Fall 12-14-2012

The Odious Debt System

Andrew Hanauer
adhanauer@usfca.edu

THE ODIOUS DEBT SYSTEM

In Partial Fulfillment of the Requirements for the Degree

MASTER OF ARTS

In

INTERNATIONAL STUDIES

By

Andrew Hanauer

November 30, 2012

UNIVERSITY OF SAN FRANCISCO

Under the guidance and approval of the committee, and approval by all the members, this thesis project has been accepted in partial fulfillment of the requirements for the degree.

APPROVED:

__________________________________ _________

Advisor Date

__________________________________ _________

Academic Director Date

__________________________________ _________

Dean of Arts and Sciences Date

TABLE OF CONTENTS

"Sovereign nations don't go bankrupt."

-Walter Wriston, Citicorp Chairman*

"The Fourth?...No, no, no. I am the *third* richest man in the world."

-Mobutu Sese Seko**

"No man is a caricature, no man alone can bear the responsibility for a nation's collapse."

-Michala Wrong***

CHAPTER 1

INTRODUCTION

"'I am pleased to announce that during my visit here the U.S.A. and Zaire have agreed to begin negotiations leading to a bilateral investment treaty,' [George] Bush [Sr.] said….The discussions took place aboard Mobutu's yacht."   (Kwitney, 1984)

Sorting through the kleptocratic lowlights of Africa's post-colonial dictators is an exercise in bewilderment. What is astounding is not the greed of Africa's rulers, though it has been immense. After all, greed has existed for thousands of years in every corner of the globe, and has particularly manifested itself in those powerful individuals capable of amassing vast sums of money. Indeed, there is very little that can be said of African dictators in the past sixty years that can't be said of dictators from every continent since the beginning of civilization: they steal money from their people and use it to build both monuments to their own greatness and luxurious getaways where they can live lavishly out of sight of the impoverished masses they have repressed. None of this is new. None of this is remotely "African."

What is astonishing is the juxtaposition of this greed with the enormous poverty that has marked Africa's post-colonial era. This contrast, though surely not confined to either Africa or the post-colonial 20th and 21st centuries, is perhaps the most powerful and enduring image of what has gone wrong since the official withdrawal of European colonial institutions from the continent. But what is bewildering is how consistently this story has played out from country to country. Africa is a vast and geographically diverse continent populated by more than one billion people of varying religious, ethnic, and linguistic origins. How is it, then, that the same story has been repeated over and over since the dawn of independence?

This paper will argue that the answer to that question lies in part in the way in which Africa's dictators were funded by the West. Lending to African nations after independence funded both the security apparatuses and the lavish lifestyles of the continent's dictators, while doing little to benefit African people. This lending allowed autocratic regimes to endure for decades, leaving impoverished and indebted countries in their wake. This type of debt, incurred by dictators but paid back by the population as a whole, has spawned a growing body of literature and a semi-official classification: odious debt. This paper will examine the nature of odious debt in sub-Saharan Africa.

Odious debt, loosely defined as external debt incurred without the participation of a nation's citizens and without the provision of benefits to the general public, is a significant component of the contemporary global debt crisis. This crisis began in the 1960's and 1970's, when rising oil prices left banks eager to invest surplus money all over the globe. Meanwhile, the Cold War created an atmosphere in which any nation, no matter how seemingly geo-politically irrelevant, could attract funds from either the Soviet Union or the West on the premise of taking sides in the conflict. The end result was that a large number of developing countries began borrowing money, often beyond their ability to pay back, and often for dubious purposes.

As interest accumulated, commodities prices fell, and developing economies imploded due to mismanagement, corruption, and war, these debts only grew larger. As of 2009, the World Bank estimated total low-income country external debt at more than $135 billion, and the total middle-income country external debt at a staggering $3.4 trillion. (World Bank, 2011) The total debt stock of all countries categorized as "developing" was $3.5 trillion as of 2009, nearly triple the 1990 amount. (World Bank, 2011)

These numbers, however, do not tell the full story of the debt crisis. In many cases, the amount of debt owed today by a country is merely a fraction of the total amount it has paid in debt service and interest over the span of many years. Furthermore, the debt crisis in developing countries has been frequently exacerbated by the inequalities and corruption inherent in the global system of lending and borrowing. Loans have fueled capital flight, in which money is funneled out of the country by elites and into western bank accounts, where it cannot be taxed. University of Massachusetts economists James

Boyce and Leonce Ndikumana estimate that Sub-Saharan Africa (SSA) alone has lost an estimated $944 billion in capital flight, a number that far exceeds its total external debt stock. (Boyce and Ndikumana, 2011) Meanwhile, conditionalities attached to both loans and loan forgiveness have resulted in damage to developing economies, thus resulting in the need for more loans and thus more conditionalities, and so on in perpetuity.

Meanwhile, debt service (a nation's annual payment of both interest and principal) further weakens an economy by siphoning money away from important domestic priorities, including health, education, and infrastructure development. This causes enormous human suffering, both in the short-term as a result of the lack of money for basic needs, and in the long-term as a country's ability to grow and thus provide for its people is weakened. The lack of educational opportunities leaves a nation further reliant on outside help (including more loans) and the lack of infrastructure causes numerous problems, including the ubiquitous "brain drain" that results when a nation's most talented individuals feel compelled to leave the country to pursue careers. This in turn fuels capital flight, which in turn reduces a country's tax base. The end result of these inter-connected dynamics is a crippling cycle of debt.

The term "odious debt" was first coined in 1927 by Russian lawyer Alexander Nahum Sack, who argued that "if a despotic power incurs a debt not for the needs or in the interest of the State…this debt is *odious* for the population of all the State." (Adams, 1991) Odious debt in its simplest form is associated with a dictatorial regime that borrows money either to strengthen its hold on power or to enrich its leaders and is then overthrown, leaving the general public to pay off its debts. A more exact definition would be that debt is odious if the people of a state do not have say in incurring the debt in the first place and are not the beneficiaries of the money.

The standard template of odious debt is that of the dictator who borrows money and uses it to fund his own lavish lifestyle or the security apparatus he uses to suppress the population. In this scenario, the citizens of this country are left to pay off this debt after the dictator has been ousted, despite the fact that the borrowed money has long since been spent on European shopping trips or on the weapons that were used to oppress the very people now being asked to pay it back. This problem has spawned a number of proposals for its solution, from the idea of labeling regimes as odious and therefore branding future loans to such regimes as odious as well to the idea of establishing a court to determine the odiousness of past lending.

The history of odious debt, however, tells a more complicated story than this simple narrative. In Sub-Saharan Africa, what has made debt odious has been not merely the manner in which individual loans have been used but rather the entire system of power relations surrounding the international funding of despotic regimes. Lending has not simply purchased palaces in Europe with stolen funds, it has prolonged dictatorial rule, strengthened it, fuelled capital flight, brought about structural adjustment and its accompanying human toll, and left numerous countries in economic ruin if not in a state of political collapse. In short, loans (and thus the resulting debt) can be odious not simply because of what they are used to buy, but also because of the impact they can have on a system of power.

The history of the Democratic Republic of the Congo (formerly Zaire) illustrates this system particularly adeptly, and is the subject of this paper's extended case study. Dictator Mobutu Sese Seko borrowed roughly $14 billion during his 32 year reign in power, during which time he built himself mansions in Europe, spent millions on a trip to Disneyworld, and brutally repressed his own impoverished people. US Congressman Stephen Solarz declared that Mobutu "has established a kleptocracy to end all kleptocracies, and has set a new standard by which all future international thieves will have to be measured." (Ndikumana and Boyce quoting Richburg, 1991) Mobutu amassed an estimated $8 billion in personal wealth, and only a tiny percentage of it was recovered by authorities after his death; meanwhile, the DRC's debt burden reached $13.5 billion before multi-lateral debt relief reduced it in the latter part of the last decade. (Ayittey, 1992, and US Dept. of State, 2011)

But the DRC's debts are odious not simply because borrowed money was spent on castles and repression. Boyce and Ndikumana argue that loans to Mobutu allowed him to retain power and even to further loot the DRC's national wealth, thus exponentially increasing both the country's economic burden and the odiousness of its debts. "Mobutu relied heavily on external resources to maintain his grip on political power and thereby on Congo's internal economic resources," write Ndikumana and Boyce. (Ndikumana and Boyce, 2000) Western countries and the IMF gave billions to Mobutu after private creditors had abandoned the dictator, propping up his regime and even giving him legitimacy through aid attached to "ostensible reforms." (Ndikumana and Boyce, 2000)

What emerges from the exploration of odious debt is a process that has followed a similar trajectory in numerous countries. This process begins with foreign countries loaning money to dictators to further their own geo-political interests. That money is then spent on personal consumption, corrupt development projects, and internal security, with much of it leaving the country and landing in western bank accounts where it cannot be taxed or later recovered. As a result of the influx of money, the authoritarian government is able to retain control over the country and its resources, in part through a patrimonial distribution of spoils, thus prolonging the cycle. Interest begins to add up, and long after the original amount of the loan has been paid off, the country owes enormous sums of money, often exceeding the total amount that was borrowed. Money spent on debt service is not spent on health, education, or infrastructure development, further impoverishing the country. Loans incurred in the hopes of breaking the cycle are tied to conditionalities that serve western interests and further damage the country's economy. In this paper, this process will be referred to as the "Odious Debt System."

Perhaps nowhere in the world is odious debt more prevalent than in sub-Saharan Africa. A large number of SSA countries ruled by dictatorships transitioned to multi-party democracies in the early 1990's, leading to an explosion of situations in which the Odious Debt Doctrine (the legal framework for the repudiation of odious debt) could be invoked. Indeed, today, of the 49 countries in the sub-continent, at least 35 of them have debts that would conservatively be considered odious by the standards laid out by the majority of legal scholars studying the issue. Today, SSA countries owe more than $200 billion in external debt, and numerous countries under authoritarian rule continue to borrow heavily. (World Bank, 2012)

This paper will focus on the Odious Debt System in Sub-Saharan Africa. Its goal is to outline the existence of this system, explain the process by which it operates, provide examples of its manifestation, and offer a proposal for how to address it. In so doing, it will challenge both the traditional notion of odious debt and the more pervasive (in the west) notion of African debt generally. By viewing odious debt in this new light, this paper seeks to take the first step to solving any problem: properly diagnosing it.

This paper will be structured as follows. In chapter 2, a review of the literature will delve into the current discussion surrounding odious debt in the academic world. Odious debt scholarship will be classified into several groups and analyzed in the pursuit of a relatively cohesive narrative of the conversation regarding odious debt to date. Chapter 3 will lay out the Odious Debt System model in detail, including the theoretical foundations on which it is understood. Chapter 4 will explore the extended case study of the Democratic Republic of the Congo, tracing each aspect of the Odious Debt System as it was experienced in the DRC.

Chapter 5 will provide more extensive and broad-based data related to the Odious Debt System, including a series of brief case studies of countries which have had similar experiences to those of the DRC. Additionally, it will lay out a statistical overview of the Odious Debt System in Sub-Saharan Africa. Chapter 6 will conclude by examining the various proposals put forth to address odious debt, concluding that these efforts are not satisfactory solutions to the problem. In contrast, this paper will argue that the only possible solution to the problem is a political one forged through the collective action of citizens of countries in both Africa and the developed West. Hopefully, this path forward will offer citizens of the global community the opportunity to work together not merely to solve an intractable problem with enormous consequences for Africa's poor, but also to build the type of transnational relationships that might endure into the future and stand as a bulwark against the odious schemes of bankers and dictators not yet born.

CHAPTER 2

LITERATURE REVIEW

"If a despotic power incurs a debt not for the needs or in the interest of the State, but to strengthen its despotic regime, to repress the population that fights against it, etc., this debt is odious for the population of all the State. This debt is not an obligation for the nation; it is a regime's debt, a person debt of the power that has incurred it, consequently it falls with the fall of this power."

-Alexander Nahum Sack (Adams, 1991)

This section will divide the literature on odious debt into four major themes within which exist numerous sub-categories. First, it will analyze the history of the traditional odious debt concept; second, it will review the literature that addresses (implicitly or explicitly) the movement from this traditional concept of odious debt to a more systemic notion of the issue. Third, it will explore legal analyses of the Odious Debt Doctrine. Finally, it will discuss normative and policy-based proposals for how to address the issue.

THE LITERATURE ON THE HISTORY OF ODIOUS DEBT

The literature on the history of odious debt generally adheres to an approximation of the following narrative: There are a handful of cases of debt repudiation scattered throughout history that fit the definition of odious debt, a definition that was fleshed out by legal scholar Alexander Nahum Sack in the late 1920's. Sack defined odious debt and established the "Odious Debt Doctrine," a legal concept that he envisioned would become part of customary international law. Sack is assumed to have had first-hand knowledge of this issue as a former employee of the Tsarist regime in Russia that was ousted by the Bolshevik revolution, which in turn repudiated Tsarist debts.

Debt then exploded in the developing world in the 1960's and 1970's, as the global debt crisis spread and the U.S. and Soviet Union lent enormous sums of money to developing countries for geo-political reasons. When the early 1990's brought a wave of democratization, particularly to Africa, populations newly freed from the repression of autocracy now found themselves billions of dollars in debt for "odious" loans to which they had not consented and for which they had received little benefit. When the United States toppled Saddam Hussein's regime in 2003, the issue returned to the forefront as the US and the new Iraqi government argued for debt repudiation on the grounds that Hussein's obligations were odious.

Despite Sack's work and the relative prominence of the issue contemporarily, the Odious Debt Doctrine has never been implemented and very few instances of debt repudiation on odious grounds can be cited, let alone examples of actual forgiveness or successful repudiation.

This narrative, and the individual components of which it is comprised, are explored in further detail below.

<u>*The History of Odious Debt*</u>

Alexander Nahum Sack, Theoretical Beginnings, and Early Precedents

While much of the literature on odious debt emerged in the aftermath of the Iraq war, Patricia Adams detailed the history of odious debt in her book *Odious Debt: Loose Lending, Corruption, and the Third World's Environmental Legacy* in 1991. Adams focuses a significant portion of her historical analysis of odious debt by highlighting the work of the doctrine's titular architect, Alexander Sack. Adams notes that Sack "authored two major works on the obligations of successor systems…Sack's debt theories dealt with the practical problems created by such transformations of state." (Adams, 1991) As part of this work, Sack laid out the doctrine of odious debt, reprinted in full below:

> If a despotic power incurs a debt not for the needs or in the interest of the State, but to strengthen its despotic regime, to repress the population that fights against it, etc., this debt is odious for the population of all the State. This debt is not an obligation for the nation; it is a regime's debt, a personal debt of the power that has incurred it, consequently it falls with the fall of this power.
>
> The reason these "odious" debts cannot be considered to encumber the territory of the State, is that such debts do not fulfill one of the conditions that determine the legality of the debts of the State, that is: the debts of the State must be incurred and the funds from it employed for the needs and in the interests of the State. "Odious" debts, incurred and used for ends which, to the knowledge of the creditors, are contrary to the interests of the nation, do not compromise the latter – in the case that the nation succeeds in getting rid of the government which incurs them – except to the extent that real advantages were obtained from these debts. The creditors have committed a hostile act with regard to the people; they can't therefore expect that a nation freed from a despotic power assume the "odious" debts, which are personal debts of that power.

> Even when a despotic power is replaced by another, no less despotic or any more responsive to the will of the people, the "odious" debts of the eliminated power are not any less their personal debts and are not obligations for the new power…
>
> One could also include in this category of debts the loans incurred by members of the government or by persons or groups associated with the government to serve interests manifestly personal – interests that are unrelated to the interests of the State. (Adams, 1991)

Adams goes on to note that Sack argued that a system should be implemented in which the hypothetical creditor was forced to prove that the money loaned to a state was used for the benefit of its people, but only after the debtor country had proved that the loans did not result in a benefit for its people. She then pivots from Sack to the more modern history of odious debt, and the trend of countries to prioritize the security of international lenders (read, in part, banks). Adams concludes by arguing that those willing to lend money to corrupt governments may soon have to deal with the consequences of a resurgence of the odious debt doctrine and the refusal of successor governments to pay back such loans.

University of Michigan Law Professor Robert Howse also notes Sack's work and his division of odious debts into "war debts, subjugated or imposed debts, and regime debts." (Howse, 2007) Howse argues that the second category, also known as "hostile debts" refers to debts incurred "to suppress secessionist movements, to conquer peoples and so forth," while "war debts" refers to a situation in which a nation borrows money to fight a war that it loses, at which point the debts are passed on to its victorious opponent. (Howse, 2007) The author also references negotiations surrounding the un-ratified Vienna Convention on the Succession of States in Respect of Matters other than Treaties, during which time odious debt was classified as "an umbrella term covering a range of specific debts." (Howse, 2007)

Sack himself, however, is a matter of some controversy. In the Virginia Journal of International Law, professors Sarah Ludington (Campbell) and Mitu Gulati (Duke) argue in an article entitled "A Convenient Untruth: Fact and Fantasy in the Doctrine of Odious Debts" that much of what is written about Sack is a myth (Ludington and Gulati, 2008) The authors argue that Sack has become a de-facto saint of the debt-forgiveness movement, where he is commonly referred to as a former Tsarist minister turned revolutionary and the "preeminent legal scholar on public debts, the originator of the odious debts doctrine, or a leading scholar of international law." (Ludington and Gulati, 2008)

In fact, Ludington and Gulati argue, Sack was never actually a Tsarist Minister turned revolutionary hero (he was neither at any point). Instead, Sack fled Russia after the Bolshevik revolution and began a career as a law professor in the United States, where he took positions on sovereign debt issues that were "consistently and uncompromisingly pro-creditor." (Ludington and Gulati, 2008) In his most famous work (*The Effects of the Transformation of States on their Public Debts and Other Financial Obligations)*, for example, Sack "reiterates the 'unanimously established' doctrine that the new state must assume the debts of the old." (Ludington and Gulati, 2008) They argue that Sack's book "did not try to expand the category of state debts…that might legally be disavowed by a subsequent regime. Based on his sources, Sack was merely trying to restate what those criteria were and constrain any tendency toward irrational exuberance in their application." (Ludington and Gulati, 2008)

That said, Sack himself is by no means the only source of the odious debt concept in contemporary literature and Gulati and Ludington's dismissal of his importance to the issue does not fundamentally detract from the historical basis of the odious debt doctrine. Several authors, for example, trace the handful of precedents in international law for a repudiation of odious debts. Adams, like many others, focuses largely on Cuba. When the United States ended Spanish rule in Cuba in the Spanish-American War, Spain immediately argued that the United States should take responsibility for Cuba's foreign debts. The Americans refused, arguing, according to Adams, that the debt was "imposed upon the people of Cuba without their consent and by force of arms," and further arguing that a large portion of the money that had been borrowed had been spent trying to crush Cuban attempts to rebel against Spanish rule (Adams, 1991)

Writing in the Duke Law Journal, New York University Law Professor Tai-Heng Cheng asserts that the concept of odious debts precedes the Cuban example and was actually perhaps first articulated by Aristotle. Cheng is dismissive of the notion that Aristotle's statement ("when a democracy takes the place of…despotism…some persons refuse…to meet the contacts in hand on the ground that it was not the State, but the despot who entered upon them…") referred to a change in government as opposed to a full-blown "state succession," which Cheng defines as "a change in the territory or international legal personality of a state." (Cheng, 2007) Cheng goes on to highlight this distinction in a review of the cases cited as possible precedents for the Odious Debt Doctrine: "the Mexican repudiation of Austrian debts in 1867, the Chilean repudiation of Peruvian debt in 1883, the U.S. repudiation of Cuban debt in 1898, Great Britain's rejection of Boer debts in 1900, the rejection in 1923 of debts incurred by Frederico Tinoco on behalf of Costa Rica, the Soviet repudiation of Tsarist debts in 1918, repudiation of Polish debts at the Treaty of Versailles in 1919, and the German repudiation of Austrian debts in 1938." (Cheng, 2007)

Cheng argues that many of the examples above were "war debts" and not "regime debts" and thus do not apply as precedents for the Odious Debt Doctrine as it is now commonly perceived. He proceeds to analyze each case listed above and concludes that in each case, debts were repudiated either because a victorious army sought to avoid paying the debts of a losing nation or because a world power used its geopolitical might to repudiate a debt, and not because debts were deemed odious either morally or legally. He argues that at most, odious debt could apply to a situation in which a colony gains its independence from its colonial rulers, as was the case with Poland after World War I and Mexico in the 19th century. (Cheng, 2007)

James Feinerman cites the 1981 *Jackson v. People's Republic of China* case in which the PRC was ruled by an American court to have no claim to repudiate the debts of its Imperial Chinese predecessors on grounds of odiousness. Feinerman notes that the court declared that "it is an established principle of international law that 'changes in the government or the internal policy of a state do not as a rule affect its position in international law.'" (Feinerman, 2007)

Robert Howse also summarizes incidents in which odious debt has been invoked. He begins with the Annexation of Texas by the United States, which "initially refused to pay all pre-annexation debts, but paid the majority of the debt on a *pro rata* basis in 1855," and then notes a clause in the 14^{th} Amendment to the US Constitution that pre-emptively repudiates any debts "incurred in aid of insurrection or rebellion against the United States…" Howse argues this was targeted at the Confederacy's creditors. (Howse, 2007)

The author continues by noting the Cuban situation, which he describes as "arguably the first direct application of the doctrine of odious debt." (Howse, 2007) Other situations referenced include the Soviet repudiation of Tsarist debts, the Polish debts of 1919, and the German repudiation of Austrian debts upon annexation in 1938. He devotes more time, however, to the Tinoco arbitration of 1923, in which Costa Rica claimed that debts incurred by former dictator Federico Tinoco were odious, and US Chief Justice William Howard Taft served as mediator. Howse argues that Taft "emphasized that the debt in question did not create a valid public debt, nor was it in the public interest." (Howse, 2007) He cites a previous scholar (Meron, 1957) who argues that it was invalidated due to a technicality and not due to odiousness, and a set of authors (Bucheir et al, 2006) who state that the Tinoco case "should be narrowly interpreted as depending on the particular facts that the Tinocos appropriated the whole of the debt. The result might have been different had the debt only been partially odious." (Howse, 2007)

Howse concludes that “this does not reduce the value of the Tinoco arbitration as a source of law on odious debt.

Howse also explores in detail the Apartheid debt of South Africa and the arbitrations related to Iranian debts owed to the United States which were declared odious by the newly installed Islamic Republic in the early 1980’s. In that particular case, the arbiter ruled in favor of the United States and stated that the Odious Debt Doctrine was not applicable in this instance. In the case of South Africa, Howse notes the pressure that was applied to the African National Congress (ANC) upon assuming power not to repudiate its predecessor’s debts and the subsequent disassociation of the ANC from NGO efforts to cancel Apartheid obligations. (Howse, 2007) Finally, Howse references the 2006 decision by the Norwegian government to cancel debts owed to it through a failed development project in the 1970’s. (Howse, 2007)

In an article entitled “The Doctrine of Odious Debt Under International Law,” written for the Center for International Sustainable Development Law (CISDL), Jeff King uses past precedents to illustrate the different categories of odious debt. King lists the Polish repudiation of German debt after World War I as an example of “Hostile Debts,” while referencing the British refusal to pay off Boer debts in 1900 as an example of “War Debts.” (King, 2003)

In far more detail, King lists past incidents of “evidence of the Doctrine of Odious Debt in international law.” (King, 2003) Many of the examples are the same: Peru, Texas, Mexico, Cuba, Boer Republic, Russia, Poland, and Costa Rica. (King, 2003) King concludes that “there is a substantial body of state practice in which debts contracted and the proceeds of which were spent against the interests of a population were regarded as not enforceable by the successor state or government.” (King, 2003)

The Debt Crisis and the Re-Emergence of the Odious Debt Issue

The next theme covered in the historical analyses of the literature is that of the global debt crisis of the 1970's that eventually transformed the odious debt issue from a relatively obscure subset of international legal thought to a major contemporary problem.

