about the accumulation of capital at all costs?

Whatever the answers for these questions might be, it remains a duty for all of us to finally tackle an ongoing injustice which has been recklessly neglected until now. In ethical terms we are convinced that a revision of debts is not only beneficial but also *ethically mandatory*: What ought to be done is not an act of charity but an outcome of both negative and positive duties stemming from an ethical reflection of the harm principle, shedding light on an increasing global solidarity.

References

Adams, Patricia. 1991. *Odious Debts: Loose Lending, Corruption, And the Third World's Environmental Legacy.* London & Toronto: Earthscan.

Arruda, Marcos. 1994. "Brazil: Drowning in Debt." In *50 Years is Enough: The case against the World Bank and the International Monetary Fund,* edited by Kevin Danaher, 44-50. Boston: South End Press.

Barsamian, David. 2004. *Louder than Bombs: Interviews from «The Progressive» Magazine*. Cambridge, MA: South End Press.

Bloomberg News. 2012. "Hey, Germany: You Got a Bailout, Too." May 24. Accessed January 22, 2015: http://www.bloomberg.com/news/articles/2012-05-23/merkel-should-know-her-country-has-been-bailed-out-too

Bonilla, Stephania. 2011. *Odious Debt: Law-and-Economics Perspectives.* Wiesbaden: Gabler.

Brennan, Geoffrey., and Giuseppe Eusepi. 2000. "The Dubious Ethics of Debt Default." SIEP, Conference XIII, Pavia, October 5-6. Accessed March 3, 2015: http://www.siepweb.it/siep/oldDoc/wp/086.pdf

CADTM, Committee for the Abolition of Third World Debt. 2006. "Let's launch an enquiry into the debt! A manual on how to organize audits on Third World debts." Accessed Mach 29, 2015: http://cadtm.org/IMG/pdf/CETIM_Angl.pdf

CAIC, Internal Auditing Commission for Public Credit of Ecuador. 2008. *Final report of the integral auditing of the Ecuadorian debt: Executive summary.* Quito: Ministry of Economy and Finance.

Carswell, Simon. 2015. "Christine Lagarde gives cool response to EU debt summit idea." *The Irish Times*, January 19. Accessed January 19, 2015: http://www.irishtimes.com/business/economy/christine-lagarde-gives-cool-response-to-eu-debt-summit-idea-1.2070553

Chmaytelli, Maher. 2014. "AAA Guarantee Gives 1st Tunisia Sukuk Pricing Power: Arab Credit." *Bloomberg Business*, May 8. Accessed February 1, 2015: http://www.bloomberg.com/news/articles/2014-05-08/aaa-guarantee-gives-1st-tunisia-sukuk-pricing-power-arab-credit

Ellmers, Bodo. 2014. "Sovereign debt restructuring: UN takes a big step forward." Accessed April 24, 2015: https://info.brot-fuer-die-welt.de/sites/default/files/blog-downloads/sovereign_debt_restructuring.pdf

EPA, United States Environmental Protection Agency. 2012. "Rare Earth Elements**:** A Review of Production, Processing, Recycling, and Associated Environmental Issues." Accessed April 07, 2015: http://nepis.epa.gov/Adobe/PDF/P100EUBC.pdf

Financial Times. 2015. "Europe will benefit from Greece being given a fresh start." January 22. Accessed January 22, 2015: http://www.ft.com/cms/s/0/639cf9b0-a1a0-11e4-bd03-00144feab7de.html

Fitch. 2015. "Ecuador Credit Rating." Accessed February 11, 2015: http://countryeconomy.com/ratings/ecuador

Gentile, Caroline M. 2010. "The Market for odious debts." *Law and Contemporary Problems* 73: 151-174.

Gorton, Slade. 1989. "Not One Debt Problem but Hundreds." In *Alternative Solutions to Developing-Country Debt Problems*, edited by Rudiger Dornbusch, John H. Makin, and David Zlowe, 87-89. Boston: University Press of America.

Graeber, David. 2015. *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy*. Brooklyn and London: Melville House.

Habermas, Jürgen. 1999. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. New Baskerville: MIT Press.

