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Ethical Issues Relevant to Debt

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ABSTRACT

While disagreements about policies and practices to deal with problems related to sovereign debt are sometimes purely empirical, with advocates of opposing positions differing only on the best means to achieve shared aims, the intensity of the debate concerning debt, and the heated rhetoric with which they are often conducted, suggest that they may be rooted in deeper disagreements of value. The purpose of this brief background paper is analytic—to help explain the type and nature of some of the disagreements of value that may underlie the debate on sovereign debt, and in particular on competing criteria of *justice* that may be invoked in assessing institutional arrangements for dealing with sovereign debt. It concludes with a few conjectures about which disagreements of value seem to play the most significant role in the controversies over sovereign debt.

Ethical Issues Relevant to Debt

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The practical significance of sovereign debt

The economic collapse in Argentina, financial crisis in Turkey, and unsustainable debt burdens of many developing countries highlight the practically urgent problem of excessive indebtedness. High debt levels can limit a sovereign government's capacity to provide social services necessary for the well-being of citizens, and divert resources and energy from the pursuit of long-term development strategies. In addition, after governments default, the mechanisms for managing the restructuring of sovereign debt usually act slowly, do not return the country to debt sustainability, and often leave the different classes of creditors as well as the people of the indebted country feeling as if they have been unfairly treated. This in turn can create disincentives for lending and investment that can be crucial to the prospects of wealthy and poor countries alike. An often overlooked but very important effect of financial crises and the debts that often engender them is that they can lead the crisis countries to increased dependence on international institutions and the policy conditionality for their continued support, limiting the capabilities of their citizens to exercise meaningful control over their policies and institutions.

There has been growing public recognition of these problems, and increasingly potent popular movements have pressured governments, financial institutions, and the financial community to seek better solutions to the debt crisis. Some of these resulting initiatives, including that for the Heavily Indebted Poor Countries (HIPCs), have focused on defining sustainable debt levels for poor countries and designing policies to maintain debt at these levels.[1] In some cases, some debt relief has resulted from these programs.

Other proposals, such as those for institutional arrangements that would mimic at the global level the legal bankruptcy regimes under national law (albeit without the same enforcement authority), have sought means of distinguishing between debts for which creditors deserve full repayment from those for which creditors either lack claims or have claims that are too weak to recover what they have lent.[2] Still others have instead recommended a contractual approach to sovereign debt crises, in which new clauses are introduced into bond contracts to enable debts to be restructured more easily and quickly.[3]

Debates on sovereign debt

The merits of the aforementioned programs and proposals for dealing with sovereign debt remain hotly disputed. While disagreements about policies and practices to deal with debt are sometimes purely empirical, with advocates of opposing positions differing only on the best means to achieve shared aims, the intensity of the debate concerning debt, and the heated rhetoric with which they are often conducted, suggest that they may be rooted

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[1] For the World Bank's description of the HIPC Initiative, see www.worldbank.org/hipc/about/hipcbr/hipcbr.htm.

[2] See Kunibert Raffer, "Applying Chapter 9 Insolvency to International Debts: An Economically Efficient Solution with a Human Face," *World Development* 18, no. 2 (1990), pp. 301–13.

[3] For discussion, see Arturo Porzecanski "The Constructive Role of Private Creditors" [in the roundtable, "Dealing Justly with Debt"] *Ethics & International Affairs* 17, no. 2 (2003), pp. 1–33; and Group of Ten, "Report of the G-10 Working Group on Contractual Clauses"; available at www.bis.org/publ/gten08.pdf.

in deeper disagreements of value. It is not obvious, however, what disagreements of value are at stake in this debate. Most participants agree that the current situation is morally unacceptable and that "something must be done" to remedy it. But advocates have seldom articulated their underlying justifications for why this situation is unacceptable, and they have thus provided little basis for determining whether their chosen policies would constitute progress. And when the rhetoric in a debate surrounding an important practical dilemma is either heated or evasive (and often both), participants may accuse one another of bad faith or naiveté about the facts of the case. They are also likely to invoke principles that support their side of the argument without thinking through their argument's broader implications—or perhaps purposefully ignoring them. These tendencies make it more difficult to identify correctly the true nature of the disagreements—and hence the evidence and argumentation that could be relevant to resolving them.

The purpose of this brief background note is analytic—to help explain the type and nature of some of the disagreements of value that may underlie the debate on sovereign debt, and in particular on competing criteria of *justice* that may be invoked in assessing institutional arrangements for dealing with sovereign debt. It concludes with a few conjectures about which disagreements of value seem to play the most significant role in the controversies over sovereign debt.