In *Odious Debt, Old and New: The Legal Intellectual History of An Idea*, Feinerman traces the origins of the current debt crisis to the explosion of lending and the oil crises of the 1970's. In so doing, he notes that the nature of lending during that period, particularly "syndicate lending," was such that banks were aggressively pushing bad loans onto developing countries, including those countries ruled by odious regimes which might not be reasonably expected to spend the loan money to improve the standard of living for their people. (Feinerman, 2007) This problem then came to be compounded because the sheer amount of money sunk into such loans by Western banks made the idea of any debt repudiation, regardless of the merits or even the uniqueness of the particular case in question, a catastrophic potential precedent for the banks. Feinerman argues that this partly explains South Africa's inability to invoke the odious debt doctrine to avoid paying back loans incurred by the Apartheid government. (Feinerman, 2007)

Feinerman further notes that one impact of the 1980's Structural Adjustment Programs (SAPs) was to make the odious debt case more difficult. Countries that voluntarily participated in restructuring their loans (the author cites Peru as an example) "appear to acknowledge that these debts were legitimate." (Feinerman, 2007) Furthermore, the author notes that such restructuring plans "lump together all loans, legitimate and illegitimate," thus muddling the legal case for repudiation.

Adams traces Sub-Saharan Africa's debt crisis to the "Keynesian revolution" of the post-World War Two era in an article entitled "The World Bank and the IMF in Sub-Saharan Africa" published in Columbia University's *Journal of International Affairs.* (Adams, 1992) Adams argues that the combination of "deficit financing" and top-down economic planning, often from external sources such as multi-lateral institutions, promoted by Keynes led to an explosion of lending. She further notes that relying on misleading macro-economic indicators such as GDP further encouraged the notion that these loans were promoting development, which in turn led to "unchallengeable officials in less-developed countries, with the power to borrow against their countries' remaining natural assets for questionable development projects…" (Adams, 1992)

The author argues that the end result of this process was that sub-Saharan Africa "was hopelessly in debt." (Adams, 1992) But more than just the debt itself, Adams makes the connection between debt and governance and the wider implications of the lending spree of the 1960's and 1970's.

> The economic effects of the loans have gone much further than the individual boondoggles they financed. Massive lending to African governments led to an unprecedented growth of the public sector and to the conversion of functioning economies into failed mercantile experiments. Enterprises reluctant to take on the grandiose vanity projects so loved by governments were nationalized. They soon became infirmaries for sick ventures of various kinds and sponsors of development programs that could not proceed without substantial financial and environmental subsidies. To this end, the physical assets of African peoples – their forests, air, land and water resources – were placed at the disposal of development planners and crony capitalists, bringing about a speedy economic demise. (Adams, 1992)

Adams thus makes the connection between individual debts which may or may not be odious and a much larger system of finance and international relations that is distinctly odious. She continues by arguing that this "massive expansion of the state also provided the necessary vehicle for corruption and capital flight, leading to the accumulation of private assets and public debt." (Adams, 1992) When the debt burdens of African countries began to become unsustainable, the IMF and World Bank began issuing relief contingent on the acceptance of SAPs, which often serve the needs of Western nations at the expense of domestic African economies. She points out that "the World Bank recognized that 'adjustment lending is a high-risk' activity and conceded that those countries receiving structural adjustment loans experienced a 'sharp fall in average investment/GDP ratios,' while 'inflation almost doubled.'" (Adams, 1992)

In their book *Africa's Odious Debts,* University of Massachusetts economics professors Leonce Ndikumana and James K. Boyce account for some of the institutional motivators that led to the debt crisis, both with regards to the lenders and the borrowers. The central question posed by the authors is: "why did creditors make billions of dollars in loans to regimes whose leaders put their personal economic interests ahead of their countries' economic development?" (Boyce and Ndikumana, 2011) On the lending side, the obviously questionable nature of many of the loans given to African nations in the 1960's and 1970's was ignored in the face of huge financial incentives. The authors point out that were these loans simply a matter of incompetence on the part of a handful of lenders, "we would expect to see differential outcomes, not systemic failures. Creditors who made unsound loans would lose their money, and either learn their lessons or exit the business." (Boyce and Ndikumana, 2011) Instead, the irresponsible lending continued.

The authors note a number of factors that led to this lending. First, many financial institutions have a "use-it-or-lose-it" mentality related to their annual budget cycles: "failure to use appropriated funds by the end of the fiscal year may trigger reduced appropriations the following year." (Boyce and Ndikumana, 2011) Second, many loan officers are aware that their job performance is measured almost entirely on the quantity of loans they make, regardless of the quality. "A loan officer who delays loans…is not on the fast track to a promotion." (Boyce and Ndikumana, 2011) Third, the authors note the phenomenon of syndicated loans, in which groups of banks banded together to offer loans with floating interest rates that rose above the fixed rate at which the banks borrowed from each other. They profited off of this difference, but more importantly, they profited immensely from upfront fees on the loans that were taken off the top right away and could be posted as a profit for that immediate fiscal quarter. (Boyce and Ndikumana, 2011) The authors quote a former international loan officer who noted that, according to a syndication expert at Chase Manhattan, "Many of the participating banks…had no firm understanding of whom they were lending to; very few performed any type of credit analysis and practically none had a tactical and/or strategic marketing plan delineated by geography…volume…was all that mattered." (Boyce and Ndikumana, 2011)

On the borrower side, "foreign loans were subject to what economists call a 'principal-agent' problem: an agent who is supposed to act on behalf of others (the principals) instead may put his own self-interest first." (Boyce and Ndikumana, 2011) In other words, an African dictator receives a loan on behalf of his country, but keeps the money for himself, thus leading directly to the classical definition of odious debt. In these cases, the borrower is not bothered by excessive up-front fees, because in essence he or she is receiving free money.

The authors then note some relevant statistical trends. From 1970 to 2008, the total debt stock of thirty-three Sub-Saharan African countries rose from less than $50 billion to roughly $250 billion. (Boyce and Ndikumana, citing World Bank, 2011) The authors list the ten countries with the highest levels of debt as of 2008 (South Africa, at $41.9 billion, is the highest) and track debt service payments from 1970 to 2008, when it peaked at a three-year moving average of approximately $20 billion. (Boyce and Ndikumana, citing World Bank, 2011) The authors conclude this portion of their book by noting the systemic nature of the problem, and arguing that "debt relief can treat the symptoms, but not the disease." (Boyce and Ndikumana, 2011)

In his book *Looting Africa,* University of KwaZulu-Natal professor Patrick Bond tracks debt flows beginning in the 1980's, and argues that Africa's debt burden was worsened when aid began to drop while debt service piled up. He notes that Sub-Saharan Africa's "total foreign debt rose [from 1980-2002] at a faster rate than that of Latin America, the Caribbean and the Middle East: from $61 billion to $206 billion, and the ratio of debt to GDP soared from 23% to 66%." (Bond, 2006) Bond notes that in the case of "at least 16 countries, a very strong case could be made that the inherited debt from dictators is legally 'Odious,' since the citizenry were victimized both in the debt's original accumulation (and use against them) and in demands that it be repaid…" (Bond, 2006) He lists the countries, which include Ethiopia, Rwanda, Nigeria, Sudan, DRC, Uganda, and more. His central argument, however, is that the Heavily Indebted Poor Country (HIPC) initiative has made things worse for Africa, a claim that will be examined in greater detail later in this paper.

Nobel Prize winner Wangari Maathai briefly outlines the history of the debt crisis in Africa in her book *The Challenge for Africa.* "For decades," she writes, "African states were offered or even urged to accept loans to finance large-scale development projects. Many of these were inappropriate to Africa's needs or simply fronts for official corruption." (Maathai, 2009) She notes that the loans continued regardless of the nature of the recipient regime, and that this indebtedness led directly to the SAP programs of the 1980's, which did not "measurably improve" governance despite the focus on fighting corruption that supposedly marked the adjustments. (Maathai, 2009) She also contrasts the growth rate in Korea, China, and Singapore between 1960 and 2001 with those of African countries, some of which (Ghana, Senegal, Chad, Central African Republic, Zambia, Sierra Leone, Madagascar, Niger, Liberia, and DRC) were actually negative. (Maathai, 2009)

Bryan Thomas of the CISDL argues that the lending spree of the 1970's is "in keeping with a long tradition" of sovereign lending and subsequent debt, but is distinguished by the fact that, in the 1970's, "loans were primarily arranged between private commercial banks and the national governments of developing countries." (Thomas, 2003) Thomas restates the "conventional explanation" for the debt crisis, noting the surge in oil prices in 1973 after the OPEC embargo, and the subsequent flood of money into commercial banks, which were in turn eager to invest it. Thomas, however, argues that this explanation is flawed because "the evidence appears to show a dramatic increase in lending to developing countries between 1971 and the early part of 1973 – before the surge in oil prices." (Thomas, 2003) The explanation may have been a rise in commodity prices during that time.

Regardless, Thomas argues that the loans were clearly unsustainable, leading to fewer such loans by the late 1970's and eventually to the collapse of Southern economies as the debt burden of interest and repayment crashed economies. In searching to explain the lending, which the author notes was largely led by major U.S. Banks, including Citicorp, Chase, and Bank of America, Thomas deflects several attempts to understand the bad loans as "rational" in a longer-term context, instead focusing on the fact that for the major banks, "bad loans were good business." (Thomas, 2003) Thomas notes that the banks received substantial up-front fees, the lending frenzy pushed small banks into making dangerous loans, thus increasing the dominance of the big banks, and that the banks truly believed in the words of Citicorp Chairman Walter Writman, who famously asserted that "countries never go bankrupt." (Thomas, 2003)

There is a consensus that enormous amounts of money was lent to dictators in Sub-Saharan Africa during the 1960's and 1970's. This in itself, however, would not necessarily provoke the re-emergence of the Odious Debt Doctrine, as odious debt requires a change in government. But when a wave of democratization pushed those dictators from power in the early 1990's, the issue became instantly relevant.

Maathai notes that this period of history coincided (but not coincidentally) with the end of the Cold War, which she argues was extremely beneficial to Africa: "African leaders no longer had to pledge allegiance to either the Soviet or the American axis." (Maathai, 2009) This removed both foreign intervention and the excuse of the defense of ideology as blockages to democratic reform, and subsequently, "some of the 'Big Men' whose personas came to dominate the political life of their country were leaving the stage." (Maathai, 2009) Maathai cites as examples the end of Apartheid in 1994, the departure of Zambia's Kenneth Kaunda and Benin's Mathieu Kerekou in 1991, and the forced removal of Ethiopia's Mengistu Haile Mariam and Somalia's Siad Barre in that same year. Notably, this movement opened Africa to both Western prescriptions for how these "new" economies should be run and international civil society calls for debt relief. In short, the legitimacy (and fairness) of African debt was now an issue of discussion.

Feinerman notes the growing realization among officials, including former World Bank President Joseph Stiglitz, that the debt situation faced by developing countries in the 1990's was both unsustainable and potentially odious. One outcome of this was the Jubilee 2000 Charter, "an international coalition movement in over forty countries calling for cancellation of unpayable third world debt by the year 2000." (Feinerman, 2007) Jubilee proposed a one-time total debt cancellation for impoverished countries, regardless of the legitimacy of the debts and without any precedent for future lending. Feinerman notes that one result of this movement was President Clinton securing funds for debt relief, a move that correlated to the introduction of HIPC by the World Bank and the Group of 7 (G-7) countries. Feinerman notes that this initiative resulted in "a predictable bout of self-congratulation" despite "almost immediate criticism by the most significant advocates of third-world debt relief." (Feinerman, 2007) These advocates, the author notes, argued that much of this debt was odious and thus should be forgiven unilaterally and not partially forgiven contingent on World Bank conditionalities. Thus the modern dynamic of HIPC and the odious debt issue was born.

The Odious Debt Doctrine After Iraq

While the wave of democratization of the early 1990's reignited the odious debt debate and may have spurred the creation of HIPC, much of the literature on odious debt seems to have arisen after 2003, the year the United States invaded Iraq and deposed Saddam Hussein. The general theme of the literature is that the United States' self-interested motives for invoking the Odious Debt Doctrine as it pertains to Iraq thrust the issue into the limelight to a degree that was not matched by the rise of democratic governance in Africa. Simply put, the United States has a large microphone.

In an article entitled “The Due Diligence Model: A New Approach to the Problem of Odious Debts,” international debt scholar Jonathan Shafter notes the importance of the Iraqi invasion on bringing the odious debt issue to prominence, particularly through a recognition of the issue by American politicians. “House Resolution 2482,” Shafter writes, “called for the cancellation of loans made to Iraq by the multinational financial organizations. The bill argued for the necessity of canceling debts incurred by dictators…because those debts were never legitimate inheritances of the new government due to the doctrine of odious debts.” (Shafter, 2008) Such recognition from the U.S. Government, despite the fact that the resolution did not pass, is significant, and Shafter argues should “serve as a warning call to the international financial community that the status quo of traditional sovereign lending law could be radically reformed by legislative action with possible retroactive impact.” (Shafter, 2008)

Tai-Heng Cheng also notes the wave of odious debt scholarship in the aftermath of the Iraq War in an article entitled “Renegotiating the Odious Debt Doctrine,” though Cheng argues that “fads pass.” (Cheng, 2007) Cheng notes that “following the [Iraq War], the U.S. government argued that the successor government in Iraq was not responsible for Iraq’s Saddam-era debt under the purported doctrine of odious-regime debt.” (Cheng, 2007) Cheng argues that America’s sudden interest in the odious debt doctrine is self-serving in that “in order for the U.S. government to minimize the international and domestic political costs of a prolonged occupation in Iraq, it needed to establish the conditions for peace, which included a stable economy.” (Cheng, 2007) An enormous debt burden, in Iraq’s case upward of $140 billion, would jeopardize that goal. (Cheng, 2007) Cheng notes that the Paris Club decision to cancel some 80% of Iraq’s multi-lateral debt was predicated on the notion that Iraq’s debt burden was “unsustainable,” thus supporting “the trend to adjust preexisting obligations to balance the needs for stability in capital markets and for the successor state or government’s continued access to capital against the need to protect the successor from being debilitated by preexisting debts.”

(Cheng, 2007) Iraq would not, it seems, provide a contemporary precedent for odious debt repudiation that might be used by other countries.

Writing in the Duke Journal of Law, Jai Damle follows the contours of the odious debt discussion as it pertains to Iraq and in the aftermath of the Iraqi situation. First he notes Iraq's particular circumstances and the ways in which they differed from those of South Africa, another notable odious debt candidate (post-apartheid). His central argument, and the argument that runs through much of the literature on odious debt in the post-Iraq era, is that "the [odious debt] doctrine…does not currently supply a meaningful mechanism for debt repudiation for those countries without sufficient political or strategic value to major world powers." (Damle, 2007) In short, even were Iraq to successfully invoke the doctrine to have its debt relieved, it is unlikely that a country in sub-Saharan Africa could replicate that success.

Indeed, as it turns out, Iraq was not able to even provide other countries with a legal precedent. Damle notes the various pro-doctrine arguments forwarded during Iraq's debt negotiation with the Paris Club, which varied from the establishment of an international bankruptcy system to the unilateral repudiation of Saddam's debt, but states that "regardless of the concerted push by participants in the odious debt debate, the new Iraqi administration chose to distance itself from the odious debt doctrine." (Damle, 2007) The author argues that this may have been more of a public stance than a private one, where perhaps the odious debt doctrine played a significant role in negotiations. That said, several problems emerged that may have prevented a more public repudiation of Iraq's debt on odious grounds.

First, Damle notes that invoking the odious debt doctrine would have forced Iraq to "conduct an in-depth, debt-by-debt analysis to determine which proceeds were used for odious ends." (Damle, 2007) Such a process would have been difficult due to shoddy record-keeping during Saddam's regime, and would have slowed down the debt relief process considerably, which was to neither the borrower nor the creditor's benefit. Second, and perhaps most importantly, "by accepting a designation of 'odious' for debts incurred by Saddam Hussein, the international lending community would be setting a standard for odiousness on which other new regimes could base their repudiation claims." (Damle, 2007)

Damle concludes by noting that despite a possibly favorable debt relief package for Nigeria just after the Iraq negotiations, the odious debt doctrine remains little more than a backroom negotiation tool for most debtor countries. Such countries "have been consistently…unwilling to damage their reputations and take on the credit risk that would necessarily flow from outright repudiation." (Damle, 2007)

From Odious Debts to an Odious System

While much of the odious debt literature focuses on the narrow definition of odious debt as a particular type of obligation incurred in specific circumstances, a broad spectrum of writers acknowledge that there is a wider systemic implication to the term "odious debt." These authors either question the limited nature of a debt-by-debt analysis of debt odiousness or address the existence of a larger system of finance at work that creates and perpetuates, and yet at the same time is itself deepened by, odious debt. This systemic thread is separated into a number of sub-sections, including the nature of sovereign lending, the role of lending in worsening debtor-nation governance, and the role of lending in creating capital flight.

The self-interest of loans

Much of the odious debt literature emphasizes that odious debt is the product of an act of theft, namely that a tyrannical regime has stolen money that was intended for its constituents. This narrative, however, obscures the role of the creditor by assuming a neutrality or lack of culpability that in practice often should not be accorded lenders to sovereign nations. Some such narratives will occasionally accuse the lender of negligence, in the sense that lenders to autocratic governments should anticipate the risk of theft and corruption. But even this does not capture the self-interest behind much sovereign lending. In this sense, the odiousness of debt is far more systemic than much of the literature acknowledges.

Rutgers law professor Anna Gelpern writes specifically about this self-interest in her article "Odious, Not Debt," published in the Duke Law Journal. Her basic premise is that much of the lending to developing nations was intended more as grants with political motives than as loans intended to be repaid. In particular, Gelpern distinguishes between private debt (loans from private banks, for instance) and official debt (nation to nation), arguing that with the latter, "the usual goal is policy influence over the borrower." (Gelpern, 2007) "Governments often lend in dire economic circumstances where no arm's length money is available and repayment prospects are dim," she continues. "Some officials may prefer to give outright grants, but settle for loans in the face of domestic political opposition; others prefer the loan form because it reinforces a long-term political relationship. Are these transfers really debt? This article suggests that they are not." (Gelpern, 2007)

Gelpern notes that private lenders have their own reasons for lending: they "are in it for the money. They want to get out as soon as possible with as much money as possible." (Gelpern, 2007) Official lenders (i.e. governments), on the other hand, want to form a relationship with the borrower, to establish "policy influence...the object of such influence may be entirely altruistic or unsavory." (Gelpern, 2007) The end result is conditionality of some kind, further tying the borrowing country to the policy goals of the lender. The point of this discussion is not to accuse all such lenders of having immoral, self-interested motives; indeed, Gelpern notes that painting policy conditionality as "a means for rich countries to control the poor" is an oversimplification of the situation. (Gelpern, 2007) Rather, the importance of this thread in the literature and of Gelpern's article is to prevent the creditor from becoming a neutral cipher in the odious debt literature. Creditors, like borrowers, have motives.

Gelpern argues that for official lenders, those motives often do not involve repayment. The fact that transfers of money to developing nations take the form of loans and not grants does not contradict this notion. "For lending governments," she notes, "the debt form has a domestic political function and a foreign-policy function." (Gelpern, 2007) By labeling the transfers of money as loans instead of grants, governments signal to their constituents that domestic taxpayer money is not being given away and that there is a measure of oversight involved that prevents fraud and theft. As for the foreign-policy dynamic, Gelpern argues that "the principal value of a repayment obligation to the creditor may be neither legal nor financial, but instead may lie in its capacity to entrench the relationship." (Gelpern, 2007)

Wangari Maathai also argues that lenders had political and self-interested reasons for extending credit to developing countries. She notes that creditors were fully aware of who they were dealing with ("governments that, once freed from the constraints of accountability, could act completely irresponsibly…") and thus are "as culpable as those to whom they gave the money. They knew very well that the recipients were not creditworthy. Yet capital was extended over and over again…" (Maathai, 2009) Why? Maathai argues it was a combination of factors, including a desire by the West and the USSR to "prop up 'friendly' leaders" and a desire by creditors to "encourage favorable business arrangements between the governments and the donor countries." (Maathai, 2009)

The author also notes the benefit to commercial creditors of such odious lending. After summarizing a handful of examples of African kleptocracy, Maathai points out that "the monies stolen from the African people and deposited in foreign accounts were then available for further lending or investment by bankers from the donor nations." (Maathai, 2009) In this way, lenders were able to recoup their money through a combination of repayment and interest on the original loan (funded by African taxpayers) and reinvestment of the stolen proceeds of that loan. (Maathai, 2009)

As noted earlier, James K. Boyce and Leonce Ndikumana discuss the motivations of creditors in *Africa's Odious Debts.* While noting the internal factors that resulted in "loan pushing" and other instances of myopia, the authors also point out the existence of more deliberate motives on the part of creditors. These include export promotion, in which developing countries are required to increase the export of cash crops (usually to western markets) as part of loan-related conditionalities, and the profits from syndicated loans, in which banks work together to profit from higher interest rates on the money they lend to a developing nation than exist on the money they lend each other. (Boyce and Ndikumana, 2011) Perhaps more odious, many lenders extended credit to authoritarian regimes to help gain connections or favor with major clients who might be invested in that particular regime. (Boyce and Ndikumana, 2011)

In "Odious Debt Wears Two Faces: Systemic Illegitimacy, Problems, and Opportunities in Traditional Odious Debt Conceptions in Globalized Economic Regimes," published in the Duke Journal of Law, Pennsylvania State University law professor Larry Cata Backer takes this argument a step further, asserting that Sack's work leads to a conclusion that "a debt is odious…not because of the nature or legitimacy of the state apparatus contracting the debt or because of any change in regimes, but because of the absence of a legitimate relationship between the debt and the state itself." (Backer, 2007) Backer's argument is that the entire lending system is divorced from any authentic notion of benefit to the people of the borrowing country, and that "all such debt is odious in the sense that it was incurred for the benefit of the lender and to the detriment of the citizens of the debtor states…" (Backer, 2007)

As such, odiousness applies to a system and not to a particular government. This concept is an explicit redefinition of the term odious debt, and reflects Backer's argument that the lending system is designed to benefit creditors, regardless of whether or not it benefits the citizenry of a borrowing nation. Backer's premise is that debts incurred as a function of this system are inherently odious, and that only through a series of demonstrable metrics could a lender prove that its loans are not a part of that system and thus legitimate. (Backer, 2007)

Loans propping up dictators

Much of the literature also acknowledges the systemic odiousness of lending aimed at perpetuating the rule of a dictatorship. For example, if a dictator borrows money and uses that money to increase the powers of the security apparatus charged with crushing domestic dissent, the odiousness of that loan extends beyond the specific dollar amount that was borrowed without benefit to the people and correlates to the harm caused by the extension of the despot's rule. This situation casts doubt on the efficacy of a loan-by-loan determination of odious debt.