Hanlon, Joseph. 2006a. "Defining "Illegitimate Debt": When creditors should be liable for improper loans." In *Sovereign Debt at the Crossroads: Challenges and Proposals for resolving the Third World Debt Crisis*, edited by Chris Jochnick, and Fraser A. Preston, 109-131. Oxford: Oxford University Press.

Hanlon, Joseph. 2006b. "Illegitimate Debt: lenders, not borrowers, are responsible." *Third World Quarterly* 27 (2): 211-226.

Hessel, Stéphane. 2011. "Time for Outrage!" In *The Nation*, March 7. Accessed January 24, 2015: http://iatrogenico.files.wordpress.com/2011/09/indignez-vous-time-for-outrage-stc3a9phane-hessel-english.pdf

Hobsbawm, Eric J. 1992. *Nations and nationalism since 1780: Programme, myth, reality*. Cambridge: Cambridge University Press.

Howse, Robert. 2007. "The concept of odious debt in public international law." *United Nations Conference on Trade and Development* 185: 1-27.

IAC, Iniciativa para uma Auditoria Cidadã à Divida. 2011. "Auditoria Cidadã: O Que É?" Accessed January 25, 2015: http://auditoriacidada.info/article/auditoria-cidad%C3%A3-o-que-%C3%A9

Jayachandran, Seema., and Michael Kremer. 2006. "Odious Debt." In *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis*, edited by Chris Jochnik, and Fraser A. Preston. 215-225. Oxford: Oxford University Press.

Jubilee USA Network. 2008. "Recent developments on odious & illegitimate debt." *Briefing Note Five*, April: 1-5. Accessed January 20, 2015: http://www.jubileeusa.org/fileadmin/user_upload/Resources/Policy_Archive/408briefnoteodiousilldebt.pdf

Kahn, Mehreen. 2015. "The biggest debt write-offs in the history of the world." *The Telegraph*, February 2. Accessed February 2, 2015: http://www.telegraph.co.uk/finance/economics/11383374/The-biggest-debt-write-offs-in-the-history-of-the-world.html

Kaiser, Jürgen. 2015. "Hope for Indebted States: Will the United Nations be Successful in Establishing a Debt Workout Mechanism?" *Friederich Ebert Stiftung: Perspective*. Accessed March 25, 2015: http://library.fes.de/pdf-files/iez/global/11241.pdf

Kleingeld, Pauline., and Eric Brown. 2014. "Cosmopolitanism." *The Stanford Encyclopaedia of Philosophy* Fall 2014 Edition. Accessed February 12, 2015: http://plato.stanford.edu/archives/fall2014/entries/cosmopolitanism/

Körner, Peter., Gero Maass, Thomas Siebold, and Rainer Tetzlaff. 1986. *The IMF and the Debt Crisis: A Guide to the Third World's Dilemmas*. New Jersey: Zed Books.

Krugman, Paul. 2015. "Nobody Understands Debt." *The New York Times*, February 9. Accessed February 9, 2015: http://www.nytimes.com/2015/02/09/opinion/paul-krugman-nobody-understands-debt.html

Lapavitsas, Costas. 2011. "Support the campaign to audit Europe's public debt." *The Guardian*, March 3. Accessed February 1, 2015: http://www.theguardian.com/commentisfree/2011/mar/03/audit-europe-public-debt

Linklater, Andrew. 2002a. "Cosmopolitan Political Communities in International Relations." *International Relations* 16: 135-150.

Linklater, Andrew 2002b. "The Problem of Harm in World Politics: Implications for the Sociology of States-Systems." *International Affairs* 78 (2): 319-338.

Linklater, Andrew. 2006. "The Harm Principle and Global Ethics." *Global Society* 20 (3): 329-343.

Ndikumana, Léonce, and James K. Boyce. 2011. "Capital flight from sub-Saharan Africa: linkages with external borrowing and policy options." *International Review of Applied Economics* 25 (2): 149-170.

Pogge, Thomas. 2004. ""Assisting" the Global Poor." In *The Ethics of Assistance: Morality and the Distant Needy*, edited by Deen K. Chatterjee, 260-288. Cambridge: Cambridge University Press.