The meaning and ethical status of debt

What is debt? It might be argued that A owes a debt to B when B has provided some benefit to A and has asserted a claim to repayment. This obviously won't do, however, since the mere fact that B claims that A owes them repayment for something does not show that A is indebted to B. Indeed, people make scurrilous claims all the time and it would be misleading to suggest that rebutting such claims amounts to "debt relief" or that by ceasing to assert them a creditor has thereby "reduced their claims" on a "debtor." It is more natural in such cases to claim that there were no debts to begin with, only invalid claims that have been rebutted. It may therefore be appropriate to define debt in terms of *ethically* valid claims. That is, A owes a debt to B only if B has a valid moral claim to repayment from A. This *moralized* understanding of debt has many things to recommend it. Indeed, speaking of "debt relief" and "voluntary" reduction of "claims" suggests, often misleadingly, that the creditors involved had morally valid claims to repayment and are therefore offering "assistance" to poor countries. What is at issue, it may be argued, is whether developing countries have such debts in the first place, not the conditions under which they should be "forgiven," since claiming that if they go unpaid it will be because they are forgiven essentially assumes the legitimacy of the creditor's claims.

While I am in sympathy with this account, and believe that the concerns that it emphasizes are very important, I fear that it may cause some confusion in evaluating the current debate on sovereign debt, which has been framed (for better or worse) in terms of the conditions under which (and terms on which) debts should be repaid. For this reason, I will understand debt in the following way:

A owes a debt to B if and only if:
(1) B has lent resources to A; and
(2) B has a claim to repayment from A that has at least prima facie *legal* validity.

I will assume, moreover, that it makes sense to distinguish between legally valid and ethically valid claims. That is, while determinations of legal validity may (as Ronald Dworkin and others have argued) depend in part on ethical considerations, and while the fact that one has a legally valid claim may not implausibly be seen as an important ethical consideration in determining whether one should be repaid, there are many contexts in which those who have legally valid claims to repayment lack ethically valid claims to repayment and in which those who lack legally valid obligations to repayment nevertheless have ethically valid obligations to repayment. Conflicts between legally

valid and ethically valid claims and obligations will be most pronounced when legal systems are unjust or where they contain many "gaps," but it is unlikely that such conflicts can ever be completely removed.

We can distinguish between the ethical statuses of different types of debt. At the first level, a distinction can be drawn between (a) those debts which the debtor has an ethical obligation to pay and (b) those debts which the debtor has no ethical obligation to repay. Because obligations are a subset of reasons for action, they are always *pro tanto*—that is, they count for or against certain courses of action, but they may not always be decisive (for example, when there are countervailing reasons of greater significance). It may turn out that what an agent ought to do, all things considered, will involve a failure to honor some of her obligations. Among those debts that the debtor has an ethical obligation to repay (set (a)), we can therefore distinguish between (i) those debts which the agent ought to repay and (ii) those debts which the agent nevertheless ought not repay. Having an obligation to repay is neither sufficient to establish that one pay, nor is it necessary. Similarly, the fact that some debtor lacks an ethical obligation to repay a debt does not mean that they should not repay it. Among those debts that the debtor has no obligation to repay (set (b)), a distinction can thus also be drawn between (i) those debts which the debtor ought nevertheless to repay; (ii) those debts which the debtor may permissibly not pay; and (iii) those debts which the debtor ought not to repay.

We can also distinguish between debts in terms of the attitudes that *creditors* ought to take toward them. That is, among those debts that the debtor is obliged to repay (set (a)), a distinction can be drawn between (i) debts which the owner of the debt ought (in part or entirely) to "forgive"; (ii) debts for which the owner of the debt may permissibly demand repayment; and (iii) debts for which the owner of the debt ought to demand repayment. Among those debts that the debtor lacks an obligation to repay (set (b)), we can similarly distinguish between (i) debts for which the owner of the debt ought not to demand repayment; (ii) debts for which the owner of the debt may permissibly demand repayment; and (iii) debts for which the owner of the debt ought to demand repayment.[4]

Finally, one can distinguish between the ethical status of a debt, and the ethical status of particular claims regarding the *terms* on which the debtor is obliged to repay it. That is, a distinction can be made between the general obligation to repay a debt and a specific obligation to repay it on certain terms (according to a particular schedule). It may be tempting to think that this distinction is not important. After all, when a debt is incurred, a contract typically stipulates the schedule on which it is to be repaid. Insofar as there is an ethically valid claim to repayment of the debt at all, it might be argued, there ought therefore to be an ethically valid claim to repayment on the terms under which it was incurred. This seems intuitively implausible, however. Suppose that I freely borrow resources from A on terms that I repay him in monthly installments over the course of the following year. Due to an accident, however, I find myself unable to work for a period of six months, after which I will resume earning a salary at the same level. If during the period of incapacitation I stick with the payment schedule stipulated in the initial agreement, I will be unable to afford physical therapy and pay for other basic necessities, which will raise the risk that I will never be sufficiently rehabilitated to resume work. It