Boyce and Ndikumana detail the impact of such loans in the Democratic Republic of the Congo (DRC) in "Congo's Odious Debt: External Borrowing and Capital Flight in Zaire." Mobutu Sese Seko, the dictator who ruled the DRC (then Zaire) for thirty-two years, perpetuated his rule through the support of western creditors and governments. Loans and aid were funneled into weapons and the security apparatus, which in turn gave Mobutu firmer control over the country's vast mineral resources, including those in the hinterlands that might have otherwise exceeded the grasp of a corrupt but limited regime based in a distant capital. "Mobutu," the authors note, "relied heavily on external resources to maintain his grip on political power and thereby on Congo's internal economic resources." (Ndikumana and Boyce, 2000)

These resources flowed freely to Mobutu due to his support for the West during the Cold War, a fact Mobutu was obviously aware of. "Mobutu assiduously cultivated relationships with government leaders and officials of international financial institutions." (Ndikumana and Boyce, 2000) The CIA gave him

$150 million early in his rule, and the early 1980's saw fresh military assistance and other aid from both the United States and France, whose Adviser on African Affairs declared that "Zaire is the most important francophone country after France." (Ndikumana and Boyce, 2000)

The authors note that beyond the military and geopolitical motivations for lending, western countries also wanted access to Zaire's mineral resources. Close relationships were forged between members of Mobutu's regime and western officials, and mineral rights were distributed accordingly. At the same time, Mobutu "reciprocated this generosity" as part of his efforts to retain Western backing: "construction projects involving businesses controlled by relatives of French president Giscard d'Estaing accounted for nearly one-third of Zaire's foreign debt in the early 1980's." (Ndikumana and Boyce, 2000) The authors conclude that much of Mobutu's foreign aid, and thus the DRC's odious debt, was the result of loans from the west that were given as part of a deliberate political strategy during the Cold War.

Wangari Maathai notes the role of western interests in Africa's debt crisis, arguing that "the supply or withholding of international aid provided a useful means of controlling Africa's leaders to the advantage of the industrialized world." (Maathai, 2009) It worked. African heads of state, she argues, received so much money from the developed world that they "were more accountable to the international donors than they were to their own people." (Maathai, 2009) Were Africans able to control their own governments during this time, it is possible that cozy business relationships with multi-national companies and cozy political relationships with western governments would have been halted. By ensuring that African leaders responded to the needs of the West instead, creditors avoided this possibility, and thus not only perpetuated autocratic rule, but deepened it.

In his book *Africa in Chaos,* Ghanaian author George Ayittey also notes the scope of western support for dictators during the lending frenzy of the latter half of the twentieth century. While largely far more critical of African leaders than of western institutions, Ayittey nevertheless notes the "heavy Western investment in…tyrants, who were blatantly corrupt and blatantly oppressive." (Ayittey, 1998) He argues that for "geopolitical, economic, and other reasons, the West propped up tyrants in Cameroon, Cote d'Ivoire, Kenya, Liberia, Malawi, and Zaire…and nurtured alliances with "pro-West" regimes in Kenya, Malawi, South Africa, and Zaire and with guerrilla groups…in Angola…" (Ayittey, 1998)

Capital flight (Debt-Fuelled)

A further thread in the literature that speaks to the larger systemic odiousness of debt centers on the notion of capital flight, which is defined as the departure of privately held money out of a nation and into foreign investments or accounts. Capital flight is an enormous concern for developing nations because it erodes the national tax base, thus limiting the ability of a government to spend money on social services or infrastructure development. It is also closely connected to foreign debt: when countries borrow money and that money is immediately sent overseas to private bank accounts, the resulting debt service (for loans that accrued no benefit to the population) is paid out of public coffers, draining the economy. Furthermore, when the dictator responsible for the capital flight is finally ousted, money he has stashed internationally is often difficult to recoup.

Lending to developing nations, argue the authors referenced below, directly results in capital flight by providing monies to be looted while insuring repayment to the creditor through public funds. But it also results in an even greater form of theft: the looting of national resources. One dollar of loan money can result in one dollar of capital flight if it is ushered out of the country and into a Swiss bank account immediately. But if that money is instead used to strengthen control over mineral or oil wealth, one dollar of borrowing can instead result in multiple dollars of lost public wealth. In this way, the odiousness of debt stretches far beyond the specific amount of a particular loan.

In *Africa's Odious Debts,* Ndikumana and Boyce explain the connection between external lending and capital flight. "Capital flight," they argue, "can be linked to foreign borrowing in four ways…The tightest linkages occur when one directly fuels the other: that is, when the same money flows in and out through the revolving door." (Boyce and Ndikumana, 2011) The first linkage is known as "debt-fuelled capital flight," in which "loans from foreign creditors to African governments finance the accumulation of private wealth." (Boyce and Ndikumana, 2011) The same process can also occur in reverse, in which case African officials move money abroad and then "borrow" it back. This is often done to launder the money and thus avoid scrutiny as to its origins. (Boyce and Ndikumana, 2011)

The authors also note two indirect linkages that occur between capital flight and foreign debt. First, a rising debt stock can depreciate a country's currency, thus motivating individuals to move money abroad. In this situation, there is no sinister motive involved in the connection between debt and flight, but there is a clear example of the economic impact that debt can have far beyond even the debt service and interest repaid by the developing nation involved. The reverse situation also exists, in which capital flight erodes the domestic tax base and forces a government to seek loans to replace the lost funds. (Boyce and Ndikumana, 2011) In that instance, a supposedly non-odious loan to a democratic government could be the result of the failure of western governments to eradicate tax havens that attract overseas money. The developing country's citizens are thus stuck paying back the loan (and interest) that results from the capital flight, with no hope of having that debt classified as "odious" under the traditional notion of odious debt.

The authors make similar claims in an article entitled "Public Debts and Private Assets: Explaining Capital Flight from Sub-Saharan African Countries," published in *World Development*. Capital flight, they note, should be a sign of a negative domestic investment climate, and thus foreign investment and lending should be expected to dry up in a situation in which money is actively leaving a nation's borders.

But it doesn't. The authors summarize a previous work (Alesina and Tabellini, 1989) in noting that "the incumbent government is happy to accumulate foreign debt since it does not internalize the burden that this will place on future…regimes and on future generations." (Boyce and Ndikumana, 2003) In other words, there is a systemic problem that creates a particular dynamic: odious debt. They also note the cyclical nature of capital flight, and thus the perpetual damage done to an economy by odious debt: "for example, for a given level of government expenditure, the presence of high capital flight may lead private agents to expect higher tax rates by virtue of the resulting lower tax base…" which encourages further capital flight. (Boyce and Ndikumana, 2003) Debt-fueled capital flight, therefore, can begin a cycle that causes lasting harm to an economy.

Economic professors Mare Sarr, Erwin Bulte, Chris Meissner, and Tim Swanson argue that "unstructured lending from international credit markets can create incentives to loot the country" in an article entitled "On the Looting of Nations." (Sarr et al, 2011) Their central premise is that the so-called "resource curse," the idea that developing countries with abundant natural resources fare worse than those without, is actually closely linked to the prevalence of foreign lending. "Manzano and Rigobon (2001) find," they note, "that the resource curse vanishes when controlling for indebtedness." (Sarr et al, 2011) While the authors make clear that borrowing does not by itself lead to looting, they argue that it is the prevalent combination of autocracy, resources, and lending that lead to the theft of resources.

Through an economic model, the authors conclude that "greater lending to sufficiently resource-rich countries is associated with enhanced likelihood of political turnover – an empirical proxy for looting – which in turn is negatively associated with economic growth." (Sarr et al, 2011) They argue that dictators are frequently faced with the choice between staying and looting, and that "such looting is facilitated when international banks are willing to turn natural resources into loans….the dictator will be fundamentally influenced in this choice by the level of lending afforded by external banking institutions." (Sarr et al, 2011) They acknowledge the relationship between odious debt and their model, and specify that odious debts "are the result" of "unstructured resource-based lending." (Sarr et al, 2011) Finally, they note the dynamic that occurs when resources are present in which "banks fail to internalize the risks of default because of the belief that sovereign debts will ultimately be 'worked out' and particularly those with large amounts of natural resources underlying them." (Sarr et al, 2011)

The Literature on the Legal Dimensions of Odious Debt

Because of the odious debt doctrine's history as a legal concept, much of the literature on the subject is written from a legal perspective. Legal writing on odious debt produces four major threads: legal definitions of odious debt, issues of state succession, legal precedents, and options for legal redress.

Legal Definitions and Categories

A starting point for the legal definition of odious debt is Alexander Sack's work in the 1920's, and many legal scholars cite Sack as the first to truly define the concept. In "the Concept of Odious Debt in Public International Law," Robert Howse, for instance, quotes Sack and notes that Sack "divided odious debts into several categories: war debts, subjugated or imposed debts, and regime debts." (Howse, 2007) Howse discusses what he deems to be the two most common categories, defining "hostile debts" as "debts incurred to suppress secessionist movements, to conquer peoples and so forth." (Howse, 2007) War debts he defines as "debts contracted by the State for the purpose of funding a war which the State eventually loses and whereby the victor is not obliged to repay the debt." (Howse, 2007) Under these definitions, an example of hostile debt would be Rwanda's obligation to pay back loans incurred by the genocidal anti-Tutsi government of Juvenal Habyarimana, while an example of war debts would be Nazi Germany acquiring loans and then those loans being passed on to the Allied powers after the war.

Ashfaq Khalfan of the CISDL adds a further category of odious debt in "Advancing the Odious Debt Doctrine." In addition to Hostile and War debts, Khalfan argues that there exists a third category known as "Third-World Debts Not in the Interests of the Population." (Khalfan et al, 2003) This category is defined as debts "that were neither hostile nor war debts, but were simply harmful burdens assumed by a state but for which the population received no benefit." (Khalfan et al, 2003)

As for the origins of Sack's ideas, Ludington and Gulati argue that Sack was "perhaps the first to use the term 'odious debts' in the sovereign debt context." (Ludington and Gulati, 2008) They argue that Sack essentially invented the doctrine rather than "synthesizing" it from previous legal scholarship, but that "the notion that some debts…might be invalid for reasons of equity or morality was not new to international law scholars. Sack's work on odious debt appears to have synthesized the preexisting notions of hostile, war, and subjugation debts under the umbrella of odiousness." (Ludington and Gulati, 2008) In essence, Sack did not build on prior legal scholarship, but rather on prior concepts of morality or fairness. The authors quote a critic of Sack's who argues that odious debts are a "theory – not a rule of law." (Ludington and Gulati, 2008) If there is a tradition in customary international law that would support the existence of a doctrine of odious debts, the authors argue, it is not the result of Sack's legal scholarship but rather from the precedents established by prior cases.

State Succession vs. Government Succession

Perhaps the critical legal issue pertaining to odious debt is state succession: namely, what is the legal nature of a change in government? Cheng argues that "positivists distinguish between state and government succession. State succession involves a change in the territory or international legal personality of a state. In contrast, government succession involves a change in government, or even a fundamental change in the structure of state authority, but it does not change the state's international legal personality." (Cheng, 2007) This last point is crucial. Cheng is arguing that simply exchanging a dictator for a democracy does not alter the legal status of debts incurred by the previous regime.

Under this definition, an example of a state succession would be the unification of Germany or the split of Sudan and South Sudan. In the first case, an entirely new country that previously did not exist was formed by merging two countries together. In the second case, the same result was achieved by splitting up an existing nation. In the latter case, however, Sudan would remain unchanged as it merely ceded a portion of territory, whereas South Sudan would be treated as a new legal entity. An example of government succession, meanwhile, would be the Democratic Republic of the Congo when Mobutu was overthrown by Laurent Kabila; a change in leadership does not change, in Cheng's argument, the legal character of the state.

Jeff King acknowledges the argument that odious debt could only be applied to state and not government succession, but argues that this "argument may, indeed must, be challenged." (King, 2003) King begins this challenge by quoting a "prominent authority" in the field who argues that "[t]he line between these two types of change in some instances wears thin to the point of disappearance, and the placing of a particular instance of change within the one or the other category is often quite arbitrary." (King, 2003) He further notes that using the distinction between the two, even if a clear distinction existed, to measure the applicability of the odious debt doctrine "would be an arbitrary limitation" because the purpose for applying the doctrine is not diminished in the event of government rather than state succession. (King, 2003)

King's final critique of this distinction relates to the legal nature of odious loan. In King's view, the legal argument supporting the doctrine is predicated on the notion that an odious debt is not a "valid obligation that binds the state because the transaction *per se* did not conform to a requirement under international law." (King, 2003) In this sense, an invalid transaction is an invalid transaction regardless of the legal validity of the government that authorized it, thus negating the distinction between state and government succession.

Robert Howse also notes the succession issue. “It is fairly obvious,” he writes, “that in cases of state succession, the issue of the future of debt obligations *must* be addressed, since the debtor as a legal person has ceased to exist.” (Howse, 2007) Howse argues, however, that the “default rule of continuity of legal obligations in government succession” does not serve as a “rejection of odiousness of debt as a basis for non-enforcement” in those circumstances. (Howse, 2007) Rather, he notes that “it is instead a rejection of government succession *per se* or *in itself* as a basis for discharge of the obligation to repay.” (Howse, 2007)

Finally, James Feinerman notes that “there does not appear to be any universal rule of international law with regard to state succession.” (Feinerman, 2007) He argues that there is a strong position that successor governments are naturally liable for predecessors’ obligations, but that there exists an “intermediary view” that such governments “do not have any responsibility for so-called ‘odious debts.’” (Feinerman, 2007)

Precedents and Applicable Treaties

The history of cases relevant to the odious debt discussion is noted in depth above. The legal thread of the odious debt literature, however, focuses on the judicial implications of these various precedents, as well as on the relevance of established legal treaties and doctrines.

Robert Howse notes the 1978 Vienna Convention on Succession of States in Respect of Treaties and the subsequent Vienna Convention on Succession of States in Respect of State Property, Archives and Debts and their inclusion of a “clean slate rule” that clearly indicates a lack of obligation on the part of successor states unless a link is demonstrated between the benefit of the loan and the new entity.

(Howse, 2007) Howse quotes a scholar who argues that this directly correlates with the right of a state to repudiate debts based on odiousness.

The author continues by referencing other sources of the odious debt doctrine in customary international law. For instance, he notes that if a state were to disintegrate (e.g. USSR), the amount of debt assigned to each newly created state is often based at least in part on the relative benefit of the loans in question to each state, rather than on the simple math of population or GDP. (Howse, 2007) Therefore, there is a legal precedent for considering benefit in determining debtor obligations. Howse also references the "general principles of law of civilized nations" recognized in "Article 38 of the Statute of International Court of Justice," principles that include "equitable limits to contractual obligations" in the event of "fraud, fundamentally changed circumstances, knowledge that an agent is not properly acting on behalf of the contracting principal and duress." (Howse, 2007)

Howse further references the Vienna Convention on the Law of Treaties, which states that obligations are not absolute in the sense that they must be "read in light of other binding agreements as well 'any relevant rules of international law applicable between the parties.'" (Howse, 2007) Howse argues that this includes human rights laws, which would presumably include a proscription against odious debt. Howse argues in conclusion that "there is a rich case law in the common law world concerning the limits of contractual freedom, whereby contractual obligations have been found unenforceable or partly enforceable." (Howse, 2007)

Meanwhile, Khalfan et al summarize the sources of international law as they pertain to odious debt. "There is little support for the doctrine in treaties," they write. (Khalfan et al, 2003) On the other hand, the authors argue that there are numerous examples of state practice that appear "to support directly or indirectly the doctrine of odious debts," while the cases of odious debts being willingly repaid are ambiguous in terms of setting precedent because it is not clear that those countries are paying back odious loans because of legal concerns or because of fear of repercussion. The authors also note the "general principles of law" including concepts of "unjust enrichment and abuse of rights," which might lend support to the odious debt doctrine. (Khalfan et al, 2003)

Jeff King then expounds on these principles. He argues that unjust enrichment is a concept enshrined in public international law, quoting the *Civil Code of Quebec* as stating that "a person who is enriched at the expense of another shall…indemnify the other for his correlative impoverishment…" (King, 2003) Odious debt is naturally a clear case of unjust enrichment in that both creditors and dictators profit at the expense of the population. King defines "abuse of rights" as "'damage caused by the exercise of a right,'" and notes its connection to the odious debt case. (King, 2003)

King also references "obligations arising from agency," including those "obligations of the agent toward the principal." (King, 2003) In other words, creditors have a commitment to act in the best interest of the parties to which they loan money, including sovereign nations. This idea is extended to cover "breach of trust" or the assistance of a "breach of trust" by third-parties, all of which holds that creditors can be legally responsible for the impact of odious debts irrespective of the existence of written legal rules or treaties specifying conditions for repudiation. (King, 2003)

Jeff King offers a summary of the "evidence of the Doctrine of Odious Debt in international law," citing past incidents of relevance and noting the important consequences of each case. (King, 2003) The US repudiation of Texan debts, King argues, demonstrates an "American tendency to question on moral or equitable grounds the automatic devolution of debts." (King, 2003) Meanwhile, Chilean repudiation of debt acquired through territorial conquest vis a vis Peru is "significant in at least three ways. First, no obligation to repay the debts of the ceded territory was recognized by the Chilean government. Second, the payments…were likely granted in consideration of political interests…Third…the fact that the debts did not benefit the territory was considered a 'weighty circumstance' in dismissing the…obligation to repay." (King, 2003)

King deems US repudiation of Cuban debts after the Spanish-American war as a critical precedent, in which "the fit between this practice and the doctrine is perfect." (King, 2003) Similarly, he argues that Polish repudiation of debt after Versailles is a "direct application of the doctrine of odious debt," while Costa Rica's Tinoco arbitration "stands for the principles of public benefit and creditor awareness." (King, 2003) He concludes by arguing that "there is a substantial body of state practice in which debts contracted and the proceeds of which were spent against the interests of a population were regarded as not enforceable…" (King, 2003) Robert Howse performs a similar inventory and reaches many of the same conclusions.

Cheng, on the other hand, questions the validity of these precedents, arguing that the "idea of forgiving regime debts has existed for millennia…[but] has not crystallized into a rule of customary international law because of a lack of state practice in support of such a rule." (Cheng, 2007) He notes the modern examples, arguing that jurists "have been reduced to relying on the following late nineteenth and early twentieth century successions," listing the very cases referenced by King and others. "Many of these examples," Cheng continues, "address the cancellation of war debts and not regime debts," and cites Chile among others. (Cheng, 2007)

He then re-raises the issue of government vs. state succession, using that distinction to invalidate the Costa Rica case, while questioning the Cuba debt cancellation on the grounds that not all of Cuba's debt was odious and therefore complete repudiation could not be solely the product of odiousness. (Cheng, 2007) Cheng concludes by arguing that "relying on the Cuban debt controversy and historical instances of decolonization to support a general theory of regime debts would be overreaching," and notes that the International Law commissioners “concluded that state practice did not support the discontinuity of oppressive debts.” (Cheng, 2007)

Sites for Legal Redress

Finally, the legal literature on odious debt touches on the possible sites for bringing odious debt cases to court. Khalfan in particular summarizes judicial resources available to advocates of the repudiation of odious debt as well as the potential location of such suits.

He begins by noting the possible sites for bringing suit in order to repudiate odious debt while admitting that “litigation has rarely been used to resolve disputes over state debt.” (Khalfan, 2003) The first possible site he lists is the International Court of Justice (ICJ), which he argues offers the advantages of neutrality, the ability to seek an advisory opinion, and its standing as “the appropriate body for clarifying norms of international law.” (Khalfan, 2003) On the other hand, the ICJ’s jurisdiction “is essentially based on consent of the states,” thus posing sizable political obstacles. (Khalfan, 2003) The author also concedes that any debtor country bringing suit at the ICJ could expect financial punishment from the international community.

International arbitration is another option. Khalfan writes that this type of process would be faster than a formal court proceeding, but raises similar political obstacles in that “the parties have more control over the choice of arbitrators, either for the specific arbitration or at the time of the agreement. This may give the creditor states an opportunity to screen out persons likely to support the odious debt doctrine.” (Khalfan, 2003) Domestic courts, meanwhile, do offer in Khalfan’s view an opportunity for civil society in a debtor country to pressure its government to seek repudiation, though they would not prevent the type of economic punishment referenced above. Unfortunately, the equivalent of class-action lawsuits would likely not be allowed in domestic courts, which increases the financial strain on debtor plaintiffs.

The Literature on Policy Solutions to Odious Debt

The literature on possible solutions to the problem of odious debt offers a range of options. The majority of proposals focus on the more narrow definition of odious debt as a particular type of loan given in particular circumstances, while a smaller subset of authors notes the necessity of a larger systemic solution. Much of the literature features critiques of one strategy or another, including some papers that advocate against a particular practice without proposing an alternative solution. In the end, the proposals generally reflect the authors' understanding of the nature of the problem (or in some cases, lack thereof). This paper, in turn, will argue that the problem is systemic and that most of the solutions proposed below lack the capacity to alter the dominant paradigm.

The Ex-Ante Approach

One solution proposed to address odious debt is known as the "ex-ante" approach. This proposal is based on the notion of having an international body declare whether or not a particular regime is currently odious, thus alerting creditors beforehand that any loans to that regime could be designated as odious after the fact. Note Ndikumana and Boyce in *Africa's Odious Debts:* "Proponents argue that if the referee assesses government legitimacy truthfully, and if creditors act rationally, little or no odious debt will be forthcoming in the international financial marketplace." (Ndikumana and Boyce, 2011)

Two advocates of this proposal are business professor Patrick Bolton and law professor David Skeel. In "Odious Debts or Odious Regimes," the authors advocate for the implementation of the odious debt doctrine and for its enforcement via an international institution that is given the authority to label regimes as odious. The authors argue that the institutions most capable of serving in this capacity are the IMF and the United Nations.