Pogge, Thomas. 2005. "World Poverty and Human Rights." *Ethics & International Affairs* 19 (1): 1-7.

Pogge, Thomas. 2007. "Achieving Democracy." *Ethics & International Affairs* 21: 249-273.

Raffer, Kunibert. 2007a. "Odious, Illegitimate, Illegal, or Legal Debts – What difference does it make for international chapter 9 debt arbitration?" *Law and Contemporary Problems* 70: 221-247

Raffer, Kunibert. 2007b. "Risks of Lending and Liability of Lenders." *Ethics & International Affairs* 21 (1): 85-106.

Reinhart, Carmen M. 2012. "Financial Repression Back to Stay." *Bloomberg Business*, March 12. Accessed February 1, 2015: http://www.bloomberg.com/news/articles/2012-03-11/financial-repression-has-come-back-to-stay-carmen-m-reinhart

Reinhart, Carmen M., and M. Belen Sbrancia. 2015. "The Liquidation of Government Debt." *IMF Working Paper* 15/7: 1-46. Accessed February 1, 2015: http://www.imf.org/external/pubs/ft/wp/2015/wp1507.pdf

Robl, Terri. 2014. "Explanation of Vote by Terri Robl after a Vote on a G77 Resolution "Towards a Multilateral Convention to Establish a Legal Regulatory Framework for Sovereign Debt Restructuring Processes."" *United States Mission to the United Nations* September 9, 2014. Accessed March 7, 2015: http://usun.state.gov/briefing/statements/231414.htm

Shafter, Jonathan. 2007. "The Due Diligence Model: A New Approach to the Problem of Odious Debts." *Ethics & International Affairs* 21 (1): 49-67.

Shapcott, Richard. 2008. "Anti-cosmopolitanism, pluralism and the cosmopolitan harm principle." *Review of International Studies* 34: 185-205.

Singer, Peter. 1993. *Practical Ethics*. Cambridge: Cambridge University Press.

Stiglitz, Joseph. 2002. *Globalization and its Discontents*. New York: W.W. Norton.

Stiglitz, Joseph. 2003. "Dealing with Debt: How to Reform the Global Financial System." *Harvard International Review,* Spring: 54-59.

Stiglitz, Joseph. 2006. "Ethics, Market and Government Failure, and Globalization: Perspectives on Debt and Finance." In *Sovereign Debt at the Crossroads: Challenges and Proposals for resolving the Third World Debt Crisis,* edited by Chris Jochnick, and Fraser A. Preston, 158-173. Oxford: Oxford University Press.

Stiglitz, Joseph. 2015. "What is the real Greek morality tale?" *The Huffington Post,* February 3. Accessed February 3, 2015: http://www.huffingtonpost.com/joseph-e-stiglitz/greek-eurozone-austerity_b_6607186.html

Trading Economics. 2015. "Ecuador: Ecuador Business Confidence." Accessed February 11, 2015: http://www.tradingeconomics.com/ecuador/business-confidence

UN, United Nations. 2014. "Resolution Adopted by the General Assembly on 9 September 2014: Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes." Accessed March 7, 2015: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/68/304&Lang=E

UNCTAD, United Nations Conference on Trade and Development. 2001. "Investment Policy Review: Ecuador." *United Nations Conference on Trade and Development* June: 1-127. Accessed January 30, 2015: http://unctad.org/en/docs/iteipcmisc2_en.pdf

Walzer, Michael. 1994. *Thick and Thin: Moral Argument at Home and Abroad.* Notre Dame: University of Notre Dame.

Weiss, Martin A. 2011. "Iraq's Debt Relief: Procedure and Potential Implications for International Debt Relief." *CRS Report for Congress*. Accessed January 6, 2015: http://fas.org/sgp/crs/mideast/RL33376.pdf

WTO, World Trade Organization. 2012. "Trade Policy Review: Ecuador – Revision." *Trade Policy Review Body: Report by the Secretariat.* Accessed March 3, 2015: http://goo.gl/5f9vMn