[4] These last two possibilities may seem strange, but they are hardly impossible to imagine. We may think, for example, that country A has no obligation to repay a debt to country B because the debt was incurred by a murderous military dictatorship that used its resources to repress and impoverish the population. Suppose, however, that although this dictatorship is longer in power it has been replaced by a corrupt and wasteful regime that consistently misallocates public funds in harmful ways. A creditor country may arguably demand repayment from such a regime if it justifiably thinks that these resources would do more harm than good if left in the regime's hands, especially if they use these funds to lessen the suffering of the debtor countries residents or that of unjustly impoverished persons.

seems plausible to claim that the mere fact of my injury does not shield me from A's claim to repayment. Indeed, if it remains much more difficult than anticipated to repay A even after I resume full-time work, it may nevertheless plausibly be maintained that I am obliged to repay the full amount. However, it may not be plausible to claim that I am obliged to repay according to the original schedule.[5] These considerations are relevant for evaluating issues that frequently arise in the debt context. When some agent is unable to keep up with payments, they are typically expected at least to continue to pay the interest owed on the principal. This means that, insofar as they are unable to pay according to schedule, the entire amount of the debt will grow. The claim of the lender to "full" repayment thus becomes ambiguous, since it can refer to the principal (plus the interest attached to each monthly payment as stipulated in the original agreement) or it can refer to the principal, interest on monthly payments stipulated in the original agreement, and any additional interest payments that arise because the debtor does not meet their monthly obligations. If we believe that there are compelling reasons to diverge from the stipulated payment schedule even while honoring the obligation to repay the principal, then we may hold that creditors lack claims to the additional interest that might otherwise be thought to be owed to them if the debtor is unable to meet their monthly payments.

The reasons for modifying the terms on which claims can be repaid may seem much more decisive when, unlike my simple example, the lender's behavior adversely affects the debtor such that it is much more difficult for them to meet their payment obligations. Suppose some very rich and powerful country G1 provides loans to a weak and poor country G77 at time T_1.[6] At time T_2, G1 decides to raise interest rates in response to fears about inflation in its domestic economy. Given its position in the world (that is, the size of G1's market represents a significant share of the world market, G1's currency is a "hard" currency in international financial transactions, and so on), this domestic decision affects the cost of borrowing in the world as a whole. Because poor countries like G77 typically "roll over" their debt, taking out fresh loans to meet prior debt obligations, increases to the cost of borrowing make it extremely hard for them to service their debts, including their debts to G1. Consequently, G77 can no longer meet its monthly payments to G1 at time T_3 and is unable to pay down either the principal, or even pay the interest on the principal. Its debt to G1 thus grows. In some cases in which the decisions of one agent greatly undermines the capabilities of agents to whom they are indebted to repay, we may wish to argue that this invalidates their ethical claim even to the principal. In others, we may grant the validity to the claim to repayment of the principal, but hold that the lending agent's behavior invalidated the original terms on which they could demand repayment. In still others, such as when we judge the lender to have affected the debtor's position through "fair competition," we will find the causal relevance of the lender to the debtor's position at a later time irrelevant.[7]

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[5] It is also important to note that even if we do hold that I am obliged to repay on the same schedule, and that the creditor may permissibly demand repayment in full, we may not feel that he may permissibly demand repayment on the original schedule. If the cost to him of allowing greater flexibility in repayment terms is slight, we may think that he acts very wrongly if he nevertheless insists on sticking with the original schedule.

[6] This example draws on Sanjay Reddy's discussion of the role of U.S. monetary policies in the debt crisis in "Developing Just Monetary Arrangements," *Ethics & International Affairs* 17, no. 1 (2003), pp. 81–94. See also Harold James, *International Monetary Cooperation Since Bretton Woods*, (Washington, D.C: International Monetary Fund,1986), and Kunibert Raffer and Hans Singer, *The Economic North-South Divide* (Northampton: Edward Elgar, 2001).

[7] Clearly, our assessment of all of these cases will depend on our ethical assessment of the process through which the lender has affected the position of the debtor. The importance of this point is emphasized further below.

This note has so far been mainly formal. It has identified the ethical statuses that debts may have, but has provided relatively little guidance about how to determine which status particular debts have. I have provided categories without indicating which considerations ought to be decisive for determining *which debts fall into which category*. A *criterion* for evaluating the ethical status of debt must provide such an account.

Empirical and theoretical differences regarding the ethical status of debts

We can distinguish between *purely empirical* and *theoretical* sources of disagreements about the ethical status of debts. Disagreements are purely empirical when advocates of opposing positions agree on the considerations that are relevant for determining the ethical status of debt, but nevertheless disagree about how these considerations apply to a particular case because they disagree on relevant facts. That is, we can have purely empirical disagreements about the justice of Collective Action Clauses for resolving debt problems because of divergent predictions of how this arrangement will serve our shared objectives of reducing poverty and ensuring that creditors' property rights are protected.