Bolton and Skeel note the first step to implementing such an approach is to clarify the definition of an odious regime, which they consider to be any regime that "first...has an overt policy of terror and oppression, and denies the basic well-being, freedoms and human rights of its people. And, second…is engaged in a policy of systematic looting for the benefit of the ruling elite. A regime that has either…of these attributes is…odious…" (Bolton and Skeel, 2007)

Next, the authors propose that the declaration of odiousness could take place at any time, though earlier in the regime's existence is preferable. Subsequently, the United Nations Security Council would be charged with implementing the policy; the authors note that the Council "already has the authority to implement an odious regime policy…the only innovation would be the added reach of denying enforcement of debt repayments for *any* debts incurred by an odious regime." (Bolton and Skeel, 2007) The IMF, meanwhile, would be tasked with monitoring "plundering" by potentially odious regimes. They note that the IMF "already conducts regular, extensive financial reviews of each of its members," and that this process could be used to monitor for corruption and looting, which in turn could result in sanctions. (Bolton and Skeel, 2007) They further mention the references made to similar concepts in previous IMF reports, thus negating the argument that the ex-ante approach would be dramatically transforming existing IMF functions. (Bolton and Skeel, 2007)

Another important argument for an ex-ante system comes from Harvard economists Michael Kremer and Seema Jayachandran in their article "Odious Debt." At the heart of their argument is "that an institution that truthfully announced whether regimes are odious could create equilibrium in which successor governments suffer no reputational loss from failure to repay odious debt and hence creditors curtail odious lending." (Kremer and Jayachandran, 2002)

The authors begin their exploration of this concept with an examination of a "hypothetical perfectly truthful institution that assesses whether regimes are odious." (Kremer and Jayachandran, 2002) Such an institution would serve to sanction regimes by preventing them from accessing loans from both multi-lateral lending institutions and countries that were signatories to the agreement that created the institution. First, they argue that the creation of such an institution would give legitimacy to the "odious" label, thus allowing countries to repudiate odious debt without a loss of credit reputation. Second, they note that if those involved in creating the institution agreed not to lend money to countries who are *paying back* odious debt, the end result would be that no amount of pressure from rogue creditors could convince successor governments to pay back such debts and thus odious lending would cease to continue.

The main thrust of their argument regarding this hypothetical institution is that it would serve as a "new form of economic sanction that has several attractive features relative to existing sanctions." (Kremer and Jayachandran, 2002) Specifically, rather than harming innocent people, as economic sanctions often do, an odious debt prevention institution would serve to incentivize dictators to spend borrowed money on the general welfare (rather than risk being declared an odious regime and thus incapable of accessing future loans), and incentivize lenders not to lend to odious regimes given the possibility that the debt would be ruled odious and thus repudiated.

The authors go on to note potential problems with such an institution, including biases that would lead to inaccurate designations of debt as being either odious or not. To minimize these problems, they argue for simple procedural safeguards to be put in place in the institution: "some illegitimate, self-serving regimes would continue to receive loans…but it would be an improvement on the status quo if even one such regime were denied loans." (Kremer and Jayachandran, 2002) They argue that the most important step this institution could take would be to declare a regime to be odious as it pertains to *future* loans, thus preventing odious lending and subsequent debt without having to answer difficult questions as to which current loans should or should not be honored.

Law Professors Tom Ginsburg and Thomas Ulen note the ex-ante approach in "Odious Debt, Odious Credit, Economic Development, and Democratization," published in the Duke Law Journal. In summarizing the most frequently proposed solutions to odious debt, the authors note the two principal benefits of the ex-ante approach: "a chilling effect on both lenders and borrowers in extending odious debt… [and] fewer grounds for dispute later on." (Ginsburg and Ulen, 2007) This second benefit is commonly cited by proponents of an ex-ante system, as it contrasts with the instability seemingly inherent in the ex-post strategy (determining the odiousness of past loans case-by-case). Ginsburg and Ulen further note the question of whether an ex-ante system would designate future loans or future regimes as odious.

Finally, Jai Damle notes the ex-ante process as the "most likely route" for the implementation of the odious debt doctrine. (Damle, 2007) He notes the proposals made by Jayachandran and Kremer, and argues that creditors would prefer ex-ante to ex-post because it "provide[s] greater predictability…ex ante designations are relatively attractive because creditors would be given notice of debt impairment due to odiousness." (Damle, 2007) However, despite this, creditors are still reluctant to support any such system, and the international community is unwilling, Damle argues, to "condition lending on subjective, politically based measure[s]." (Damle, 2007)

Critique of the Ex-Ante Approach

A number of authors offer critiques of the ex-ante approach, including scholars who advocate for its use.

As they argue for a system of labeling regimes as odious for the purpose of preventing odious debt, Bolton and Skeel note the various concerns with such a process. First, they point out the difficulty in defining an odious regime, and note that allowing a court or institution latitude in determining the definition on its own ("we know it when we see it") runs the "obvious danger of inviting a descent into ethical relativism." (Bolton and Skeel, 2007) They also acknowledge the danger of the definition becoming "overinclusive" and leading to virtually every non-democratic regime being labeled as odious regardless of circumstances. (Bolton and Skeel, 2007)

Second, the authors discuss the "inevitable concerns with a U.N.-overseen odious regime policy." (Bolton and Skeel, 2007) These include concerns about the UN itself, specifically the political nature of the Security Council and the unlikeliness that any single odious regime would not have at least one ally with veto power on the Council.

Third, a series of complications arise when determining which debts would be cancelled as a result of labeling a regime as odious. Only those debts incurred after the designation? All debts incurred by the regime? Debts incurred to pay off previous odious debts? And what about money channeled through private systems of finance to avoid the odious label?

Finally, the authors note the argument that labeling a regime as odious may hurt the population of the country, the very people an odious debt doctrine is supposed to benefit. They note simply that the United Nations could have the flexibility to delay an odious determination in the event of extreme economic distress, but do not address the unintended consequences of providing a ruler largely imbued from the day-to-day economic realities of his people with an incentive to create an economic crisis. (Bolton and Skeel, 2007)

Ndikumana and Boyce also list several concerns with an ex-ante system in "Africa's Odious Debts." First and foremost, the ex-ante system, they argue, does not address the massive volume of past debts, therefore condemning African nations to "remain snared in the debt trap left by irresponsible borrowing and complacent lending…" (Ndikumana and Boyce, 2011) Second, the authors note what may be the single most powerful critique of the ex-ante system: the political bias inherent in any international institution charged with labeling future regimes as odious. "Influential governments could seek to veto rulings against client regimes, and press for unfavorable outcomes for disfavored regimes. There may also be a bias against declaring the governments of economically powerful countries to be odious, whereas small countries, including most African nations, may be more likely to be penalized." (Ndikumana and Boyce, 2011)

Furthermore, the authors note the "moral hazard" inherent in an ex-ante system, such that regimes not labeled as odious would be given free rein to borrow and loot, while creditors willing to lend to such governments would have similar freedom from repercussion. (Ndikumana and Boyce, 2011) This varies little from the current status quo, but it is a problem that would not arise were a system to be created that labeled past debts as odious, thus maintaining an enforcement mechanism that could be used at any time.

Finally, the authors point out that even odious regimes occasionally engage in legitimate lending. Such lending would be cut off entirely by an ex-ante system, initiating the harm to the population referenced by Bolton and Skeel. If odious debt refers to odious loans, why focus on odious regimes?

Other authors note the problems with declaring loans themselves odious ex-ante. "Although it is not impossible that this ex ante certification scheme could develop into a viable method of dealing with the problem of odious debt," write Ginsburg and Ulen, "its effectiveness is doubtful." (Ginsburg and Ulen, 2007) The authors cite several reasons for their skepticism. First, declaring ahead of time which parts of a loan would be declared odious or "unlikely to survive a regime change" would be toothless in the face of despotic leaders capable of hiding the end destination of the borrowed money.

Ginsburg and Ulen also question the ability of any tribunal or judicial entity to devise an appropriate system to deal with the inherent gray area in designating loans as odious. "Will (or should) the tribunal give an overall odious score to the loan on, say, a one-to-ten scale? Will (or should) it be the case that if some portion of a loan package is deemed odious, then the entire package should be deemed odious?" (Ginsburg and Ulen, 2007)

Finally, the authors note that a ruling of odiousness would hardly put an end to the question of whether or not a particular loan should be repaid. They argue that litigation would inevitably follow any such decision, and that much of the cost of the appeals process would be borne by the successor government. (Ginsburg and Ulen, 2007)

In an article entitled "Partially Odious Debts," law professors Mitu Gulati and Omri Ben-Shahar raise a number of questions regarding an ex-ante system, all of which they label as "practical." (Gulati and Shahar, 2007) "Can we expect an agreement by the majority of states over the creation of an international body that will be authorized to designate odiousness?" they ask. (Gulati and Shahar, 2007) They further question the ability of such a tribunal to properly label a regime as odious, either because of bias or because of a lack of credible information.

Law professors Albert Choi and Eric Posner question the benefits of the odious debt doctrine in general, regardless of which approach is taken. That said, they offer specific criticisms of the model proposed by Kremer and Jayachandran, arguing that it: a) fails to take into account "quasi-public investment;" b) assumes erroneously that a dictator is always overthrown at a particular stage of the process (after the borrowed money has already been spent); and c) improperly assumes that loan sanctions could be enforced when in fact dictators could evade them in the same manner in which they evade trade sanctions. (Choi and Posner, 2007)

U.S. State Department Legal Counselor Paul Stephan argues that no "satisfactory mechanism exists for instituting an odious debt doctrine" in an article entitled "The Institutionalist Implications of an Odious Debt Doctrine." (Stephan, 2007) Stephan notes the contours of a "top-down approach," his term for the creation of a tribunal to "label regimes and projects as odious," and argues that the

Security Council would be a poor choice of institution given its inability to enforce its own resolutions. (Stephan, 2007) How, then, to select or create a proper alternative? Stephan argues that this is virtually impossible because "the agency wielding this authority would find itself mired in ideological wars about what counts as a truly democratic and representative government and how governments must serve the public good." (Stephan, 2007)

Stephan also notes what is a common concern among critics of both the ex-ante and ex-post approach: the fungibility of money. Given that dictators can use borrowed funds for non-odious projects and tax money for odious ones, labeling a particular project as odious would not deter a dictator from borrowing funds and then diverting other funds simultaneously.

The Ex-Post Approach

The other main proposal for addressing odious debt is referred to as "ex-post," in which a tribunal or legal institution would declare after the fact that certain loans were odious and thus subject to cancellation.

Ndikumana and Boyce, in *Africa's Odious Debts,* argue that the ex-post strategy essentially has two distinct possibilities for implementation. Under both scenarios, the successor government in a debtor country would declare loans odious after the fact and refuse to pay them back, but in one case, the debtor would need to prove odiousness while in the other, the creditor would need to prove non-odiousness. (Ndikumana and Boyce, 2011) In either case, a neutral arbiter is needed. "Clearly," the authors write, "neither the debtor nor the creditor qualifies as an impartial arbiter of the status of the debt. A neutral third party must perform this function. Who?" (Ndikumana and Boyce, 2011)

The authors argue that the burden should be placed on the creditor to prove the loans were legitimate. "If the creditors can document where the money went, and show that the loan was virtuous or at worst merely imprudent, then the debt would be [legitimate]…" (Ndikumana and Boyce, 2011) The question then becomes what venue would these claims be adjudicated in, and the authors note it would need to be a legal venue, either one currently established in New York and London or a new tribunal created expressly for this purpose. They reference Norway's 2005 call for an "'international debt settlement court' for just this purpose," and note that "this proposal has much to recommend it." (Ndikumana and Boyce, 2011)

Paul Stephan classifies ex-post as his "bottom-up approach" to odious debt, arguing that for the doctrine to become reality, it would need to be initiated through a court decision that becomes a legal precedent. The court would need to "'find the doctrine within customary international law by noting the weight of authoritative opinion declaring that the doctrine had become an international rule and position itself as following this authority." (Stephan, 2007)

Omri Ben-Shahar and Mitu Gulati argue for a variation on the ex-post strategy in "Partially Odious Debts?" They claim that the ideal strategy is one in which parts of loans are determined to be odious, keeping with the reality of debt in which borrowed funds are often spent in both odious and non-odious ways simultaneously. This "partial-liability framework" would require "a court or other adjudicator" which would "have enough information to make correct decisions. Specifically, courts will need….to determine (1) what creditors knew or should have known and (2) what benefits ensued from the debt." (Shahar and Gulati, 2007)

This will be ambiguous at times. "Even some of the most despotic uses of funds…can have legitimate aspects. Are credit institutions capable of determining what uses of funds are legitimate?" (Shahar and Gulati, 2007) The authors argue this ambiguity can actually be a good thing, as it will push creditors toward exercising extreme caution in dispensing loans. They further argue that the type of clarity needed to determine which aspects of a loan were odious and which were not is more readily available in an ex-post system, since “good information as to the benefit to the populace from the loans is also more likely to be available after the despot has been dethroned.” (Shahar and Gulati, 2007) They conclude that a partial liability ex-post system offers the benefits of a full ex-post system with the advantage of not penalizing creditors for loans that were only partly odious. They concede that the effectiveness of the idea “might not be answered unless tested.” (Shahar and Gulati, 2007)

In “Sites and Strategic Legal Options for Addressing Illegitimate Debt,” Ashfaq Khalfan notes the various avenues open to those seeking to implement an ex-post system. First he notes the importance of obtaining a single legal decision in favor of repudiation on odious grounds, and then proceeds to explore how best to obtain such a decision. He references various legal sites at which to bring a suit, including the International Court of Justice (ICJ), an international arbitration tribunal, and domestic courts. Related to each site, the author notes the various options available to debtor countries attempting to bring the suit, including a pre-arranged suit involving a sympathetic creditor designed to set precedent, an advisory opinion from the UN, joint suits from multiple borrowers, and more. (Khalfan, 2003)

Critiques of the Ex-Post Approach

Within the literature, several critiques of the ex-post approach emerge. In advocating for his own “due-diligence” model (discussed below), Jonathan Shafter argues that the notion of determining whether or not loans were contracted with the consent of the people is so riddled with ambiguity as to leave it useless in any legal sense. The end result of this lack of clarity, Shafter argues, is that lenders will withdraw from lending except to the most unambiguously democratic nations rather than risk repudiation later on. This, the author argues, means that the “cure for odious debt might be more painful than the disease.” (Shafter, 2008)

Bryan Thomas of the CISDL, meanwhile, notes some of the difficulties in establishing a debt tribunal specifically with regards to the loans of the 1970's, a significant portion of African odious debt given the historical background previously discussed. Thomas notes that the restructuring agreements undertaken by African countries on these loans leaves a vast amount of odious debt intermixed with non-odious debt, thus rendering the work of any such ex-post tribunal nearly impossible. Furthermore, a substantial portion of this debt has been resold on the secondary market, further complicating matters.

In advocating for an ex-ante system, Bolton and Skeel note two major problems with an ex-post approach. First, they echo other authors' concerns with the ambiguity inherent to sovereign lending, citing a nuclear development project in the Philippines which was unquestionably corrupt but also likely provided some benefit to the population regardless. Would such a loan be odious or not? And how could any court truly determine where to draw a consistent line?

Second, the authors note the fungibility of money, which "severely limits the potential effectiveness of the debt-by-debt approach to the odious debt doctrine." (Bolton and Skeel, 2007) The fungibility argument is premised on the idea that dictators could borrow money for non-odious purposes but use those added funds to free up other pools of money for odious reasons. As such, even if a particular loan was not dedicated to an odious project, the loan could be responsible for harm to the population, or at best lack benefit.

Paul Stephan also discusses concerns with an ex-post system, notably the instability its implementation would cause in the sphere of international contract law. Stephan argues that "tribunals will have difficulty reassuring contractors that an odious debt decision is a one-off matter, and not part of a general skepticism about the enforceability of sovereign debt contracts." (Stephan, 2007) He also argues that determining odiousness will be "no easier for courts than for an international agency," which he further argues would "struggle to determine the specific purposes of particular debts against the background of money's fungibility." (Stephan, 2007)

The Due Diligence Approach

One other prominent approach to tackling odious debt is the "due diligence" model proposed by Jonathan Shafter. Under this system, a country would be labeled as "odious-debt-prone," after which point creditors would be required to "cite the specific ends that the funds are intended for and the due diligence monitoring plan that the lender intends to implement to ensure that the funds go toward these stated uses." (Shafter, 2008) Debts incurred before a country is labeled as odious-debt-prone would not be eligible for repudiation and subsequent debts would only be deemed odious if "funds were diverted toward illegitimate ends and the lender failed to make a good faith effort to comply with its own pre-approved due diligence plan." (Shafter, 2008)

Shafter proposes that the model include an international institution empowered to declare that a certain regime is prone to odious debt and to regulate loans to that regime. (Shafter, 2008) He argues that while bias is inevitable in any institution, "an actually implemented system alleviating the suffering of the citizenry in most odious debt-prone nations is superior to a theoretically perfect system never put into place due to insurmountable political resistance." (Shafter, 2008) He concedes the fungibility of money, but argues that his model would still improve on the status quo, in which dictators are free to use any funds they want for illegitimate purposes.

Finally, he explores "venues for implementation," including the UN, without concluding that a particular current institution is ideal. (Shafter, 2008) He concludes by arguing that "merely shining light on the financial relationships between lenders and sovereign governments might be sufficient to mitigate some of the most extreme situations where positive regime bias protects the debtor government from more formal monitoring." (Shafter, 2008)

The Market Incentive Approach

Tom Ginsburg and Thomas Ulen argue that "none of these proposals for dealing with indefensible sovereign debt has commanded, or is likely to command, a majority scholarly or public following." (Ginsburg and Ulen, 2007) The authors argue that the largest complication facing any solution for odious debt is the "odious creditor;" they reference China's loans to Sudan as an example of the self-interest inherent in the lending system and the obstacles that creates for implementing any type of international tribunal. (Ginsburg and Ulen, 2007)

The solution, they argue, is to create market incentives to promote repudiation of odious debt by debtor countries. "Modest steps can be taken," they write, "to encourage selected, carefully identified recipient countries to repudiate the debt. The IMF or World Bank could offer insurance on future loans to be extended to the country after repudiation, thus reducing the interest-rate penalty the country will suffer as a consequence of the reputational harm." (Ginsburg and Ulen, 2007) They conclude by acknowledging some of the critiques of such a system but advocating for its installation as a significant improvement on the status quo.

The Heavily Indebted Poor Country Initiative (HIPC)

Some of the odious debt literature focuses on a solution to the debt crisis that is not solely connected to the notion of odious debt. In the late 1990's, the World Bank and IMF introduced the Heavily Indebted Poor Country Initiative (HIPC), aimed at reducing the debt burdens of low-income countries to sustainable levels. Participating countries are required to meet certain requirements, including the completion of a Poverty Reduction Strategy Paper (PRSP) that outlines future macro-economic policies. (IMF, 2012) To date, 39 countries have either reached "completion-point" or have entered into the process at some prior stage, 33 of which are sub-Saharan African nations. (World Bank, 2012)

Countries that have reached completion through HIPC have received various levels of debt relief. This relief has been awarded irrespective of the odiousness of the country's obligations, but still impacts the odious debt debate in that it could conceivably render policy discussions moot by unilaterally eliminating much of Africa's odious debt. That said, there is much skepticism regarding HIPC's ability to address debt relief generally, let alone odious debt.

Patrick Bond argues that HIPC "applied to loans that *weren't being paid in any case.* Most of the countries…have vast debts…that can never be repaid; the countries are, in accounting terms, bankrupt." (Bond, 2005, emphasis original) Bond's argument is that the "notional reduction of these debts is effectively meaningless," and thus of little to use to Africans while serving a public relations purpose for the Bretton Woods institutions behind the initiative. (Bond, 2005) At the same time, Bond argues that HIPC "retains a deeply neoliberal set of conditionalities," including "macroeconomic austerity and services privatization." (Bond, 2005) As such, while HIPC does little to change the debt situation for low-income African countries, it does give western institutions added leverage in controlling African economies.

Bond goes on to argue that PRSP's are not open for debate and thus are highly un-democratic, while focusing solely on "internal factors and ignor[ing] the role of international/global factors and forces in creating economic crises and poverty…" (Bond, 2005) He also notes the arguably common failure of the World Bank to demonstrate competency; "by 2003, even the World Bank conceded some of HIPC's mistakes…its staff 'had been too optimistic' about the ability of countries to repay…projections of export earnings were extremely inaccurate, leading to failure by half the HIPC countries to reach their completion points." (Bond, 2005)

Bryan Thomas also references the impact of HIPC on odious debt indirectly when he notes that "restructuring plans had the effect of rolling odious debts together with non-odious debts, and subsequent trading on secondary markets immensely complicated the task of sorting them out again." (Thomas, 2003) HIPC does not differentiate between the two. So if, for instance, Malawi had one billion dollars in odious debt and one billion dollars in non-odious debt, and it received one billion dollars in HIPC debt relief, how would it be possible to determine how much of its remaining debt burden was odious?

The literature on odious debt is voluminous and growing. What is largely lacking from this body of work, however, is a clear delineation of a system of odious debt, and how it works. It is the argument of this paper that such a system exists and that it has followed a predictable process in numerous African countries. It is to an explanation of this systemic model that this paper now turns.

CHAPTER 3

THE ODIOUS DEBT SYSTEM MODEL

"If unintended effects of a project end up having political uses…this is not any kind of conspiracy; it just happens to be the way things work out. But because things do work out this way…it does become less mysterious why 'failed' development projects should end up being replicated again and again."

-James Ferguson (Ferguson, 1994)

RECONCEPTUALIZING ODIOUS DEBT

This section will outline the model of the Odious Debt System. In attempting to reconceptualize odious debt, it is not the intention of this paper to engage in an academic exercise. On the contrary, it is hoped that by furthering an understanding of how odious debt truly works in African countries, progress can be made toward taking action that will address the problem and help alleviate the unnecessary suffering of heavily-indebted African societies. The conclusion of this paper will address the nature of that action.

The vast majority of scholars examining odious debt approach the issue in the "traditional" context: odious debt is understood to refer to specific debts that meet certain criterion of odiousness. It is not surprising, therefore, that the solutions offered by these scholars reflect this understanding, and that these proposed solutions do not properly address the problems created by a systemic odiousness of debt. Until odious debt is understood in this systemic manner, and not as a category of loans (or even of portions of loans), it is unlikely that any proposals for its eradication will offer hope for success.

This section will lay out a model of the Odious Debt System. This model will offer a framework in which to recognize how a comprehensively odious system of debt impacts developing countries and an understanding of its theoretical underpinnings.

THE MODEL

The Odious Debt System model consists of 10 components divided into three sections. While it is not necessary for each and every component to be present for the model to apply to a particular country, each aspect of the model generally follows from another aspect and thus perpetuates the overall system.

Section 1: The Influx of External Funds

- Foreign-supported authoritarian rule

- External funding of regime (loans, grants, aid)
- Use of funds for perpetuation of domestic control
    - Funding of security apparatus
    - Funding converted into appropriation of domestic resources

Section 2: The Downward Spiral

- Kleptocracy
- Capital flight
- Absence of domestic development (health, education, infrastructure)
- Rising debt leading to rescheduling
- Structural adjustment and its accompanying economic shocks

Section 3: The Aftermath

- Absorption of debt by successor regime without recourse to repudiation
- Long-term debt and poverty unimpeded by partial debt forgiveness

HOW THE SYSTEM WORKS IN SHORTHAND

Broadly speaking, the model plays out as follows:

A leader takes power in an African country, and is offered support for political and/or economic reasons by foreign governments and financial institutions. This support is sometimes, though not always, instrumental in the leader's ascension to power in the first place. The leader is in turn supplied by the international community with loans, aid, and grants. This influx of cash, often given to promote foreign political and/or economic interests, is used by the dictator to establish control in an otherwise insecure environment. A patronage system is established in which competing "elites" are bought off by the dictator and which is secured through his ever-expanding personal wealth. Funds are also used to increase the capacity of the state's security apparatus so as to suppress domestic dissent. This wealth comes in part from a series of corrupt practices that siphon or simply steal externally-derived funds. Meanwhile, the dictator uses this patronage system and coercive violence to appropriate valuable domestic resources, which are in turn used to fuel the leader's patrimonial rule.

As the leader's power solidifies, a number of other elements begin to take form. Kleptocracy becomes rampant, as the dictator and his associates plunder both external funds and national resources to enrich themselves. Capital flight increases, as stolen funds are spirited out of the country into safe bank accounts where the money cannot be taxed or recovered by authorities in the event of a regime change. Meanwhile, general economic decline creates hardship for ordinary citizens and exacerbates, and is exacerbated by, all of the other dynamics at play. Health, education, and infrastructure development are neglected, further impoverishing the citizenry and diminishing hopes for economic recovery, while more wealth is sent abroad to avoid the impact of the economic downturn. The dictator single-mindedly pursues resource extraction, from which he can easily appropriate funds, while human capital and other forms of industry whither, further expediting economic catastrophe.

As the country falls farther and farther into debt, the dictator either ceases to pay back loans from an increasingly strapped treasury or asks the West for intervention. This intervention comes in the form of debt rescheduling, oftentimes tied to structural adjustment programs. These adjustment programs deepen the economic woes through reduced employment, increased prices for staple goods, and the devaluation of the currency, which leads to additional capital flight and a reduced tax base. The dictator uses this process to protect his own patronage network while further assaulting those elements of society that might oppose his rule (teachers, civil servants, etc.) Meanwhile, rescheduling mixes so-called "odious" debts with so-called "legitimate" debts, making debt-by-debt repudiation by any future regime almost impossible.

When the dictator is finally removed from power, the successor government is left with an enormous debt burden and little hope of retrieving stolen funds. Partial debt relief through the World Bank and IMF HIPC initiative does not fundamentally alter the burden faced by these countries, nor does the removal of a dictatorship necessarily alter the political character of the state. Patronage systems remain intact, new loans are procured to fund them, and occasionally former dictators are even elected as president. Even well-intentioned new governments are unable to alter the debt situation substantively because they cannot repudiate odious obligations without incurring the wrath of creditors and being cut off from future funding.

These elements are chronologically linear, but also overlap and reinforce each other. Capital flight, for instance, can stem from external borrowing but it can also lead to additional loans. Structural adjustment can lead to economic decline, which in turn can necessitate further loans. The use of loan money for the perpetuation of tyrannical rule can lead to a number of the other dynamics listed above, but it also re-emerges at numerous stages of the process: in the DRC, for example, initial lending allowed Mobutu to solidify his rule, but uprisings and general domestic upheaval decades later threatened to unseat him, at which point IMF loans and US military assistance allowed him to remain in power.

THEORETICAL UNDERPINNINGS –CONTOURS OF AFRICAN DEBT CRISES

Each component of this system is born out not only through an examination of case studies and actual events but also through a review of relevant theory. This theory is primarily two-fold: first, theory in the literal sense of the word; second, relevant scholarship on Africa as a whole. In the end, these arguments point toward a series of relatively simple conclusions: bad governance is harmful, theft is bad, loans benefit lenders and tyrants at the expense of the poor, etc. It is the argument of this paper that these simple conclusions, when placed together side-by-side, reveal a coherent system of odious debt that in turn challenges both traditional notions of odious debt and the claim that remaining debts should be repaid. As such, it also challenges policy prescriptions offered by both those who promote that traditional notion of odiousness and those who would advocate that remaining debt burdens be honored.

Section 1: The Influx of External Funds

At the heart of the Odious Debt System is governance that is divorced from civilian interests, a status that does not universally require either authoritarianism or foreign support. However, it is also not surprising that in virtually every case in which the Odious Debt System is present, one or both of these aspects characterizes the government that accrued the debt. To understand why, we turn to an understanding of governance generally and African governance (without implying a universal characteristic therein) specifically.

Fantu Cheru defines governance as "responsible, accountable, transparent, legitimate, effective democratic government." (Cheru, 2002) The profound absence of such governments in Africa, Cheru argues, is a consequence of several factors, including the emergence of "neo-patrimonialism:" a "system of rule in which all governmental authority and economic rights tend to be treated as privately appropriated economic advantages and where governmental powers and the associated advantages are treated as private rights." (Cheru, 2002) This system, further expounded upon by Reno and Bayart, leads "elites in Africa to become more and more preoccupied with defining power relations while simultaneously seeking legitimacy from outside." (Cheru, 2002) Put another way, the creation of a system of government that is inherently parasitic on the part of those in power leads inevitably to an external search for support. After all, internal actors can only be viewed, in this system, as competitors or threats to the system, and therefore "a siege mentality" takes hold, leading to "concern for elite security [taking] precedence over development and improving the welfare of the population." (Cheru, 2002)

This concept is defined by William Reno in his book on weak states and warlord politics. Reno's model of a weak state is the "bureaucratically weak and internally insecure African state of the postcolonial era." (Reno, 1999) It is marked by a "distinctive political logic," in which "rulers who face threatening internal behavior intentionally cripple the arms of the state," in an effort to thwart the emergence of rivals. (Reno, 1999) As such, the development of the economy and the empowerment of government institutions runs contrary to the interests of those in power. This in turn initiates a cyclical process as domestic actors come to understand that the government is the enemy in a zero-sum game of resource allocation. Where, then, does that government turn to ensure its survival?

Reno argues that it turns to the West. "During the Cold War, for example, external resources went into patronage networks aimed at reining in unruly strongmen at the expense of development." (Reno, 1999) These patronage networks allowed rulers to co-opt political opposition and keep a hold on power; without foreign support, however, rulers would have had nothing with which to bribe the opposition. Essentially, Reno argues that the international legitimacy conferred on the leader of a state, regardless of how illegitimate his rule might be or how weak his state has become, "could be used to attract aid from outsiders that filled in for absent domestic political resources." (Reno, 1999)

Reno cites Robert Jackson's coined term "quasi-state," referring to those states that combine "external dependency and internal institutional weakness" and argues that such quasi-states actively predate western resources to advance their own aims. (Reno, 1999) This certainly does not imply that the West is the victim in such instances, or that it is not also getting what it wants out of the relationship, merely that weak states intentionally manipulate western interests to achieve desirable ends.

In this way, foreign support is crucial for the survival of any such regime. Without an initial injection of foreign support, weak state rulers are subject to internal challenge and the possibility of an endless cycle of coups and counter-coups (Africa had 169 such military interventions between 1950 and 2010). (Powell and Thyne, 2011) Foreign support, therefore, can be seen as the process of selecting a winner. Once that winner is chosen, the rest of the odious debt cycle can begin.

Loan money then begins to flow in, but as Anna Gelpern argues, many loans are simply politically-motivated grants that must be disguised as loans to garner western domestic approval. As such, the odiousness of this entire system is laid bare by the simple fact that western governments choose not to attempt to defend their role in it and instead disguise the true nature of their motivations to their own constituents. As Gelpern notes, "the usual goal [of official debt] is policy influence over the borrower. Governments often lend in dire economic circumstances where no arm's length money is available and repayment prospects are dim. Some officials may prefer to give outright grants, but settle for loans in the face of domestic political opposition; others prefer the loan form because it reinforces a long-term political relationship." (Gelpern, 2007)

Gelpern also notes the conditionality that is "common to all official lending." (Gelpern, 2007) Such conditionality, however, is simply part of a process of control that serves "to deepen and perpetuate, rather than sever, the underlying relationship" between debtor and creditor. (Gelpern, 2007) This attribute is critical to understanding the expansion of post-colonial African external debt in the context of a continent littered with post-colonial economic relationships. Former colonies seeking to maintain ties to newly independent states could use loans as a means of solidifying those relationships; such practices often led to corrupt relationships between African elites and European or American officials with economic or financial interests in the continent.

The same dynamics that drive foreign support for a dictator allow that dictator to perpetuate his rule through the appropriation of loan and aid money. Reno, in particular, highlights how rulers use external funds for their own purposes, most notably either to fund patronage systems and systems of security or to appropriate domestic resources which are in turn used to bolster the regime's power and suppress dissent. This process provides an understanding of how rulers with little if any popular legitimacy are able to stay in power for extraordinary periods of time. In Africa, this is a highly relevant question:

DICTATOR	COUNTRY	LENGTH OF TENURE
Omar Bongo	Gabon	41 years
Gnassingbe Eyadema	Togo	37 years
Paul Biya	Cameroon	37 years
Felix Houphouet-Boigny	Ivory Coast	33 years
Teodoro Obiang Nguema Mbasogo	Equatorial Guinea	33 years
Jose Eduardo dos Santos	Angola	33 years
Robert Mugabe	Zimbabwe	32 years
Dawda Jawara	Gambia	32 years
Mobutu Sese Seko	Zaire	31 years
Hastings Banda	Malawi	31 years
Abdou Diouf	Senegal	30 years

In the simplest of terms, there are two methods of suppression available to dictators: bribery and violence. The first method largely takes the form of the patronage system described above, as dictators desperately attempt to monopolize resources both to secure a means of patrimonial distribution and to deny them to rivals. In articulating what he calls "the politics of the belly," Jean-Francois Bayart argues that this race for resources unsurprisingly characterizes not merely the leadership but the whole of African societies, where "social struggle is a zero sum game where the only prize is the accumulation of power." (Bayart, 2009) Reno, in turn, argues that the end result of such a system is that leaders "reject the pursuit of a broader project of creating a state that serves a collective good…when it threatens to put resources into the hands of those who might use them to challenge the rulers' position." (Reno, 1999)

Pierre Englebert describes the contours of patrimonial bribery when he argues that the African state "substitut[es] patron-client links for its lack of moral foundations. In the process, the modern state is reduced to a merely instrumental role, a set of resources that rulers use to foster their power: fiscal revenues are distributed to create networks of political support as rulers personally appropriate public funds to finance political allegiance." (Englebert, 2000) Bayart adds that these "networks are founded upon inequality but are themselves producers of inequality…the strategies of heads of networks resemble the capture, accumulation and partial redistribution of wealth." (Bayart, 2009)

However, because redistribution can only be partial in such a system, directed to the handful of "elites" whose loyalty it is deemed necessary to buy, bribery is inevitably insufficient to maintain power. The other option is violence, the use of which is intensified both due to the lack of inherent legitimacy in the state and the manner in which the desperate struggle for resources pushes those at the bottom to resort to either banditry or violence to oppose the regime. On the first point, Reno notes that "violence and militarization of commerce were central to adapting the functions and forms of state sovereignty to the pressing task of building political authority in heavily divided postcolonial African societies." (Reno, 1999) Lacking in internal legitimacy, rulers resorted to violence rather than allow the dissolution of the state as local constituencies considered secession as a viable means of securing local resources against the predatory "national" state.

On the second point, Bayart notes that the zero-sum game is "truly a matter of life and death. Life – if one succeeds in taking one's part of the 'national cake'…Death – if one is forced to make do with a hypothetical salary that will only feed the family for the first three days of the month." (Bayart, 2009) As such, those excluded from elite accommodation resort to "rural banditry" or urban violence in the "juvenile underworld." (Bayart, 2009) "The 'highest of the high' are very much aware of this and increasingly live in a siege mentality, protected by their personal guards." (Bayart, 2009) This violence, of course, is also necessary to keep dissenting or threateningly powerful elites at bay: "with the material stakes so high no holds are barred in the competition between the chiefs of the network, however violent they may be: homicides, arbitrary imprisonment…." (Bayart, 2009)

The nature of the violence is, as Bayart writes, "domination exerted without disguise:"

> Forced labor under the pretext of human investment; police raids and other so-called ‘thorough searches’ for the purpose of tax verification; the authoritarian repatriation of unemployed town dwellers into the countryside, the struggle against ‘human litter’ and ‘undesirables’ in the center of towns, the grouping tougher of villages and the military ‘slum clearances’ from urban areas, obligatory participation at endless demonstrations of ‘solidarity’ and other rallies…floggings and massacres, tortures, denunciations, public executions, extra-judiciary imprisonments; through the armed forces and a network of informers the men of power exercise robust control over the populations they want to subject….(Bayart, 2009)

Meanwhile, the intersection of these two methods is described in a highly illuminating account of how Mobutu operated his own personal patronage system:

> Like a European feudal king surrounded by nobles, Mobutu also dispenses vast sums as patronage to his own elite in Zaire. Unlike an aristocracy, this elite depends for its status on one man's changing whims. As one reporter put it: 'besides Mobutu and his family only 80 people in the country count. At any one time, 20 of them are ministers, 20 are exiles, 20 are in jail and 20 are ambassadors. Every three months, the music stops and Mobutu forces everyone to change chairs.' Part of Mobutu's political genius lies in his ability to co-opt would-be rivals into the leadership class - and to boot them out again before they can accumulate too much power. (Askin, 1990)

All of this is made possible through foreign support, which provides the resources necessary to bribe and coerce, as well as to secure the domestic resources that might otherwise be beyond the scope of the regime’s power. Foreign loans also perpetuate the entire system by attaching a significant monetary incentive to being in power: “what is being fought for,” Bayart writes, “is the right to the riches claimed by the holders of ‘absolute seniority’…” (Bayart, 2009) These western riches are conferred to those in power of the state because they possess the “trappings of sovereignty,” as Reno describes it, even if they act more like a mafia than a government. (Reno, 1999)

Reno describes how foreign support led directly to the expansion of the patrimonial state: “as long as foreign backers supported a version of the rules of the game that rejected…separatist claims and armed and financed incumbent regimes, the costs to strongmen of not accepting a ruler’s patronage were much higher than the weak internal capabilities of the state alone would suggest.” (Reno, 1999) In other words, as noted earlier, western support heavily tilted the playing field in the favor of the ruler and against his domestic opposition. “External aid helped weak-state rulers to reward loyalty and cooperation,” and conversely to punish dissent. (Reno, 1999)

“Foreign links are crucial,” writes Bayart, “because they are the main conduits for the circulation of wealth.” (Bayart, 2009) This wealth in turn gives rulers incentives to remain in power and thus perpetuates Reno’s “warlord politics” in which development is bypassed in favor of the destruction of the state and the pursuit of resource accumulation. Sarr et al argue that in a resource-rich country (of which there are many in Africa), external funding allows dictators to “liquefy” domestic resources and may in fact provide the tipping point that convinces such rulers to loot these resources rather than invest in sustainable development. (Sarr et al, 2012) “Our model suggests that the dictator will be fundamentally influenced in this choice by the level of liquidity afforded by external agents. The opportunity cost to staying and investing in the economy increases directly with any increase in the liquidity being afforded. In this way the decision making environment of the autocrat is highly-influenced by external operators,” write Sarr et al. (Sarr et al, 2012)

The authors further argue that foreign actors are at best “oblivious to the effects of affording liquidity to autocrats, since their assuror is the state’s resources not the autocrat,” and at worst actively “looking to transfer a state’s wealth to its own balance sheet. Enhanced levels of corruption [brought about by loan-induced looting] may enhance the potential for future revenue streams from resources and, in any event, are unlikely to redound to the detriment of the outsider.” (Sarr et al, 2012) In this way, foreign lending is a many-sided assault on the debtor country’s well-being: it enriches ruthless autocrats, allows them to extract resource wealth which is in turn used to further oppression and future extraction, and saddles the recipient country with debt.

Foreign funding masked as development is also used for political ends. Bayart, in noting the example of Zaire's Inga-Shaba overhead power line (a "grandiose and useless project" discussed in greater length in this paper's extended case study) and Cameroon's use of the construction of a major road to hinder the advance of a rival group, argues that "territorial unification has been made possible by western technology… [though] it is more important to specify the political use to which this technology is put…" (Bayart, 2009)

That the World Bank would fund expensive development projects that serve mainly (or only) to enhance the power of corrupt autocrats does not necessarily imply a global conspiracy. James Ferguson argues that much of the development undertaken by international agencies like the World Bank is powered by a "depoliticization" that views development and poverty as technical problems divorced from the political world of power relations. As a result, "a 'development' project can end up performing extremely sensitive political operations involving the entrenchment and expansion of institutional state power almost invisibly, under cover of a neutral, technical mission to which no one can object." (Ferguson, 1994) This cover "is not any kind of conspiracy…but because things do work out this way, and because 'failed' development projects can so successfully help to accomplish important strategic tasks behind the backs of the most sincere participants, it does become less mysterious why 'failed' development projects should end up being replicated again and again." (Ferguson, 1994)

Section 2: The Downward Spiral

What happens next is characterized by Reno's description of a weak state descending into "warlord politics." (Reno, 1999) The difference between the two, he writes, is the "distinction between collective versus private interests." (Reno, 1999) Fueled by external support and intent on perpetuating personally lucrative rule, dictators "jettison all pretenses of serving the interests of a public that may contain dangerous rivals or unruly citizens." (Reno, 1999) As notions of collective interest are abandoned in favor of personal gain, foreign support is increasingly necessary for the retention of power, but foreign support also offers opportunities for appropriation that intensify the process of divorcing the government from the people. This dynamic, along with increasing indebtedness, exacerbates economic collapse, which in turn fuels the inability of governments to pay back their debts. The end result is structural adjustment, which is shown to worsen most of these problems, and which Reno argues actively promotes the collapse of weak states into states run by the African equivalent of the Mafia.

There is no linear beginning to this portion of the Odious Debt System, but at its heart lies the contrast between elite personal enrichment and massive domestic impoverishment. This enrichment takes the form of kleptocracy; the most renowned example of this is Mobutu's Zaire, but Bayart notes that the "scandal of the fortune of [Mobutu] should not, however, divert attention from the frequency of these extreme situations, where political institutions function like trading companies and exploit national resources." (Bayart, 2009) Indeed, Bayart's argument is that "it would be a grave error to see all these dealings simply as the corruption of the State. They are, conversely, the State's fabric, and the struggle for power is perhaps chiefly a struggle for wealth." (Bayart, 2009) In this way, kleptocracy can be seen as the extreme logical extension of the zero-sum battle for resources in African states in which rulers enrich themselves, often to extraordinary degrees, paradoxically, both to secure power and to provide an insurance policy in case they are ousted.

The intertwined dynamics of kleptocracy, foreign loans, capital flight, and eventually structural adjustment accelerate economic inequality. Reno argues that the disintegration of an African economy can in part be traced to the patronage system described above and to the dynamics of weak-state politics, in which "rulers who face threatening internal behavior intentionally cripple the arms of the state, which weakens the agencies that outsiders prescribe as the best means to mobilize resources to alleviate pressure from the international economy, such as debts…and instruments to enhance state revenues." (Reno, 1999) The emergence of a diversified, healthy economy is prevented, Reno argues, by the very dynamics that allow African rulers to remain in power: "the entrenchment of patronage politics into centers of accumulation hobbles attempts to mobilize those resources. A 'civil society' of independent entrepreneurs may consist of the very same people a ruler regards as menacing rivals or local people identify as warlords…the exercise of power [does] not permit the creation of an economic class capable…of autonomous local accumulation." (Reno, 1999)

If there is any economic activity of any substance in such economies, it is resource-based. Mkandawire and Soludo argue that such an economy "tends to divert attention from the development of human resources, a crucial ingredient in long-run growth and technical flexibility of the economy." (Mkandawire and Soludo, 1999) Furthermore, resource-based economies "tend to worsen income distribution, which can in turn be a brake on growth…expose the economy to great instability because prices of raw materials have greater variance and fluctuation than those of manufactured goods…[and] attracts fierce battles over the distribution of [resource] rents…" while disincentivizing investment in other sectors. (Mkandawire and Soludo, 1999) Meanwhile, if a country lacks resources entirely, its government is left even more dependent on the international political and financial arena, where it can access "all sorts of opportunities…under the shield of external guarantees." (Reno, 1999)

Either way, the domestic economy is neglected, most notably in the areas of health, education, and infrastructure development. Englebert illuminates the cyclical problem with this failure when he notes that "there are…two categories of public investments that have sweeping developmental benefits: education and infrastructure." (Englebert, 2000) While the logic behind this assertion is fairly simple ("the greater the proportion of children that governments can place in school, the more likely these children will become more productive citizens and lead their countries to faster growth in the future…"), the evidence is nonetheless powerful. (Englebert, 2000) Englebert notes that Robert Barro studied African countries' relative levels of school enrollment in 1960 and found that they explained away virtually half of the subsequent variation in average per capita growth between 1960 and 1985. (Englebert, 2000) The notion that cause and effect may be lacking in this example is undermined by the cyclical nature of education and growth: other factors that could be used to explain away variances in growth (war, dictatorship, commodity price fluctuations) are all mitigated by the existence of an educated civil society that can sustain a varied economy and good governance.

Englebert argues that "investments in infrastructure have equally powerful effects on growth…infrastructure allows the realization of economic gains by producers and the exploitation of economic opportunities by entrepreneurs, and it leads to greater development of markets and a more efficient division of labor." (Englebert, 2000) He cites Easterly and Levine's findings that infrastructure, including even the number of telephones per worker, "all correlate strongly with long-run growth." (Englebert, 2000)

Meanwhile, capital flight can be seen as both a symptom and a cause of this economic malaise. Ndikumana and Boyce argue that capital flight has been a huge factor in African economic decline, sapping billions of dollars in funds and sending them abroad where they cannot even result in tax revenue. Countries with higher levels of capital flight have lower levels of taxation, which in turn "adversely affects the poorer segments of the population who depend most heavily on publicly funded services." (Ndikumana and Boyce, 2011) Furthermore, the authors illustrate the cyclical nature of capital flight, noting that a weak domestic currency, for instance, "makes assets denominated in domestic currency less attractive" and encourages capital flight. (Ndikumana and Boyce, 2003) Inflation also has a big impact on capital flight and vice versa: "'inflation may be the origin of capital flight but once it takes place it has in itself a powerful inflationary impact…in the end, it is hard to identify which is the chicken and which is the egg.'" (Ndikumana and Boyce quoting Dornbusch, 2003)

Foreign lending is directly tied to capital flight in a number of ways. First, "foreign borrowing provides the resources as well as a motive for channeling private capital abroad…in some cases, the funds may never even leave the creditor bank, simply being transferred into an international private banking account at the same institution." (Ndikumana and Boyce, 2003) This follows from Bayart's and Reno's understandings of the nature of African states: "foreign loans are 'lootable' resources that corrupt leaders can appropriate for private enrichment," and they thus further exacerbate the ruthless quest for power in weak states. (Ndikumana and Boyce, 2003) Second, it "causes capital flight by contributing to an increased likelihood of a debt crisis." (Ndikumana and Boyce, 2003) In other words, elites seek to remove their money from the domestic economy knowing that rising levels of debt will bring about unwanted economic changes to the country. It is at precisely this moment in the process of the Odious Debt System that structural adjustment enters the stage.