Disagreements are theoretical when disputants hold different views about the aims that ought to be pursued, the procedural fairness of various arrangements that might be implemented to promote these aims, or about how responsibilities for achieving these aims can be fairly allocated. That is, we may agree completely in our predictions of the likely effects of CACs, yet still disagree about their justice because we attach different degrees of importance to the objectives of reducing poverty and protecting creditors' property rights, or some other considerations that are deemed ethically relevant.

Morality, justice, and debt

Within the domain of ethics a rough but nevertheless useful distinction can be made between *morality*, which is concerned with principles for the ethical assessment of the character and conduct of individual and collective agents, and *justice*, which concerns the ethical assessment of social rules.

Philosophers have sometimes tried to capture the distinction between the morality and justice that I have in mind through the crude metaphor of games. *Morality* asks what individual players *within* the context of a game should and should not do, including their compliance or noncompliance with the rules of the game themselves. Questions of *justice*, on the other hand, concern whether we are playing the right *kind* of game in the first place, or whether the rules themselves ought to be revised.[8] The distinction between justice and morality crosscuts the distinction between empirical and theoretical disagreements, since we can have empirical and theoretical disagreements about each.

In speaking of questions related to the "ethics" of debt, we can thus distinguish between (1) those questions that relate to the assessment of various actors involved, such as whether lenders should be more discriminating about which states to provide resources to, and whether borrowers ought to have made sounder borrowing decisions, been more honest in their dealings with creditors (and their own people), and acted more fairly in their decisions regarding budgetary expenditures; and (2) those questions that relate to the assessment of rules that govern economic exchanges, such as whether the rules governing global economic interaction ought to permit deeply flawed governments to borrow assets in their country's names, thereby binding present and future citizens to repay them.

Questions of justice that are raised by sovereign debt will be emphasized in what follows. This is not because questions of the morality of different "players in the debt game" are irrelevant. Indeed, the conduct of such agents clearly *is* relevant, since many of

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[8] See esp. John Rawls, "Two Concepts of Rules," in *Collected Papers* (Cambridge: Harvard University Press, 1999), pp. 20–47. This understanding of justice is not without its critics. See, for example, G. A. Cohen, *If You Are an Egalitarian, How Come You're So Rich?* (Cambridge: Harvard University Press, 2000), esp. ch. 9 and 10.

the problems related to debt mentioned above could be at least partly alleviated were collective agents such as states and banks to act less recklessly and with more regard to the harms their conduct imposes on others in their lending and borrowing decisions. Indeed, developing a clearer sense of the considerations relevant to assessing the justice of rules governing debt will also at least go partway toward understanding the morality of the actors involved in sovereign debt, since justice assessments help us to evaluate the individual and collective agents who institute, benefit from, uphold, or seek to reform these rules. However decent a lender may be—avoiding, for example, loans to notably corrupt regimes—our overall moral assessment of their behavior may not be positive should they actively lobby their governments in support of rules governing debt workouts that seem on balance to be unjust. Furthermore, our ethical assessment of the rules governing economic interaction will significantly influence our *descriptions* of the interactions among different agents that are relevant for the assessment of their conduct. Assessing the conduct of G1 and G77 in the case sketched above, for example, will depend at least in part on whether unilaterally raising interest rates to a significant degree is a legitimate expression of national self-determination or instead involves the illegitimate exclusion of those who are significantly affected by political decisions from exercising some degree of influence over them. If the former, then the possibility of G1's undertaking such a policy will be considered as part of the background circumstances that G77 must take into account in deciding whether and on what terms to borrow. If the latter, then G1's claim to amounts lent to G77 may reasonably be viewed as weakened due to the fact that they have subsequently imposed undue harms on G77.

Debt and conceptions of global justice

The word "justice" has a somewhat broader meaning than indicated in the preceding section, usually associated with evenhanded treatment of persons and groups. Recent discussions of justice, however, have tended to focus on assessments of the rules and institutions that govern the interactions of participants within a social system, which John Rawls has famously called the "basic structure of society." The fundamental role of a conception of justice is "to specify the fair terms of social cooperation."[9] In domestic settings, the prevailing institutional arrangements that determine the terms of social cooperation include the tax system, bequeathable rights to private property, and the structure of political decision-making. Most fundamentally, the issue of sovereign debt raises questions of "global" rather than "domestic" justice, since it relates to global rules and arrangements, including markets in capital and labor, international trade and monetary arrangements, and constitutive features of the modern state such as its sovereign rights to tax, to bind citizens through agreements, to control the use of natural resources within its territorial domain, and to represent its interests in international bargaining and rule setting.[10] Questions of domestic justice are nevertheless relevant to this issue, since we may wish to treat differently the debts of states that we deem to have "legitimate" or "reasonably just" governments and institutional arrangements from those that lack them.

The aim of any *criterion* of global justice is to provide plausible absolute and comparative judgments about feasible global institutional arrangements, whether actually existing or merely proposed.