Structural adjustment, at one point an almost inevitable result of over-indebtedness, can be seen to further the Odious Debt System in a number of interconnected ways. First, Reno argues that the very neo-liberal reforms sought by Bretton Woods institutions actually reinforce the attempts by weak-state rulers to dismantle the government and suppress dissent. The author lays out the process in full:

> Rulers of weak states learn that as with sovereignty, economic reform programs outsiders insist on in return for aid can be manipulated to gain access to resources and thus enhance a vulnerable ruler's political authority. Rulers can then intrude into 'private' markets through the agency of preferred cronies or compliant foreign firms and limit their rivals' access to wealth. Most important, rulers can still forego the creation of expensive and potentially threatening formal state institutions, which most reformers reject as hopelessly corrupt or, at best, inefficient. Rulers continue to provide for essential allies, whereas large numbers of state officials – such as teachers, health care workers, statisticians, and accountants – who consume scarce resources and do little to strengthen rulers' capacity to control rivals…can be safely jettisoned. Reforms that emphasize cutting state expenditures help rulers to justify to external audiences their internal efforts to weaken or even attack threatening strongmen. (Reno, 1999)

In this way, structural adjustment provides an excuse for such rulers to do exactly what they would choose to do anyway, but it has more powerful impacts than that. First and foremost of these is the disintegration of that class of civil servants described by Reno, a consequence of which is the further deterioration of the economy. This rising unemployment is further exacerbated by the characteristic initial shock of devaluation, the loss of price supports, and the elimination of subsidies for critical household goods. Mike Davis argues that the end result of this combination is "a vicious cycle of increasing immigration, decreasing formal employment, falling wages, and collapsing revenues." (Davis, 2007) He quotes Carole Rakodi in arguing that SAPs have led to "capital flight, collapse of manufactures…drastic cutbacks in urban public services, soaring prices, and steep decline in real wages." (Davis, 2007)

Another by-product of structural adjustment is the alignment of the interests of western institutions with those of the dictator. As the IMF and World Bank push to demonstrate the efficacy of their adjustment models, their desire for demonstrated success dovetails with the dictator's public relations goals. The end result is not merely the often unwarranted optimism that marked IMF and World Bank public pronouncements during the height of the adjustment period, but also the muting of unpleasant realities. These can include corruption, which Graham Harrison notes is covered up by the World Bank so as not to "hurt…the reform process," and macro-economic failure, which Adams notes was finally admitted to by World Bank officials long after many African countries had experienced declines in GDP/investment ratios and increases in inflation. (Adams, 1992)

Adjustment, like foreign lending and like Ferguson's notion of 'development,' can only be either a conspiracy to enrich western interests at the expense of Africa's poor or an example of the impact of de-politicization or both. Most likely a combination of self-interest and de-politicization is at work, starting with the double standard that is applied when enforcing adjustment. As Davis notes, the very "'ladder' of protectionist tariffs and subsidies that the OECD [Organization for Economic Cooperation and Development] nations had historically employed in their own climb…" is "'kicked away'" from poor countries through the process of adjustment. (Davis, 2007) Adjustment programs, Davis notes, pushed rural African producers "sink or swim into global commodity markets dominated by heavily subsidized First World agribusiness," by removing such subsidies in adjusted economies. (Davis, 2007) Writes Harrison: "the…imposition of neoliberalism on the non-West leaves open the possibility that neoliberalism is not a universal template, but rather a differentiated project to maintain a global system of core and periphery." (Harrison, 2010)

Whether such a "project" is conspiratorial in nature or simply the by-product of a de-politicized framework that views adjustment as a "technical" exercise is beyond the scope of this paper. But certainly such de-politicization goes a long way toward explaining the adjustment process. Harrison notes the "rise in a strongly technical policy discourse, in which decisions regarding resource allocation or economic regulation are expressed in an economistic and 'scientific' language which appears to be value-neutral." (Harrison, 2010) The end result of such language is that the concerns of adjustment's intended beneficiaries are easily dismissed as the clamor of interest groups: "it is easy to render any political action that pulls this orthodoxy into question as somehow parochial or self-serving." (Harrison, 2010)

As Ferguson notes, when there exists a strong disconnect between the "instrumental aims embodied in plans" and the "actual process," then plans "can neither be dismissed nor can they be taken at their word…it must be said that the planners' conceptions are not the blueprint for the machine; they are parts of the machine." (Ferguson, 1994) In other words, that adjustment was couched in such value-neutral language and promoted ceaselessly as good governance and yet worked out very differently in practice does not necessarily implicate its planners in a system of global inequality. At the same time, that adjustment programs continued to operate despite the evidence of increased autocracy, poverty, and inequality speaks to the role of the West in Africa's odious debt cycle.

Section 3: The Aftermath

In the aftermath of this system, several dynamics become clear. First, the successor government is wholly unable to repudiate any of its dictatorial predecessor's debt without losing access to international credit. As such, no debt has ever been repudiated successfully by invocation of the odious debt doctrine. Second, the government that takes over is often more likely to pursue negative policies because of the system of governance put in place by the dictator and perpetuated by his foreign supporters. Third, the new government is hindered in its ability to revive its economy by the debt burden it inherited. And finally, debt relief through the HIPC initiative is substantively not a solution to the problem of the odious debt cycle.

Successor governments have not successfully repudiated debt on odious grounds at any point since the odious debt doctrine was ostensibly laid out by Alexander Sack in the late 1920's. Scholars examining odious debt have posited a number of explanations for this, including the difficulty of implementing any number of odious-debt related solutions, the unwillingness of debtor countries to incur the displeasure of the international financial community, and the inherent difficulty in separating "odious" loans from "non-odious" loans in the aftermath of decades of debt rescheduling and purposefully inadequate dictatorial record-keeping.

"One obvious reason for the doctrine's precarious status is the difficulty of implementing it," write Bolton and Skeel. "'Upon hearing of the doctrine,' as one advocate puts it, 'most international lawyers are likely to believe that the doctrine could never be applied in practice.'" (Bolton and Skeel, 2007) Indeed, the only recent instance in which the odious debt doctrine played any substantive role in a debt negotiation is that of Iraq after the fall of Saddam Hussein; here, however, the exception proves the rule. Iraq, supported by the United States in its claim that Saddam's debt was odious, was likely able to use the threat of repudiation in its negotiations with creditors. But such support is not forthcoming for countries of less strategic interest to the world's most powerful country: "perhaps, not surprisingly, such arguments are most effective, or only effective, when accompanied by political, military, or economic backing from world powers, particularly the United States," writes Jai Damle. (Damle, 2007) He concludes that "the doctrine…does not currently supply a meaningful mechanism for debt repudiation for those countries without sufficient political or strategic value to major world powers." (Damle, 2007)

As a result, there seems to be no method for countries to escape the Odious Debt System once it begins. This statement, meanwhile, assumes that the status quo is undesirable for the new government. Unfortunately, there are reasons to believe that new governments are often unconcerned with issues that impact their constituents; such governments often emerge as a direct result of the system put in place by their autocratic predecessors, thus further prolonging the negative impact of the Odious Debt System. Many African dictatorships, for instance, were replaced in the early 1990's with multi-party democracies, but has this change altered the patrimonial, elite-based structure of government in Africa?

Fantu Cheru argues it has not. "First-hand observation tells us that the creation of new parties has not directly involved many citizens from outside the existing political elites, and particularly not those in grassroots organizations and interest groups in rural areas." (Cheru, 2002) Such systems of democratization, moreover, have led to the politics of ethnicity, in which a prisoner's dilemma results in parties appealing to ethnic solidarity "for fear of losing out to an opponent's ethnic mobilization." (Cheru, 2002) Meanwhile, many of the same elites who prospered in the autocratic patronage system move into positions of power in the new political parties, even "opposition" parties. Some of these elites have been supporters of the dictator in the past, but with systems such as Mobutu's revolving door described above, they may also have been opposition figures, and thus can claim the mantle of reform. Of course, "the collapse of one-party states is rarely accompanied by a substantial reorientation of power relations between urban and rural areas," and thus large swaths of the population see little betterment as a result. (Cheru, 2002)

One reason for the lack of improvement in leadership is debt itself. Sarr et al argue that high levels of debt make investment by future regimes that much more difficult and thus that much less attractive. "This means that succeeding administrations start from an initial condition that is more indebted, and hence more prone to looting than previous ones." (Sarr et al, 2012) Meanwhile, countries which are heavily indebted are often heavily constrained in the actions they can take because of the conditions placed on them through debt rescheduling and/or relief. Harrison notes that "multiparty elections have not tipped the balance…in favor of an alternative to neoliberalism…" and that this has coincided with "former single-party presidents [reinventing] themselves as 'democrats.'" (Harrison, 2010) Therefore a cycle is perpetuated in which the continued rule of elites allows for the continuation of adjustment policies which hamper efforts to transform economies in a way that benefits the poor.

That said, democracy does offer some hope in that it provides a greater avenue for the expression of anti-adjustment civil protest. In Malawi, such protest helped push the government to violate its agreements with the IMF when its adjustment program was actively exacerbating the country's famine. Such an example further illustrates the importance of autonomous economic rule and the difficulty of lifting indebted countries out of poverty when such autonomy is constrained by multi-lateral institutions. As Harrison writes of countries under adjustment: "African states, infused with neo-liberal practices that have a largely external provenance, do not own their development policy in any 'sovereign' sense." (Harrison, 2010)

It is in this context that civil society helped push the World Bank and IMF to create the Heavily Indebted Poor Country initiative (HIPC). HIPC promised debt relief to low-income countries with unsustainable debt burdens provided they met conditions associated with poverty reduction. As of July of 2011, 36 of the 40 HIPC countries had reached so-called “completion point status,” including 30 of the 33 sub-Saharan African participants. (World Bank, 2012)

While many of these countries have received extensive debt relief, HIPC remains highly controversial and does not offer a proper remedy to the system of odious debt. Most importantly, HIPC does not offer full debt relief, thus leaving countries trapped in a debt cycle; it often cancels debt that was not being paid back anyway, thus reducing the actual impact of its assistance; and it does not address the concept of odiousness, thus reviving the problem that is at the heart of this paper’s argument: it is impossible to solve a problem if the problem is misdiagnosed. HIPC views unsustainable debt as its target, but the existence of the Odious Debt System leaves that assessment lacking both in its scope and in its definition of debt. In fact, some experts argue it is lacking even in its definition of its own target as HIPC definitions of “sustainability” are heavily challenged.

For heavily-indebted African countries, then, even billions of dollars in debt relief can do little to alter reality. This paper now turns to an examination of the DRC’s odious debt history to understand how such a crippling system plays out in practice.

CHAPTER 4

THE EXTENDED CASE STUDY: DEMOCRATIC REPUBLIC OF THE CONGO

"Everything is for sale, everything is bought in our country. And in this traffic, holding any slice of public power constitutes a veritable exchange instrument, convertible into illegal acquisition of money or other goods, or the evasion of all sorts of obligation."

-Mobutu Sese Seko. (Renton et al, 2007)

Introduction

Perhaps no country better embodies the systemic nature of odious debt than the Democratic Republic of the Congo (DRC). The DRC is a country born out of a dark colonial past and whose democracy was hijacked from its inception by powerful foreign governments. It endured a more than 30-year reign of terror by a dictator bent on stealing his country's resources and wealth, and whose theft and longevity were perpetuated by foreign interests and external loans. Today, more than a decade after the departure of its dictator, the DRC is one of the poorest countries on earth, and is billions of dollars in debt to a variety of foreign creditors who are largely responsible for its current predicament.

What the DRC demonstrates so clearly is that a proper analysis of odious debt must take into account so much more than the specifics of individual loans. The DRC's debt burden, poverty, and chaos are the end results of a corrupt system of foreign lending and influence. This system funneled money to a kleptocratic tyrant repeatedly despite full awareness on the part of lenders of how this money was being used. It perpetuated this tyrant's rule, prolonging his time in power and deepening his control over his country's resource wealth, thus concurrently deepening and prolonging the misery of millions of people. The perpetrators of this system now seek billions of dollars in debt payments from the people of the DRC. This section will examine the DRC as a case study of this Odious Debt System.

This section will be organized as follows. First, it will provide an overview of the DRC's political and economic history in broad strokes. Second, it will investigate each stage of the Odious Debt system as it has manifested itself in the DRC process at the outset of this paper. Finally, it will conclude by offering a perspective on what the DRC case study demonstrates vis a vis the subject of this paper, and in what ways the DRC may be an outlier.

DRC: A Brief History

The colonial history of the DRC (hereafter referred to as the Congo, the DRC, or Zaire interchangeably) is a story of massive crimes against humanity. While there are no definitive statistics, one estimate of the number of Congolese killed during the colonial rule of Belgium's King Leopold II is 10 million. (Hochschild, 1998) Leopold established a personal fiefdom in the Congo that was premised on the extraction of raw materials, notably ivory and rubber, and which employed horrific violence to achieve its economic goals. Congolese (an identity forged through the arbitrary creation of Leopold's Congo Free State and which incorporates numerous ethnic and tribal groups that otherwise did not share a unified identity) men were forced to harvest wild rubber for the Belgian authorities through a system in which the women of a village were held hostage until a rubber collection quota was met. Punishment was arbitrary and harsh: Congolese men, women, and children were shot, beaten, or tortured at the whim of the authorities for the smallest "transgressions."

It is little wonder that colonialism in the Congo attracted a massive international human rights campaign aimed at ending its atrocities. Soldiers in the employ of the colonial authorities were ordered to cut off the hands of dead Congolese to prove they had not wasted the bullets they used. Sometimes they simply cut off the hands of the living instead. When one commanding officer complained that his men were only killing women, they returned to him with severed male genitalia. (Hochschild, 1998) When entire villages were ordered to evacuate and serve the authorities as porters by carrying goods, mothers had their babies ripped from their arms and thrown into the grass to die so that the mothers could carry heavier loads. (Hochschild, 1998)

Beyond the shocking human toll, colonialism in the Congo stripped the Congolese of natural resources and wealth. Supposedly aimed at civilizing and developing the African continent, colonialism retarded development in the Congo by extracting resources without providing any benefit to the native population. The Kuba people of the present-day DRC offer a powerful example of this. Wrote missionary William Sheppard:

> Only a few years ago, travelers…found them living in large homes, having from one to four rooms in each house…[now] there farms are growing up in weeds and jungle, their king is practically a slave, their houses now are mostly half-built single rooms and are much neglected…their children cry for bread. Why this change?...There are armed sentries of chartered trading companies who force the men and women to spend most of their days and nights in the forests making rubber… (Hochschild, 1998)

Colonialism in the Congo was an all-encompassing holocaust for the Congolese. By the time the DRC achieved independence in 1960, colonialism had left two indelible marks on the Congo: it had stripped an inestimable amount of raw materials from the Congo while killing millions of Congolese people, leaving the country impoverished and scarred, and it had created an enduring relationship between European powers, most notably Belgium, and the Congo, a relationship that would prove devastating for the DRC in the years to come.

The Congo's first leader was Prime Minister Patrice Lumumba, a man bold enough to have given a scathing rebuke of Belgian colonialism at an otherwise celebratory independence ceremony at which the King of Belgium was the keynote speaker. Almost immediately upon taking power, Lumumba was faced with a secessionist movement in a resource-rich province of the country funded by the French, Belgians, and British, who were motivated largely by a desire to secure those very resources. The movement "lacked popular legitimacy, even in [the] region…but [its leader] asked Belgium for help; and the Belgians agreed, occupying Leopoldville with parachute troops the very same day." (Renton et al, 2007)

Lumumba's "extreme nationalism" and acceptance of Soviet assistance as a last resort in the face of hostile western interests hastened his demise. Western governments viewed him as both politically and economically uncooperative; the CIA authorized his assassination, and the Belgian Minister for African Affairs stated "clearly that Belgian policy was now directed at the 'definitive elimination' of Lumumba."

(Renton et al, 2007) Lumumba was indeed killed by a firing squad that included Belgians, an act that caused international furor but nevertheless accomplished the goal of its perpetrators: (Renton et al, 2007)

> Despite the universal popularity of Patrice Lumumba among the people of the Congo in summer 1960, his regime was toppled in less than a year…The ordinary people of the Congo wanted Lumumba to live…They believed desperately in Lumumba and everything for which he stood. After his death, however, no politician made any serious attempt to repeat the strategy of 1960. (Renton et al, 2007)

At this point, army officer and CIA client Joseph Desire Mobutu began to maneuver himself into power. By 1965, he was in charge of the country and "had the support of the old colonial power, Belgium, and of its regional successor, the United states." (Renton et al, 2007) He reached out to those countries and they helped him repel a series of early attempts to unseat him. He renamed the country "Zaire" and changed his own name to Mobutu Sese Seko, and ruled for thirty-two years, during which time he looted and plundered his country's resources, allied himself with the West, killed and tortured political opponents, amassed enormous personal wealth, and retained power through a patronage system that rewarded loyalty financially. His reign in power, the debt he accrued, the manner in which he accrued it, and the support he received from western institutions will be the focus of this case study.

A wave of democratic reform spread across Africa in the early 1990's, and Zaire was not exempted from it. Pressured by mounting opposition, Mobutu made overtures to multi-party democracy, but continued to stall in the hopes of retaining power. Unfortunately for Mobutu, however, the degree to which his rule was simply a product of American support was made clear when one of the principal reasons for that support was removed with the end of the Cold War. Meanwhile, the economic reasons for supporting Mobutu were also becoming increasingly questionable: "the largest American investor in Zaire in 1995 was Chevron International, but revenue from oil production was insignificant…" (Renton et al, 2007) Meanwhile, Sudan and its Islamic militant allies were seen as the new regional threat, and the greatest bulwark against their power was viewed, by the Americans, as the "pro-western" East

African bloc of countries running from Rwanda in the south to Ethiopia in the north. (Renton et al, 2007) Rwanda and Uganda, at this time, had begun a war in the eastern Congo that threatened Mobutu's rule, and American support for the dictator disappeared. A rebel army led by Laurent Kabila, armed and supported by Rwanda, Uganda, and the U.S., swept through the Congo in 1997, forcing Mobutu to flee into exile.

Kabila eventually turned on his Rwandan allies to gain popular legitimacy, but was promptly assassinated and replaced with his son. Meanwhile, a massive war broke out all over the country that included numerous rebel factions, many of them funded and supported by foreign armies. Regional geo-politics contributed to the conflict, but much of it was fueled by the Congo's rich supply of natural resources. Rwandan and Ugandan forces simply stole everything they could, forcing Congolese civilians to work under slave labor conditions or worse; exports of raw materials skyrocketed from both countries despite their relative domestic scarcity, lending documentation to these claims. In a sad postscript to three decades of Mobutu's kleptocracy, these foreign armies worked with multi-national companies to plunder the DRC's wealth and were supported by western governments in doing it. Millions of Congolese civilians were killed in what has been called "Africa's World War," a conflict that has taken more lives than any other since World War Two. (New York Times, 2009) Today, it continues to flare in the eastern part of the country.

THE DRC AND THE ODIOUS DEBT SYSTEM

The DRC is a textbook example of the Odious Debt System outlined in this paper. This case study will examine each aspect of that system to highlight how it has worked in this particular country. By demonstrating how this concept has worked in "the real world," this paper hopes to both shed light on the dynamics of this system and demonstrate its existence.

Foreign-Supported Authoritarian Rule

A central component of the Odious Debt System is western support for a country's dictator or regime at the expense of its people. While not a prerequisite, that support is often instrumental in the dictator's rise to power, cementing the relationship between the two actors and illuminating clearly (to the dictator himself, most importantly) the object of the dictator's loyalties.

In the case of the DRC, Mobutu's rise to power was a western creation. Belgium and the United States orchestrated Lumumba's downfall, eliminating the public figure with the largest base of popular support, thus opening the way for Mobutu to take power. In return, Mobutu acted in the best interests of western actors, at least to a point, rather than in the interests of his own people, in effect colluding with the West to strip the Congolese people of any chance at representative government. "In sum, the U.S., in collaboration with Belgium and France,…worked toward…the liquidation of Lumumba, and eventual enthronement of the pro-Western Mobutu in 1965….Mobutu thus owes his political survival largely to his role as a Cold War client of the West rather than to internal legitimacy." (Afaoaku, 1997)

External Funding of Autocracy

Western money began to flow to Mobutu as soon as he took power. Some of it came in the form of loans ostensibly marked for the Congolese state, while some of it came in the form of direct transfers of funds to Mobutu himself, either as bribes or to finance covert actions. This money would have two devastating consequences for the DRC: first, it would allow Mobutu to perpetuate his rule, and second, it would leave the Congolese nation with an enormous debt burden despite the absence of benefit to the population.

Mobutu began collecting money even before taking power, by 1962 having "diverted enough money from foreign military aid programs to make himself a millionaire." (Askin and Collins, 1993) Similarly, the United States Central Intelligence Agency (CIA) gave Mobutu approximately $150 million in the early stages of his rule, largely for military ventures, though Mobutu pocketed much of the money for himself.

(Askin and Collins, 1993) These types of loans, however, would pale in comparison to the money Mobutu would borrow in the decades to come; by the time he was forced from power in 1997, the DRC's debt burden stood at $14 billion. (Ndikumana and Boyce, 2000)

Steve Askin and Carole Collins argue that Mobutu built a system of theft and self-enrichment upon five "pillars:"

- Direct bribes from foreign governments and security agencies
- Payments and takings from foreign investors
- Diversions from the Zairian government budget
- Embezzlement of export earnings
- Diversions of foreign aid and foreign loans

(Askins and Collins, 1993)

While the fifth pillar is the one that most directly impacts the DRC today (by creating the bulk of its debt burden), all five pillars allowed Mobutu to perpetuate his rule, which in turn deepened the destruction of the country and allowed for the continuation of odious lending. And, as Askins and Collins note, this entire structure "required the deliberate participation of foreign partners who benefited politically or economically from Mobutu's system." (Askins and Collins, 1993)

In the 1970's, Mobutu borrowed extensively from western creditors, netting almost $1 billion from 1972 to 1975 alone. (Ndikumana and Boyce, 2000) "Much of this borrowing financed 'prestige' projects characterized by excessive scale…and systemic corruption and maladministration." (Ndikumana and Boyce, 2000) In 1974, "a US Embassy official discovered that the Zairian Central Bank had no meaningful system for tracking foreign loan agreements and repayment obligations... [Erwin] Blumenthal of the IMF definitively warned international lenders that they could never expect repayment of funds lent to

Mobutu's Zaire. He concluded that 'the corruptive system in Zaire…will destroy all endeavors…toward recovery and rehabilitation of Zaire's economy.'" (Askin and Collins, 1993)

Still, the money continued to flow in. After a pro-Western military excursion in Chad, Mobutu was rewarded with a request by President Reagan to Congress to double aid to the dictator. (Askins and Collins, 1993) The Inga-Shaba hydro-electric power project was funded through foreign loans, though Mobutu received kickbacks on those loans and the value of the project was heavily questioned. Even when Mobutu became "an untouchable in client terms" to some commercial banks, "lending from official creditors increased." (Boyce and Ndikumana, 2000) As a result, "between 1979 and 1990, the country's total external debt soared from US $4.8bn to US $10.3bn…in 1981, the IMF provided Zaire with the largest loan to an African country in that institution's history – more than US $1bn." (Boyce and Ndikumana, 2000) In the words of a senior banker: "in that context if there were any bankers still willing to lend money, there are some serious questions to be asked about them." (Boyce and Ndikumana, 2000)

Use of External Funds for Perpetuation of Domestic Control

These financial inflows both deepened (strengthened) and perpetuated (lengthened) Mobutu's rule. As such, they are responsible for increasing both the debt burden of the current DRC and the misery of the country's people. James Boyce and Leonce Ndikumana write that "Mobutu relied heavily on external resources to maintain his grip on political power and thereby on Congo's internal economic resources." (Boyce and Ndikumana, 2000) This two-step process then became a cycle in which money begat power which in turn begat more money. Whether the power or the money came first is irrelevant because western interests supplied Mobutu with both from the outset.

From the beginning, Mobutu was faced with the task of controlling a vast country with active secessionist movements and doing so without the popular legitimacy enjoyed by Lumumba. The major movement to divide the country was the Katangan rebellion, which had been heavily supported by several Western countries as a means of destabilizing Lumumba and securing the vast mineral resources in the province, which accounted for roughly 60% of the country's entire stock. (Renton et al, 2007) With Lumumba out of the way, international actors now desired a different outcome: a united Congolese state with a pro-western government. International support for the Katangan cause dried up, but "a more serious revolt broke out" in 1964 in various eastern provinces, led by Maoists and Lumumba supporters, threatening the still-weak central government. (Renton et al, 2007)

Mobutu was not yet officially in charge, but he was the power behind the scenes and was effectively in control of the government. The United States recognized this, and in 1963, President Kennedy gave him "an airplane for his personal use, and a US Air Force crew to fly it for him." (Hochschild, 1998) To help suppress the revolt and preserve the unified state, the Belgians, British, and Americans all sent support to the Congolese government. Belgian paratroopers even landed in Stanleyville (now Kisangani) to take the city from the rebels. (Renton et al, 2007) The rebellion was eventually squashed, its leader tortured and murdered by Mobutu's troops after a false promise of amnesty, and the West had a leader in the Congo it could trust. The following year, Mobutu took power, "with United States encouragement." (Hochschild, 1998)

Upon taking office, Mobutu further solidified these links with the West. "Further US military aid helped Mobutu repel several attempts to overthrow him…he repaired relations with Belgium…he had the support of the old colonial power, Belgium, and of its regional successor, the United States." (Renton et al, 2007) Mobutu's strategy was crafted carefully and was highly successful. "Knowing that his hold on power depended on his ability to manipulate the international political arena, Mobutu assiduously cultivated relationships with government leaders and officials of international financial institutions." (Ndikumana and Boyce, 2000) As noted earlier, the money rolled in.

In turn, Mobutu used the influx of money to plunder his own country's resources and thus create a steady flow of domestic wealth. Confident in Western support, he was able to nationalize certain industries while cutting deals with multinational corporations to ensure they maintained profits. Nationalization, or "Zaireanisation" as it was called, did not benefit the Congolese people as a whole, but rather "put substantial new sources of wealth directly into the hands of the new Zairian elite." (Renton et al, 2007) It was a patronage system designed for the "development of an elite that owes its power to his." (Renton et al quoting Riley and Parfitt, 2007)

Siphoning off loans and grants, diverting state funds, stealing funds from mineral exports, and even taking an enormous Presidential salary directly out of the state budget, Mobutu proceeded to solidify his foreign support by buying off western politicians and businessmen. "Corporations, like foreign governments, have found that providing Mobutu a chance to earn money facilitates desired transactions," write Askin and Collins. "Mobutu used his political power to obtain shares in the Zairian branches of…ITT-Bell, Fiat, Gulf, Pan Am, Renault, Peugeot, Volkswagen, and Unilever." (Askin and Collins, 1993) In return, these corporations were granted investment rights in the country on favorable terms. "Mobutu ultimately turned the tables and, by the late 1960's, was busy buying the allegiance of Western politicians. Belgian officials who received money or lucrative contracts from Mobutu included a former Prime Minister, the one-time leader of the Christian Democratic party and top civil servants in the foreign ministry…" (Askin and Collins, 1993) This allegiance allowed him to remain in power and perpetuate the cycle.

The U.S. "played a critical role, in conjunction with France and Belgium, in suppressing political insurgence in Shaba province in 1977 and 1978," writes Osita Afoaku (Afoaku, 1997) Indeed, "American support continued right up to the end of the 1980's," and even involved pressure on the IMF to continue to support Zaire despite its appalling economic corruption. (Renton et al, 2007) During this same period, Amnesty International alleged that "most of the political prisoners in Zaire are held without charge or trial and often tortured." (Renton et al, 2007) The State Department, in "almost ludicrously dispassionate language," admitted that "the use of force…in the interrogation of suspected criminals is reportedly common practice in Zaire…From time to time there are allegations of brutal treatment of political prisoners, extended incarceration without trial, and even of death of prisoners under interrogation." (Kramer, *The Nation,* 1977) U.S. Secretary of State Warren Christopher perhaps said it best: "[d]uring the long Cold War period, policies toward Africa were often determined not by how they affected Africa, but by what advantage they brought to Washington or Moscow." (Afoaku, 1997)

Had Mobutu been overthrown in 1973, the DRC's foreign debt would have stood at $938 million. (Ndikumana and Boyce, 2000) Had his regime collapsed in 1984, the total would have been just over $5 billion. (Ndikumana and Boyce, 2000) By 1994, the figure was more than $12 billion. (Ndikumana and Boyce, 2000) U.S. support for Mobutu led directly to an escalating debt burden that is now being paid by the very people who lived under the dictator's repressive and corrupt rule. Each additional year that passed without a change in government was costly for the Congolese: for every year in the 1980's that Mobutu remained in power, for instance, the country's debt burden increased by an average of $550 million. (Boyce and Ndikumana, 2000)

In the case of the DRC, it is not sufficient, therefore, to measure odious debt in terms of the specific uses of particular loans. Each loan, each new influx of money, each corrupt business deal from which Mobutu siphoned off money with the connivance of foreign companies helped elongate the rule of a regime that in turn borrowed more and more money that was converted into private wealth and repressive institutions. Money borrowed created more money stolen, which not only increased the country's debt burden, but hampered its ability to pay it off.

This finding mirrors the theoretical framework offered by Sarr et al: lending equals looting. A dictator leading a resource rich country, they argue, chooses between various options that essentially equate to looting or investing. When third-party funding is introduced, however, in the form of foreign lending, the dictator is far more likely to choose looting, largely because he can turn his country's resources into easily appropriated personal wealth, which makes investing in the country's infrastructure and development less valuable.

Indeed, foreign investment and support of Mobutu encouraged such looting, entrenched his rule, and deepened the Congo's plight. As Afoaku succinctly notes: "the single most significant consequence of foreign penetration of the Zairian political economy is the permanence of dictatorship…" (Afoaku, 1997)

Connecting Foreign Funds to the Absence of Domestic Development

As foreign funds poured into Zaire, international actors realized increasing benefits from dealing with Mobutu while the country's domestic economy collapsed. This process lies at the intersection of Sections 1 and 2 of the Odious Debt System model, and signals the beginning of the downward spiral.

Collusion between Mobutu and international business interests took two principal forms. First, Mobutu developed a patronage system that "nationalized" certain industries but maintained the lucrative role of foreign companies; as such, the end result was the creation of a class of Congolese elites at the expense of small and medium-sized domestic businesses rather than the enrichment of Congolese of all economic strata at the expense of foreign companies. Second, the DRC received loans for large development projects of dubious value; Mobutu would skim off the top, international companies would receive lucrative contracts to carry out the work, and the Congolese people would be left to pay off the debt. In both instances, foreign interests continued to benefit from Mobutu's rule while the domestic economy collapsed.

As noted above, Mobutu nationalized much of Zaire's resources, most notably the copper mines of Union Miniere, but hardly in the spirit of socialist or redistributive ideology. "The new national company did not in fact cut the old colonial owners out of the picture; on the contrary, the new arrangement helped to secure their profits." (Renton et al, 2007) Mobutu aspired to keep foreign investors happy; in doing so, he protected their profits at the expense of the domestic economy and the Congolese people.

Union Miniere was the primary example of this process. While publically attacking foreign influence and declaring the economic independence of the Congolese people, Mobutu's nationalization of the mining company actually included a settlement that "granted the Societe Generale de Belgique (SGB)…a lucrative contract to manage the state-owned successor [to the company]." (Askin and Collins, 1993) In fact, "an unwritten settlement condition provided that [Union Miniere] would secretly kick back a portion of the royalties directly to the Zairian ruler." (Askin and Collins, 1993) In other words, a foreign company was profiting from a process that benefited a select handful of Congolese elites, and secured its role through bribery. In order to maintain the public relations aspect of Zairianization, and to further increase the amount of wealth it could appropriate, Mobutu's regime targeted "small or mid-size enterprises owned by expatriates of comparatively modest means and limited political clout….while [he] continued to build mutually beneficial relations with more influential foreigners." (Askin and Collins, 1993)

This dynamic was damaging to the Congolese people and their economy. While foreign companies extracted the Congo's precious resources and profited heavily, the Congolese people saw little of that wealth. Flush with bribes, kickbacks, and his own expropriated businesses, Mobutu had little reason to push for a more equitable distribution of resource wealth. "The settlement proved lucrative to Union Miniere and brought unanticipated costs to Zaire," one author noted. (Renton et al, 2007)

These costs took their toll. While the government spent heavily to subsidize these industries to the benefit of foreign investors, education and infrastructure development continued to languish. The end result was that "Zaire's initial economic programs developed its huge copper resources at the expense of human capital." (Hacker, 1992) The result was a tiered economy heavily reliant on mineral exports and subject to the whims of international commodity prices. "Mining required the expertise of high-salaried bureaucrats and workers who formed the elite financial class of Zaire…they chose to buy imported consumer goods and to bank abroad, effectively divorcing themselves from the Zairian market." (Hacker, 1992)

Western creditors also conspired with the Mobutu regime to profit from major development projects that had little practical value to the Congolese people but which left the country mired in debt. The most well-known of these ventures was the Inga-Shaba power line, which stretched for 1,100 miles and promised to bring power to wide swaths of the country and attract foreign investment, but which was judged largely to be an "utter failure…" (Clark, 1998)

It was not, however, a failure for Mobutu or for foreign businesses. For Mobutu, the project had two immediately recognizable benefits. First, the dictator had a predilection for prestige projects, and a massive power line that stretched almost the entire length of the country would attract press and further the narrative that Mobutu was modernizing or developing his nation. Inga-Shaba was just one of several such projects, including a $200 million steel mill, "Le Voix du Zaire, the country's radio and television station constructed at an estimated cost of $1.09 billion, and the Kinshasa International Trade Center (reportedly a replica of the New York World Trade Center)…" (Afoaku, 1997) Second, as noted earlier, foreign companies came to learn that giving money to Mobutu "facilitates desired transactions." (Askin and Collins, 1993) Inga-Shaba was no exception; the Commission on Misacquired Wealth "said that evidence suggests that Mobutu may have pocketed 7% of the project's value in secret kickbacks and commissions…" (Askin and Collins, 1993)

For foreign investors, the project was also a boon. The Morrison Knudsen Company, based in Idaho, was the prime contractor on the project, and felt strongly enough about the profits it was making from the deal to lobby Idaho Senator Frank Church "to retain military assistance [to Mobutu] in order to protect U.S. corporate personnel in Zaire." (Cooper, 1979) Meanwhile, the company seems to have benefited from a close relationship with former U.S. ambassador to Zaire Sheldon Vance in obtaining the contract in the first place. (Kwitney, 1984) This type of corruption, however, only begins to tell the story about the Inga-Shaba project.

In judging the benefits of the project to foreign companies, for instance, it is important to note that there is enormous controversy regarding its utility and cost. "Many people," writes Jonathan Kwitney, "including some American employees helping engineer and build the power line in Zaire, say that the Zairian mining industry could get all the power it needs from dams on these nearby rivers, and at a small fraction of the cost of the dazzlingly sophisticated Inga-Shaba line." (Kwitney, 1984) These studies were ignored, and replaced by new ones that claimed the line would benefit Zaire.

Writes Kwitney: "…there are two real reasons the power line is being built: first, to provide a big construction contract for U.S. industry in return for U.S. support of the Mobutu regime; and second, to give Mobutu control over the flow of electricity to Shaba." (Kwitney, 1984) The Inga-Shaba line was specially designed so that power could not be siphoned off from points between the source and the destination. This means that ordinary Congolese were unable to benefit from the project and were left with "at best an eyesore," but it also means that the power line acted as a one-way conduit of power (in the literal and figurative sense) from Mobutu to the resource-rich rebellious region of Katanga. (Kwitney, 1984)

This second point illustrates the interconnectivity of Mobutu's interests and Western actors' interests. Suppressing rebellion in Shaba protects the economic interests of foreign companies extracting resources from the region. Building an enormous power-line with foreign contractors creates incentives (see lobbying of Senator Church above) for U.S. policy makers to view Zairian security, and thus Mobutu's longevity, as equivalent to U.S. corporate security.

Inga-Shaba may have brought some benefits to the Congolese nation, but if so, it was certainly not the primary motivation of the project. The U.S. embassy in Belgium "warned the State Department in a classified cable, 'neither World Bank nor Belgian government greatly interested in financing Inga-Shaba Transmission Line Project since it seemed based more on political than economic considerations." (Kwitney, 1984) This apparent act of sanity on the part of the World Bank did little to diminish American enthusiasm for a lucrative project for one of its connected contractors. Nor was it deterred when the chief political office in the U.S. embassy in Kinshasa declared that the project was "just costing more and more and more and more. It's taking so long that a lot of the equipment they're putting in at the two ends is deteriorating." (Kwitney, 1984)

The Congolese, meanwhile, got stuck with the bill, adding $1 billion to a ballooning national debt; they may not have gotten much else. "Terri Hathaway of the International Rivers Network reported many examples where 'transmission lines pass over the houses of villagers next to hydro dam sites' and argued that 'electricity from large hydro-power will not reach the majority of Africans, who live far from the power grid; expanding the grid to reach them would be prohibitively expensive. Hydro projects increase a nation's electricity supply in big increments, an inefficient way to address the gradual increases in market demands typical of African economies.' (Lin and Schuster quoting Hathaway, 2009)

Capital Flight and Kleptocracy

In countries with developed financial regulations, a vast inequality in wealth can at least be partially addressed through progressive taxation. In many parts of Africa, however, where inequality can be enormous, tax bases are eroded through capital flight, the act of stashing money abroad where it cannot be taxed or regulated by domestic institutions. At its core, capital flight erodes African independence: the Tax Justice Network (TJN) argues that "in Africa, tax revenues will be essential for establishing independent states of free citizens, less reliant on foreign aid and the vagaries of external capital." (TJN, Sharife, 2011) In terms of odious debt, tax havens and capital flight not only give dictators incentives to loot resources by providing them with a place to store the money, they also make it more difficult for nations to recoup those lost funds after the dictator is ousted, leaving the country less able to pay off its debts.

In the case of the DRC, capital flight reached $12 billion in 1990, but "with imputed interest earnings, the accumulated stock of Zairian flight capital was nearly $18 billion." (Ndikumana and Boyce, 2000) This amount would be enough to pay off the country's entire foreign debt burden. This money, much of it Mobutu's personal wealth, was stashed in bank accounts and holdings all over the world, with little hope of recovery by Congolese authorities. Indeed, when the newly installed government of Laurent Kabila went looking for Mobutu's money after the dictator's downfall in 1997, Swiss Banks informed the DRC that only $3.4 million could be found, a claim that was met with a fair amount of skepticism. (CNN, 1997)

Capital flight is intricately connected to foreign loans. As Boyce and Ndikumana argue, debt can fuel capital flight by placing ill-gotten funds in the hands of a dictator, funds that he then spirits out of the country as quickly as possible to avoid regulation or re-appropriation. This "debt-fueled capital flight" is exactly what happened in the DRC, where Mobutu made money from a variety of illicit methods all connected to the influx of foreign cash. (Ndikumana and Boyce, 2011) These methods included bribes (which eventually "had a declining personal significance" for Mobutu because he became so rich), kickbacks and commissions from development projects (see Inga-Shaba among others), presidential benefits (in this case a hefty presidential salary written into the state budget), diversion of state funds (Mobutu repeatedly overspent his hefty presidential budget), and stolen export earnings (embezzlement of state-run mineral export proceeds). (Askin and Collins, 1993)

As such, capital flight can be seen as simply the inevitable end result of this Odious Debt System, and casts further doubt on the notion that any one debt can be viewed in a vacuum. Any foreign loan, no matter how well-intentioned, offered Mobutu the opportunity to siphon funds, which in turn allowed him to hide those funds beyond the reach of any future government. That money belongs to the DRC, and should be viewed as having been stolen; given the nakedness with which Mobutu plundered, any creditor thus has to answer for why it would help facilitate such theft.

Of course, there is a ready answer to that conundrum: bankers benefit from capital flight because they are provided with a source of funds which they can reinvest, while still collecting on the original loan plus interest. Ndikumana and Boyce note that some dictators have even mastered a concept known as "round tripping," in which they deposit money in a foreign bank and then borrow it back on behalf of the state, thus effectively laundering the funds and shifting the burden of repayment onto the state. (Ndikumana and Boyce, 2011) As for the bank, it receives the "explicit or implicit guarantee that the government will assume the liability…" (Ndikumana and Boyce, 2011) Governments, Walter Wriston noted, do not go bankrupt. As for Mobutu, there is of course no method to prove that he participated in this type of scheme because the private funds he stashed overseas have never been found and thus there is no way to connect them to specific banks which lent to Zaire.

Mobutu's personal wealth, stolen from the Congolese people through a dizzying array of fraudulent activities, is well documented. In estimating Mobutu's personal wealth, Ndikumana and Boyce cite a figure of $4 billion, though other estimates are higher. (Ndikumana and Boyce, 2000) The manner in which he amassed this wealth was brazen, including an exorbitant presidential salary, the "transfer [of] money directly into his personal accounts" from the Zairian central bank, kickbacks, siphoned loan and aid money, and more.

The processes by which Mobutu enriched himself have been noted extensively in this paper. To illustrate the nature of kleptocracy within the Congo's Odious Debt System, this section will instead highlight the extravagant lifestyle that Mobutu led. While his people starved, Mobutu spent millions of dollars on luxurious European homes, expensive travel, and frivolous luxuries. In 1991, US Congressman Stephen Solarz declared that he had "established a kleptocracy to end all kleptocracies, and has set a new standard by which all future international thieves will have to be measured." (Ndikumana and Boyce, 2000)

The bounty from this thievery was summed up in an obituary written in a British newspaper:

> His conspicuous consumption was unparalleled even by an African yardstick. He owned a chateau in Belgium, houses in Brussels, Venice, Paris and Abidjan, a Spanish castle, a luxury yacht, a Portuguese ranch and Swiss chalet and the Villa del Mare on the Cote d'Azur which had a cellar created to store 2,500 vintage wines.
>
> But his true home was a Versailles-like palace where he became a virtual recluse in his later years. It was sited in ornamental gardens overlooking a northern bend of the Zaire River in his native village of Gbadolite. There was a casino complex and a chapel commemorated to his mother where a choir trained by a Belgian Jesuit sang Gregorian chant.
>
> The nine children by his two wives were ferried to school in helicopters, taking off from a runway that was large enough to accommodate the wide- bodied jets he appropriated from the national airline to go abroad on shopping sprees. On vacations in Europe and the US with an entourage of up to a hundred, he could spend at the rate of a million dollars a week.
>
> It was in the marbled halls of Gbadolite that he held court in baroque splendor - gold cutlery, Limoges china and, of course, his favorite Taittinger champagne - making sure that dignitaries such as the former UN Secretary General Boutros Boutros Ghali were kept waiting for hours. (UK Independent, 1997)

Meanwhile, Mobutu spent millions of his country's money on a foreign visit to Disneyland, and "in a single year, he dispatched a state-owned jet airliner thirty-two times to Venezuela to ferry five thousand long-haired sheep to his ranch…" (Hochschild, 1998) When asked by a reporter if it was true that he was the fourth-richest man in the world, "Mobutu's response was indignant. 'The fourth?' he repeated. 'No, no, no. I am the *third* richest man in the world.'" (Cooper, The Nation, 1979)

Economic Collapse

Mobutu's reign, perpetuated through western support, left the Congo in economic ruins. "At independence in 1960 the Democratic Republic of the Congo…was regarded as one of the most promising countries in Africa," writes Stephani Matti, "…and yet, by the early 1990's, despite abundant natural resources, it was in a state of economic and political collapse." (Matti, 2010) In 1982, "only 10% of the official budget was spent on education and health services; a decade later this had fallen to zero." (Matti, 2010)

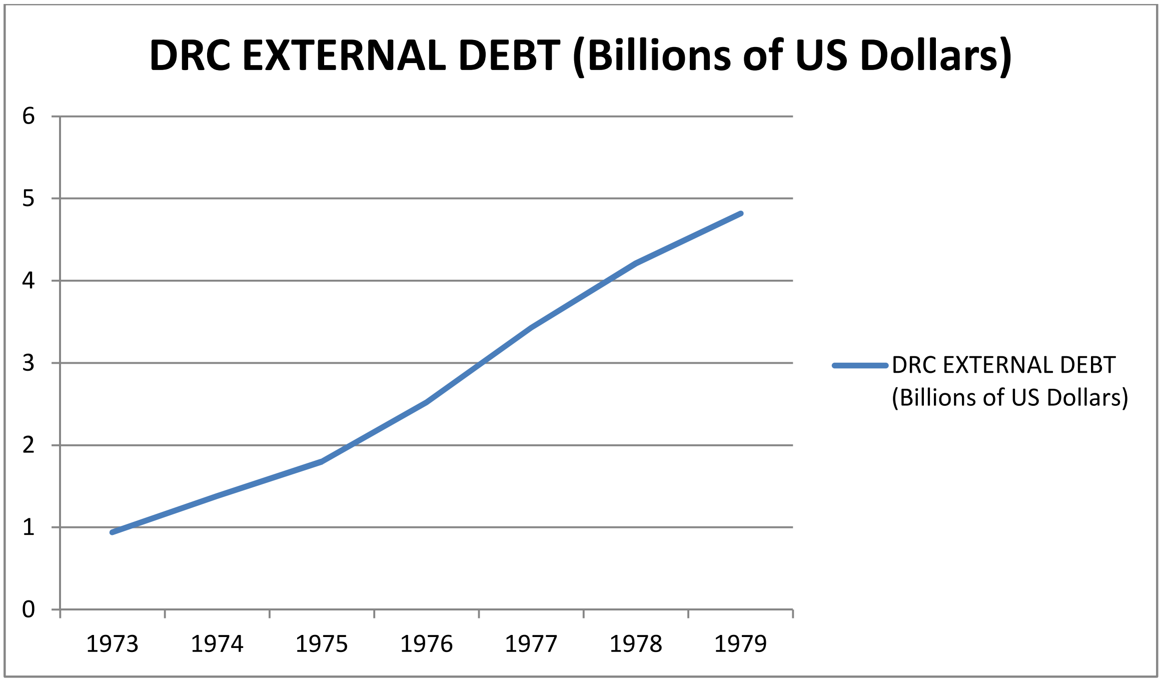
From the outset, it is important to acknowledge that Zaire's economy under Mobutu suffered greatly when the price of copper declined. However, many of the causes of the DRC's descent into economic chaos and anarchy are directly linked to Mobutu, notably due to theft, lack of development of health, education, and domestic infrastructure, and systemic corruption. Even the impact of international commodity price drops can be traced to an economy based entirely on resource extraction and lacking in diversification, a direct result of Mobutu policy.