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[9] John Rawls, *Justice as Fairness* (Cambridge: Harvard University Press, 2001), p. 7.

[10] Different terms, such as the "global basic structure," the "international regime," the "global institutional *scheme*," or the "social and international order" have been used to refer to these global institutional arrangements. For a helpful synthetic overview of some recent literature on this topic, see Charles Beitz, "International Liberalism and Distributive Justice: A Survey of Recent Thought," *World Politics* 51, no. 2 (1999), pp. 269–96.

A criterion of justice typically involves two main elements. The first element is criteria of *distributive justice*, which assess the distribution of benefits and burdens within a social system. The second element is criteria of *procedural justice*, which assess the ways in which the basic parameters of the social system are themselves fixed. Theoretical disagreements about the justice of institutions for dealing with sovereign debt may relate to either of these components. With respect to distributive justice, for example, participants in these debates may disagree about *whom* we ought to look at in assessing the benefits and burdens of social cooperation.[11] There may also be disagreement about *what* should count as the benefits and burdens that are relevant for these assessments. We might refer to these variables as the *goods* of global justice.[12] Different conceptions of global justice might, for instance, evaluate countries and persons as faring better or worse according, variously, to their economic performance, literacy rates, life expectancies, enjoyment of civil and political liberties, freedom from coercion, or to some weighted combination of some or all of these kinds of goods. *Distributive* requirements may also be at issue, such as whether one ought to use sum-ranking, maximin, or some indicator of inequality as an aggregation function for combining the relevant goods enjoyed by the subjects of justice for the purpose of evaluating global institutional arrangements, as may be *minimal* requirements, whether, for example, it should be required that all subjects enjoy security and access to basic liberties and necessities.

An account of distributive justice may also take note not only of the *shares* of goods enjoyed by the subjects of justice, but also the *ways* in which these shares of goods have came about. One might hold, for example, that, all things being equal, justice requires that inequalities in wealth among countries be minimized, but hold that all things are not equal when some countries have lesser shares of wealth because of decisions or actions for which they can reasonably be held responsible. Such considerations are familiar in discussions of domestic justice—where the distribution of wealth among different persons within a society is often deemed more or less just depending on the extents to which these differences can be attributed to the prudence or negligence that these persons have exercised in their economic decision-making or to differences in their social circumstances and/or brute luck. Views of distributive justice that give weight to such considerations may differ about the moral relevance of different ways through which such outcomes may have come about. So-called luck egalitarian views of justice, for example, allow people's shares of goods to vary insofar as they do so in response to their responsible actions or attitudes, but disallow differences in shares due to *all* other factors. Others, such as John Rawls, have argued that justice permits people's opportunities to vary insofar as they do so in response to their responsible attitudes and actions or to inequalities in their *natural* endowments but disallows inequalities of

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[11] We might refer to these entities as the *subjects* of global justice. Some may take states as their fundamental subjects, focusing on their absolute and relative conditions, such as whether there are steep inequalities in wealth or political influence between them, or whether they lack the resources and capacities to secure just domestic institutions, while others focus directly on the distribution of benefits and burdens among persons.

[12] Resources, freedoms, opportunities, and happiness have recently been defended as the goods whose distribution is relevant for the ethical assessment of social arrangements. Leading discussions include John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); John Rawls, "Social Unity and Primary Goods," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), pp. 159–86; Amartya Sen, *Commodities and Capabilities* (Amsterdam: North-Holland, 1985); and the essays in Amartya Sen and Martha Nussbaum, eds., *The Quality of Life* (New York: Oxford University Press, 1993).

opportunities that are traceable to inequalities in their social starting positions.[13] All views of justice that grant significance to the ways in which outcomes come about require that we be able to make a "cut" between those features of an agent's present circumstances for which they can be reasonably held accountable and those they cannot. In practice, making any such "cut" is extremely difficult. It arguably becomes even more difficult when it is "national" or "statal" responsibility rather than individual responsibility that is at issue. Any criteria of justice that rely on distinctions that are difficult to apply of course raise difficult questions about how such criteria should be applied in real world contexts.[14]

Taken as a whole, an account of global distributive justice may be summed up by a more or less complicated demand about how global institutional arrangements should be designed, such as "develop those global institutional arrangements that tend over time to maximize the resources available to persons falling in the bottom global income quintile," "equalize the opportunities for economic growth among countries," "eliminate all inequalities of national wealth and opportunity that cannot be attributed to that nations responsible attitudes and actions," and so on.

Whether or not institutional arrangements governing debt are distributively just cannot therefore be judged in isolation from the broader framework of rules governing economic and political interaction. That is, whether some particular initiative for sovereign debt workouts is just will depend in part on rules governing many other aspects of the global economy. A system of rules for working out sovereign debt crises that tends to favor debtors over private creditors may be superior or inferior to one that favors private creditors over debtors depending on the character of other rules governing their interactions through trade and investment, and so on.[15]

Considerations of *procedural* justice relate to the conditions under which institutional arrangements can be fairly and legitimately determined. That is, it may be important to treat the subjects of justice (whether individuals, groups, or countries) not only as patients who have needs to receive certain benefits but as agents who have rights to shape the social arrangements that affect them. If this is so, then the performance of global institutional arrangements must be evaluated with a view to the legitimacy of the procedures by which they are run and not only with regard to their efficacy in generating desirable distributions of goods. A criterion of procedural justice may require, for instance, that the standing rules of global institutional arrangements be publicly known and subject to revision, monitoring, and reinterpretation through collective decision-making procedures. With respect to sovereign debt, for example, disagreements may relate to divergent assessments of the conditions under which countries and the interests of groups within them have had a fair opportunity to influence the institutional arrangements that govern these debts (as well as their ongoing operations). Different understandings of procedural justice may also figure in differences among participants in this debate regarding the conditions under which a collective agent such as the government of a state can legitimately bind the state's present and future citizens (and successor governments) to repay loans borrowed in their name. Some may argue that the

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[13] Rawls adds the further requirement that even inequalities due to differences in endowments can permissibly lead to inequalities in shares of social goods only if allowing such inequalities works to the advantage of the least advantaged. For a helpful discussion of these issues, see Samuel Scheffler, "What Is Egalitarianism," *Philosophy & Public Affairs* 31, no. 1 (2003), pp. 5–39.

[14] For an interesting discussion of these issues, see Alexander Cappellen, "Responsibility and International Distributive Justice," in Andreas Follesdal and Thomas Pogge, eds., *Real World Justice* (Berlin: Springer, 2005), pp. 209–22.

[15] This may raise difficult questions regarding the appropriate sequences of reforms to the rules governing global economic interaction.

rights of nondemocratic regimes to bind their citizens to repay debts, for example, should be weakened or perhaps even eliminated in some cases.[16]

The procedural justice of a system of rules governing debt, too, cannot plausibly be judged in isolation from the justice of other rules governing global economic interaction.[17] Insofar as some countries fail to have a fair opportunity to influence other important decisions—perhaps including the kinds of globally consequential monetary policy decisions mentioned above—it may arguably give them a correspondingly stronger claim to exercise influence on the features of any system of rules governing debts, or perhaps a more important role in monitoring them than they otherwise could have.

In addition to the two criteria of justice mentioned above, justice must also specify what might be called *deontic principles* of justice that serve to specify different agents' obligations to uphold, and comply with just arrangements when they are in place, to work toward bringing about just arrangements where they are lacking, and to remedy the hardships brought about when unjust arrangements are in place.

A system of debt rules can be deemed distributively just or unjust because of the outcomes it generates, and procedurally just or unjust because it advantages one party at the expense of another in the debt resolution process. And there may be disagreement not only about what justice requires with respect to rules governing debt resolution, but what it requires of particular agents who are in a position to take action with respect to these rules.

Key theoretical disagreements

The preceding discussion identified some of the general disagreements about justice that *may* underlie controversies regarding sovereign debt. I conclude here with some conjectures about some of the issues that actually underlie such debates.

Defining the limits of external sovereignty

It is often finance ministers who make the borrowing decisions on behalf of the government and thus of the people as a whole. The debts that they incur are recognized and treated as an obligation of the government as a whole, which in turn raises revenues to service its debt at least in part from taxes imposed on citizens. The present and future citizens (and other subjects taxable by the borrowing government) are therefore held liable to repay it. Such ministers (and the government more generally) thus enjoy not only *internal sovereignty*—special power and authority within their state, but also *external sovereignty*—the power to alter the claims of others on their citizens, and thus the privileges of their citizens with respect to them.[18] Like internal sovereignty, external sovereignty admits of degrees. And just as the international order places limits (however tentative and imperfectly and inconsistently enforced) on the internal sovereignty of governments, so too it can place limits on the external sovereignty of governments. An

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[16] See, e.g., Michael Kramer and Seema Jayachandran, "Odious Debt," typescript, Harvard University 2002; and Thomas Pogge, "Achieving Democracy," *Ethics & International Affairs* 15, no. 1 (2001), pp. 3–23.

[17] The importance of this point is emphasized in Ann Pettifor, "Resolving International Debt Crises Fairly," [in the roundtable, "Dealing Justly with Debt"] *Ethics & International Affairs* 17, no. 2 (2003), pp. 2–9.

[18] The terminology of powers, claims, and privileges is drawn from W. N. Hohfeld, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1919).

adequate criterion for assessing the ethical status of debt must clarify the extents to which governments should enjoy external sovereignty with respect to borrowing.

The present practice is to grant governments nearly absolute external sovereignty with respect to borrowing. This practice is highly questionable—by what right should oppressive elites be entitled to run up debts in the names of those whom they impoverish (or worse)? At the same time, granting a significant degree of external sovereignty with respect to borrowing clearly serves an important purpose—governments can raise resources for important projects (understood broadly to include investment in infrastructure, education and health, improving working conditions, and so on) that benefit those living within a state only because they enjoy such sovereignty. The question, then, is how to permit enough external sovereignty to enable governments to borrow for justified projects while at the same time limiting their capacity to abuse such privileges. Similarly, the external sovereignty of governments with respect to *lending* is also nearly absolute.[19] Here again, the existence of relatively robust lending privileges seems to benefit both the lending governments and the recipients of loans. Yet here an unlimited lending privilege can also harm both the lending and the borrowing state. It can harm the borrowing state if the resources are used to unjustly enrich a small elite or for repressive purposes. And it can harm the lending state because it may unduly burden its own taxpayers with footing the bill for loans that are never repaid.[20] Of course, it may be argued that the present system is, all things considered, more just that any feasibly attainable system. This might be because the aims of distributive justice are best served (in the long run at least) by a system of nearly unlimited external borrowing and lending sovereignty; because one cannot legitimately determine and implement a better system; or because a revised system of external sovereignty that was distributively and procedurally just could only be brought about were we to unreasonably demand that many agents undertake heroic efforts and make great sacrifices to bring it into being or sustain it. But this certainly isn't *obviously* true. A justified *criterion* for evaluating the ethical status of debt must provide such a plausible account of the proper scope of external sovereignty with respect to borrowing and lending under present circumstances. A practically oriented discussion of such an account must address not only what particular form of external sovereignty with respect to borrowing and lending is justifiable, but how we might legitimately go about revising existing institutional arrangements to bring them more into line with it.

Collective responsibility

Suppose that some system of external sovereignty with respect to borrowing and lending is in place, and that we have reason to believe that it is the best available system. Suppose further that some country becomes heavily indebted, and can service its debt obligations (as contractually defined) only by severely cutting back on expenditures on education, health, and security, and that these cutbacks will predictably lead to acute deprivations among its people. We are thus faced with the question of whether the residents of this country ought to bear the cost of its government's earlier decision to borrow—or whether this cost ought to be pushed on to others, whether they be the creditors or perhaps other agents.[21] Some would hold that our answer to this question ought to depend not only on

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[19] Some interesting proposals are introduced in the Kremer and Jayachandran, "Odious Debt"; and Pogge, "Achieving Democracy."

[20] Reckless lending can, of course, also harm their "moral" interests, since it may implicate them in harms abroad.

[21] One could imagine a general compensation scheme into which all countries pay in proportion to the size of their economy that provides resources to heavily indebted countries to meet their debt obligations without sacrificing the provision of goods and services to their people.

how badly off the country is in absolute and relative terms and how costly it would be to offset the costs that it faces, but also upon how the country became heavily indebted. David Miller, for example, has recently argued, "If people have poor or otherwise inadequate lives because of decisions or actions for which they are responsible, then outsiders have no obligation of justice to intervene." He adds that while "it might still be a worthy humanitarian objective to provide aid to those who are responsible for their own impoverishment, but it is not a matter of justice, and it is arguably wrong to compel people to pursue it."[22] If the country has acted imprudently or recklessly, it might therefore be argued, then it is unfair that the resulting costs be pushed onto others, even if the country can only pay the costs with great difficulty and at great sacrifice. The intuition behind such a view is strong.[23] Any view that wishes to distinguish in this way between costs that do and costs that do not "belong" to those on whom they initially fall must, however, meet four challenges:

First, they must indicate how the distinction ought to be drawn between those outcomes (or particular features of outcomes), which are attributable to the agent, and those that are not. What grounds can be given for holding an agent responsible for harm that befalls them? Tort law, for example, attributes outcomes to an agent when it can be shown that (1) she causally contributed to the outcome; (2) the outcome was her fault; and (3) the faultiness of her conduct was causally relevant to the outcome. Fault operates normally with some notion of a "standard of care" and draws essentially on the idea of what a "reasonable person" ought to do given what is foreseeable in the contexts in which they act. But of course this tort-based is not the only way to draw such a distinction. Liberal egalitarian theories of distributive justice typically draw the distinction in terms of whether those outcomes result from factors under the control of an agent or inequalities that are outside of their control.

Second, they must indicate whether the relevant distinction can be drawn not only with respect to the outcomes of individual behavior, but to the behavior of collective agents such as states. If such responsibility is modeled on the tort standards above, for example, a plausible conception of the "standard of care" that draws essentially on the idea of what a "reasonable state" entails must be developed. Or, pursuant to liberal egalitarian theories, some distinction between those outcomes that are under the control of the state and those that are not must be made out.[24]

Third, since it is not possible to hold a country responsible for some outcomes without holding the individuals living in that country responsible for them, it must

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[22] David Miller, "Justice and Global Inequality," in Andrew Hurrell and Ngaire Woods, eds., *Inequality, Globalization and World Politics* (Oxford: Oxford University Press, 1999), pp. 187–210.

[23] It plays a major role in Rawls's discussion of distributive justice in his *The Law of Peoples*. He writes: "Two liberal or decent countries are at the same level of wealth . . . and have the same size population. The first decides to industrialize and to increase its rate of (real) saving, while the second does not. Being content with things as they are, and preferring a more pastoral and leisurely society, the second reaffirms its social values. Some decades later the first country is twice as wealthy as the second. Assuming, as we do, that both societies are liberal or decent, and their peoples free and responsible, and able to make their own decisions, should the industrializing country be taxed to give funds to the second? According to the duty of assistance there would be no tax, and that seems right; whereas with a global egalitarian principle without target, there would always be a flow of taxes as long as the wealth of one people was less than that of the other. This seems unacceptable." John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 2001), pp. 117–18.

[24] See Cappelen, "Responsibility and International Distributive Justice."

indicate the conditions under which we are justified in holding not only present but also future individuals in a country responsible for the policies made by their government.[25]

Fourth, they must indicate how the distinctions mentioned above can be made in a reasonably precise way in practice. What kinds of standards should be employed in determining whether some debt crisis is fully or partially the responsibility (in the relevant sense) of the indebted country? Must the indebted country "prove" that they are *not* responsible before some adjudicative tribunal, or should we instead presume that their costs should be shifted to others unless it can be shown with great confidence that they *are* responsible for these outcomes? What kinds of institutional arrangements might be developed that could fairly apply such distinctions?[26]

Participation in decision-making

It has become a commonplace that poorer and weaker states have become increasingly vulnerable to external intervention even in matters of domestic governance, directly—since financial crises and state failures lead them to accept economic conditionality and external intervention—and indirectly—since weak governments face strong incentives to cater to the interests of more powerful states and their constituents. Insofar as the legitimacy of institutions and policies depends (at least in part) on the political role that those who are affected by them are allowed to play in shaping them, these developments can be quite problematic. Disagreement over the appropriate terms on which different agents should be able to exercise influence with respect to political decisions seems often to underlie disagreements of the arrangements required to resolve sovereign debt crises fairly. These disagreements are of two main types. The first concerns the more general issue of who ought to be included (and in what way) in determining policies and institutions (whether national or international) that substantially affect the economic position of different countries. Some participants in debt controversies hold that procedural justice requires that the standing rules of global institutional arrangements be publicly known and subject to revision, monitoring, and reinterpretation through collective decision-making procedures, while others resist this, citing instead the importance of granting states the prerogative to pursue their own goals, most importantly the promotion of the well-being of their citizens. The importance of this kind of controversy is quite evident from the example of G1 and G77 sketched above. If procedural justice demands that the legitimacy of political decisions made by states depends in part on the political role that those who are affected by them are allowed to play in influencing them, then G1's policy of unilaterally raising interest rates to a substantial degree without consultation or collective decision involving others whose livelihoods will be significantly affected by such a decision may be quite problematic, which may in turn influence our assessment of the status of G77's debts to G1.[27] The

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[25] Some of the complexities that arise with respect to intergenerational justice are addressed in Axel Gosseries, "What Do We Owe the Next Generation(s)?" *Loyola of Los Angeles Law Review* 35 (2001), 293–354.

[26] Kunibert Raffer proposes the establishment of (ideally) a permanent international court of arbitration or (more likely) ad hoc panels that would hear complaints about the effects of IFI conduct lodged by governments as well as by international and nongovernmental organizations. "Risks arising from events beyond the parties' control would remain with the client. Risks arising from negligence of IFIs would remain with the risk imposer." See Kunibert Raffer, "International Financial Institutions and Financial Accountability," *Ethics & International Affairs* 18, no. 2, pp. 61–78. Kremer and Jayachandran have proposed an independent institution that would be charged with assessing whether regimes are legitimate and whether any sovereign debt incurred by such regimes should be declared "odious," and thus not the obligation of successor governments. See Kremer and Jayachandran, "Odious Debt."

[27] This example is one of many that might be given to illustrate the influence of decisions made by one powerful collective agent on the prospects of other agents.

second disagreement relates more specifically to the issue of participation in determining a "solution" to a debt crisis. The IMF's Sovereign Debt Restructuring Mechanism , for example, has been criticized on the grounds that because the mechanism would be overseen by the Fund's own executive board (which is in turn dominated by the official creditors of the powerful G-7), it would "ensure that Fund staff and the executive board would play a preemptive role in shaping the outcome of the debt crisis resolution negotiations by setting the country's level of debt sustainability, on the basis of which will be determined the necessary debt reduction."[28] Similar complaints have been lodged against CACs.

[28] Pettifor, "Resolving International Debt Crises Fairly," p. 5.