Foreign lending led directly to economic collapse in a number of ways. First, as noted earlier, it helped perpetuate Mobutu's rule; for all the reasons listed above, this simple act brought about economic ruin. Second, it created an enormous debt burden, the servicing of which crowded out other domestic budget priorities. Third, it encouraged the creation of a resource-extraction state, preventing the diversification of the economy and discouraging the growth of non-resource related domestic industries. Fourth, it helped feed a system of corruption, which eventually overwhelmed the entire domestic economic culture.

To illustrate the first point would be redundant to the earlier discussion of lending perpetuating Mobutu's rule. It is sufficient to repeat that lending helped Mobutu stay in power for as long as he did and that his leadership of the economy was disastrous, a point that will be elaborated upon below.

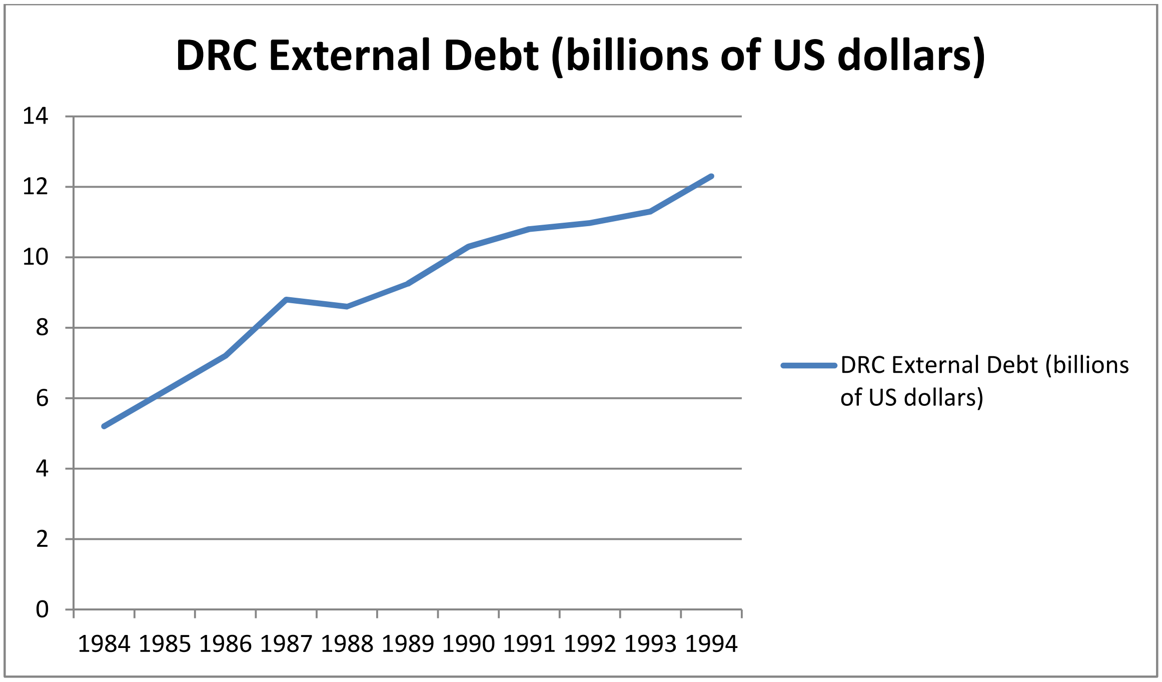
The 1986 Congolese budget is illustrative of the impact of debt servicing on the Congolese economy. That year, a staggering 43% of Zaire's national expenditures were dedicated to servicing its foreign debt, while just 13% went to "traditional government departments" and half of that in turn was spent on the military. (Askin and Collins, 1993) Nor does this type of debt burden simply vanish when the dictatorship is overthrown: from 2005-2007, the DRC spent more than three times as much on debt service as it did on health. (Ndikumana and Boyce, 2011) Successor governments, left with a shattered economy, are incapable of making large enough payments to break out of the perpetual debt cycle of interest and debt service. Without significant intervention, the DRC will never be able to pay off Mobutu's debt.

The DRC's debt burden crossed the $1 billion threshold in 1974, when Mobutu began to borrow heavily from private creditors. (Ndikumana and Boyce, 2000) With copper prices plummeting, interest rates skyrocketing, and Mobutu's corruption taking its toll on the commodity-based economy, Zaire's debt burden began to grow by extraordinary leaps and bounds:



(Ndikumana and Boyce/World Bank, 2000)

At this point, private creditors began to shy away from lending Mobutu money. The Congolese economy was a disaster, Erwin Blumenthal had emerged from the belly of the Zairian Central Bank and warned the entire world not to loan money to Mobutu, and members of congress began to heavily question the validity of U.S. loyalty to the Zairian leader. Zaire underwent a number of restructurings of its foreign debt (to be discussed at greater length further on in this paper), and as a result, the debt burden remained relatively constant until the mid-1980's. At that point, however, lending from bi-lateral creditors, the World Bank, and the IMF took off, and the results were as follows:



(Source: Ndikumana and Boyce/World Bank, 2000)

As this figure grew, debt service began to consume a larger and larger portion of Zaire's budget. At independence, roughly 13% of the national budget was devoted to health care. By 1964, after four years of coups and western machinations, that figure had been cut in half; after seven years of Mobutu, it had dropped further to just over 2%. By 1985 it was at 1%, and by the time Mobutu left office, health expenditures had dropped to a fraction of 1%. (World Bank, 2005)

> By 1980, Zaire had become an economic cripple. At Mama Yemo General Hospital…unattended patients died because there were no bandages, no sterilization equipment, no oxygen, and no film for X-Ray machines. The health clinics at the University Campuses in Kinshasa and Lubumbashi had shut down because the medicines intended for use there had been diverted to the black market. (Ayittey, 1992)

The terrible human cost of this situation is self-explanatory, but the economic cost is also substantial. Not only are sick people unable to be productive members of society in economic terms, they also drain resources from family members and friends. When parents are sick, children are forced to work when possible, further eroding the educational system, which in turn decreases a nation's human capital.

Similarly, little was done to invest in infrastructure. With the focus of the government exclusively on resource extraction, little was done to modernize or develop in ways that might benefit ordinary Congolese citizens. "Agricultural produce intended for market often rotted on the ground because the transportation system had broken down," writes Ghanaian author George Ayittey. "Zaire had 31,000 miles of main roads at independence in 1960; in 1980 only 3,700 miles were usable." (Ayittey, 1992) In the 1980's, "internal road transport remained poor…and telecommunications… (run by the state concern, the OCPT), were possibly the worst in Africa." (Renton et al, 2007)

This focus on resource extraction also prevented the development of non-resource related domestic industries. "Zaire's initial economic programs developed its huge copper resources at the expense of human capital," writes Jacob Hacker. "…on the advice of the IMF and the World Bank, Mobutu and his apparatchiks decided to modernize the copper industry." (Hacker, 1992) This type of "advice," often presented more as a condition of further loans, was common in developing countries. The Bretton-Woods institutions emphasized commodity exports frequently, which drove down the prices for such exports (a nice benefit for western interests) at the expense of the development of a diverse domestic economy. In "Zaire's case it was a miscalculation linked to an economic infrastructure keyed to mineral exploitation that Belgium had left behind. Belgium had structured the Zairian economy to provide minerals needed for Belgian and Western bloc industries." (Hacker, 1992)

Loans led directly to this monolithic economic strategy. Projects like Inga-Shaba were built with foreign loans and directly benefited the extraction industry at the expense of the national economy as a whole. IMF-imposed conditionalities, which often further encouraged commodity exports, were made possible only by Mobutu's escalating debt stock. And loan money that flowed into the country was routed by Mobutu in the direction that would lend him the best access to illicit wealth. Mobutu prospered heavily from resource extraction, both through direct acts of theft and corruption and through the creation of a class of Zairian elites which owed its wealth to the dictator. In contrast, he stood to gain little from the arduous creation of a Congolese middle class.

The impact of this was devastating for Zaire's economy. "New [resource-related] wealth created new local processing and service industries but prevented the growth of a sufficiently diversified internal Zairian market," writes Hacker. "The result was a growing reliance on foreign goods…once a major agricultural exporter, Zaire now [as of 1992] imports some 60 percent of its food." (Hacker, 1992)

Meanwhile, the reliance on commodity exports allowed Mobutu more opportunities for fraud, which in turn hastened the economic decline. Such an economic strategy, after all, "might have provided a short-term basis for growth, if not a sustainable framework for development, [but] was undoubtedly hindered by the corruption of the state by the patronage system of the political elite under Mobutu." (Renton et al, 2007)

Finally, loans helped fuel a system of corruption in the DRC, a system that not only destroyed the economy through the sheer magnitude of theft from the top, but proceeded to create a country-wide system of corruption that eroded formal markets, social structures, and the basic structures necessary to rebuild a working economy in the future. As noted earlier, unstructured lending has been shown to lead directly to plunder, particularly in a situation in which a country has vast natural resources. Mobutu's use of loan money to create personal wealth is well documented, to say the least.

Zaire under Mobutu was an economy built on plunder. Every source of funds, from CIA military assistance to regular budget appropriations, was subject to presidential theft. This one-man kleptocracy, however, was expanded into a patronage system of revolving "elites" who profited from the president's "generosity." These elites included "leaders of the opposition, who were only too willing to bargain with the great dictator." (Renton et al, 2007) As such, "while Mobutu's personal corruption was significant, the establishment of a political tradition of corruption and patrimonialism was more pervasive." (Matti, 2010)

This notion is bolstered by the work of economist Amartya Sen, who argues that corruption feeds on a perception that corrupt behavior is normalized, and thus "importance may be particularly attached to the conduct of people in positions of power and authority." (Sen, 2000) In the case of Zaire, "Mobutu encouraged anarchy by publicly recognizing that 'everything is for sale, everything is bought in our country.'" (Renton et al, 2007) As a result, "smuggling became endemic, in both the countryside and the towns….it also took place at all levels." (Renton et al, 2007)

This corruption led to Zaire's neighbors becoming leading exporters of minerals they did not possess. "Large-scale crime required…the involvement not only of dishonest customs officials but also of middle-ranking bureaucrats as well as private entrepreneurs." (Renton et al, 2007) This in turn led not merely to the undermining of the formal economy, but also to a fundamental change in the mindset of the average Congolese citizen. The black market became *the* market.

"Clandestine links began to be forged with the formal sector; factories and offices found that they could obtain supplies of materials…more cheaply from this 'second' economy than from the first," write Renton et al. "Jobs which people held in the formal sector came to be valued not for the direct income they gave but for the access to profitable opportunities for doing informal business." (Renton et al, 2007) More devastating, however, was the manner in which Kinshasa descended into a city of pyramid schemes and gambling. With little hope for formal employment, vast numbers of Congolese pinned their hopes on a series of "fantastic get-rich schemes," including some linked to wealthy Zairians with connections to Mobutu; one such pyramid scheme defrauded tens of thousands of Zairians. (Hacker, 1992)

All of which simply points to the devastation wrought by Mobutu. In the words of Filip de Boeck: "why continue the social convention of referring to a banknote as 'money' when one is confronted daily with the fact that it is just a worthless slip of paper?...What is the use of distinguishing between formal and informal or parallel economies when the informal has become the common and the formal has almost disappeared?" (Davis, 2007)

Structural Adjustment and Debt Rescheduling

The next step in the Odious Debt System is for the debt burden to reach a high enough level that the country must reschedule its obligations with its creditors. When this happens, so-called odious loans are inevitably mixed together with so-called non-odious loans as the lines between individual obligations are blurred. More importantly, debt rescheduling and/or even debt relief are often contingent on a series of conditionalities imposed by the Bretton Woods institutions, conditionalities that have been proven to often do more harm than good for the poor. These "structural adjustments" then deepen the country's woes, leaving it less able to pay off its debt and less able to overthrow its dictator. These programs also create a relationship between multi-lateral creditors and dictators in which both have a stake in the perception of reform. As a result, these adjustment schemes actively increase western complicity in the perpetuation of tyrannical rule.

In 1975, Zaire essentially stopped paying back commercial debt, "and western commercial banks were threatened with default by a sovereign borrower." (Cooper, *The Nation,* 1979) Desperate to avoid such a default, banks and western institutions scrambled to find a solution. New loans could be issued, they decided, but only if Zaire agreed to work with the IMF on adjusting macro-economic performance. Zaire agreed, and while the first of such programs had "a low level of conditionality – its terms were quite limited and modest," the upsurge in lending combined with the widespread theft of borrowed funds meant that Zaire's balance of payments would only grow worse (see debt stock chart, pages 103-104.) This in turn led to more loans from the IMF, stricter conditionalities, and more promises from Mobutu to "reform."

What happened instead, of course, is that Mobutu never reformed, the loans kept coming in, and the conditions attached to the loans took their toll on the Congolese people. "The characteristic elements of structural adjustment figured in the IMF's programme of reform for Zaire," write Renton et al. "Cuts in public expenditure and a reduction in the role of the state in the economy led, in 1981…not only to a reduced ability to manage the economy in the national collective interest but also to the sacking of thousands of civil servants and teachers." (Renton et al, 2007) Adds Wendy Cooper, writing in *The Nation* magazine in the late 1970's: "I.M.F.-instigated measures such as severe credit ceilings, devaluation and import restrictions have probably exacerbated the country's current miseries." (Cooper, 1979)

Whether or not these types of liberalization policies might be effective generally, it quickly became clear that Zaire had no capacity for absorbing the initial shock of such schemes. "For ordinary Zairians, the effects were dramatic and led to a severe erosion in living standards. In 1979, prices were estimated to be up to 46 times higher than those of 1969, but by 1986 they were 113 times higher….An agreement with the IMF and the World Bank [in 1983] resulted in a massive 77.5 per cent devaluation of the Zaire… [which] sent the prices of staple food soaring upwards by something like 200 to 300 per cent. Wages were restrained and thousands of workers in the public sector were fired." (Renton et al, 2007)

The misery caused by structural adjustment was of course compounded by the debt burden it created. I.M.F. and World Bank lending helped Mobutu retain power, drastically increased the country's debt burden, and did very little for the country, as most of the funds lent were immediately sent back out of the country as capital flight or debt service, or simply stolen by Mobutu. Jonathan Kwitney describes the entire process this way:

> …private banks…have found big profits making direct loans to Third World governments. Yet the IMF has continued its role as regulator whenever a country can't pay its debts. So in a practical sense, the IMF often acts as a U.N.-authorized collection agent for the big banks…The IMF team will make sure that any money Zaire gets through sale of its resources is sent back out again to repay Western bankers. Enough spare parts and fuel will be allowed in to maintain the mining industry. And Zairian officials will be allowed to skim off enough in graft to keep them cooperative. Under this arrangement, much of the money paid for Zairian minerals never even arrives in Zaire except as a bookkeeping entry…the Western banks lend to Third World countries at relatively high interest rates. Details of the loans usually aren't made public, but overall profit records show that most banks get a higher rate of return from their Third World business than they do from their domestic loans…most of the money is fed to central planners running Third World governments. Few of these planners are democratically chosen. Many, like Mobutu in Zaire, hold office because of U.S. intervention. Most are corrupt or naïve or both, often to a mind-boggling degree. (Kwitney, 1984)

This interpretation of the system is obviously not the same as the one put forth by the IMF. The World Bank and IMF argue that their adjustment programs are attempts to reform corrupt governments and broken economies and to reward good performance with loans. This narrative, however, obscures the incentives for multi-lateral institutions to loan money to corrupt governments, disregards the political pressure placed on those institutions by western governments to loan money to "friendly" countries, and thus creates a common interest among the dictator and the multi-lateral lender to promote the notion of reform, regardless of whether or not the reality is quite so promising.

Mobutu undermined reform in two ways. First, while the suffering felt by the masses likely mattered little to him, Mobutu resisted any attempt to undermine his carefully crafted patronage system by protecting the perks enjoyed by loyal bureaucrats. Second, he continued to pilfer funds and maintain the corruption that marked his time in office despite demands by the IMF that he reform. These actions made a mockery of the entire exercise of structural adjustment and left the IMF and World Bank to actively lie in order to justify continued lending; when the dust settled, Zaire was poorer and more indebted, but nothing had been reformed.

Initial reforms came in the form of suggestions, which were "brushed aside by Mobutu." (Cooper, 1979) He "jacked up civil servants' salaries by double [the amount it was suggested he *cut* them] almost before the plane taking the I.M.F. team back to Washington had left the runway. This move…and the release of what was considered a totally unrealistic 1979 budget, led the fund to insist on a renegotiation of the plan." (Cooper, 1979) Suggestions became demands, including one "fiercely resisted by Mobutu" that would have done away with the corrupt state-owned enterprises "from which many members of the political elite gained their illicit income." (Renton et al, 2007)

Meanwhile, even as the IMF sent high-level officials to monitor progress in Kinshasa, Mobutu continued to steal blatantly. Manoudou Toure, a Senegalese economist in charge of the IMF team in Kinshasa, "moaned that he couldn't control the illegal outflow of wealth from the country," or the "illegal withdrawals by government officials and Mobutu's relatives." (Kwitney, *The Nation*, 1984) When the IMF imposed austerity measures in 1979 that included a prohibition on converting Zairian money into foreign currency, Mobutu assented to the national program but politely declined to subject himself to such hardships. He "withdrew 364.3 million Belgian francs from the Zairian national bank, the equivalent of more than $14 million...in the previous two years, the records show, Mobutu and his relatives had withdrawn $2.8 million in U.S. cash, $132.1 million in Belgian francs, $6.4 million in French francs and $286,000 in Swiss francs, a total worth some $141.6 million." (Kwitney, *The Nation,* 1984)

Were the western public to learn that IMF loans and conditionalities had led to widespread impoverishment and absolutely no reduction in top-down corruption, it might have questioned the logic of continuing such loans. What followed, then, was more than a decade of obfuscation emanating from the IMF and World Bank as to the true nature of what was occurring in the Congo. While bankers "were confessing privately that they were 'tired' of the whole issue [reforming Zaire's economy]" and the Belgian ambassador to the U.N. laughed and said "we have to be optimistic [about reform]…there's no other way," additional loans were being approved on the grounds that Zaire was making progress. (Cooper, 1979)

In 1980, the "World Bank told the public that the deterioration of Zaire's economy had been 'arrested.'" (Kwitney, *The Nation*, 1984) Supposedly the country's economy grew by 1.8%, supposedly the country's problems were simply the result of "the downturn in the copper market" and supposedly "significant progress was made under the [structural adjustment] program in 1980…" (Kwitney, *The Nation,* 1984) Six years later, this optimism was undiminished. "In March 1986 the IMF published a report on the Zairian economy in the *IMF Survey*...[that] characterized Zaire's economic policies as 'broadly satisfactory,' and lamented the fact that the country's efforts had not 'been rewarded by an increase in disbursements from foreign loans and grants.'" (Ndikumana and Boyce, 2000) The following year, the World Bank "urged donor governments 'to facilitate investments in Zaire by their nationals,' and "recommended 'full support from the international community' for the government's adjustment programme." (Ndikumana and Boyce, 2000)

These declarations were undermined by what the IMF and World Bank were saying in private. As Kwitney puts it, you could "read [negative] stories in World Bank memorandums – but only if you worked for the World Bank." (Kwitney, *The Nation,* 1984) One such leaked note from 1979 "complained…of an off-the-books 20,000-ton copper sale to China" and noted that the state mining company had "expended $5.3 million in foreign exchange, part of a plan to pay $59 million for the improvement of a single farm. The memo didn't identify the farm, but it sounded suspiciously like Mobutu's…" (Kwitney, *The Nation,* 1984) Meanwhile, "the [leaked] memo also noted that $25 million was drained from [the state company] for 'two presidential centers.'" (Kwitney, *The Nation*, 1984)

Toure, the IMF director in Kinshasa, "resigned out of frustration." (Kwitney, *The Nation,* 1984) Meanwhile, an unnamed IMF economist admitted that the "alleged 1.8 percent growth" happened largely because "Mobutu had decided to allow more smuggling so that needed items could be imported." (Kwitney, *The Nation,* 1984) As Kwitney notes, "carried to its logical conclusion, that means the IMF currency and exchange restrictions are actually *impeding* development in Zaire." (Kwitney, *The Nation,* 1984) Only after Mobutu was ousted did the World Bank publically admit the truth about foreign assistance to the dictator: "It would be hard to argue much was achieved in Zaire, in economic or social terms, as a result of the aid." (Ndikumana and Boyce, 2000)

In fairness to the IMF and World Bank, there was an enormous amount of pressure placed on multi-lateral lenders by the United States to give to Zaire for political reasons. "In 1987, the IMF approved a new loan to Zaire, under pressure from the US government, despite strong objections from senior IMF staff members." (Ndikumana and Boyce, 2000) At the time, the US was using Zaire as "a base for covert action against neighboring Angola. Such decisions prompted the former director of the IMF's Trade and Finance Department to decry 'the intrusion of political factors' into the Fund's decision-making…" (Ndikumana and Boyce, 2000) Senior IMF official C. David Finch resigned for similar reasons. (Renton et al, 2007)

"By 1986, following five years of economic austerity, Zaire had witnessed few gains. There was little real growth in the economy and no improvement in the balance of payments. Net outflows of foreign exchange exceeded inflows, and the proportion of export earnings devoted to servicing the external debt was more than 25 per cent." (Renton et al, 2007) Austerity had failed (assuming the best intentions of its architects) and Zaire was deeper in debt than ever before. Despite this failure, the IMF and World Bank spent years defending the Mobutu regime, acting as a "neutral" voice in support of an embattled government.

The Aftermath

What is the end result of this system? In the DRC, the human cost of odious debt has been severe. Mired in economic ruin, traumatized by a horrific war that broke out as a direct result of Mobutu's desperate attempt to retain power, and saddled with a staggering debt burden, the DRC stands today as a sad symbol of the cost of odious debt.

In 2010, the global average of per capita GNP was $10,869, while the average for Sub-Saharan Africa was $2,448. (World Health Organization [WHO], 2012) In the DRC, per capita GNP was a shockingly low $320. (WHO, 2012) Life expectancy today is 55 years, which ranks ahead of just a handful of countries, most of which are either in the midst of armed conflict or in the grip of the AIDS epidemic. (CIA, 2012) Infant mortality is 76.63 per 1,000 births, thirteenth worst in the world; only two-thirds of adults are literate and in a fairly ominous sign, the World Health Organization omits the DRC in its tabulation of primary school enrollment. (WHO, 2012)

In his book *Planet of Slums,* Mike Davis describes Kinshasa this way: "one great city, officially expelled from the world economy by its Washington overseers, struggles for bare subsistence amidst the ghosts of its betrayed dreams…of the world's megacities, only Dhaka is as poor, and Kinshasa surpasses all in its desperate reliance upon informal survival strategies." (Davis, 2007) Davis quotes an anthropologist who claims that "less than 5 percent of the Kinois earn a regular salary" and notes that the "unofficial civic slogan" is "*se debrouille ('to cope in spite of all').*" (Davis, 2007) Davis notes that "average income has fallen to under $100 per year; two-thirds of the population is malnourished; the middle class is extinct; and one in five adults is HIV-positive." (Davis, 2007)

The DRC's debt burden hit its apex in 2009 when it reached $13.1 billion. (IMF, 2009) At that point, external debt in the DRC was a staggering 128.4% of GDP and IMF/World Bank projections were that without debt relief, it would grow to 170% by 2012. (IMF, 2009) So when the IMF and World Bank announced that the DRC would receive up to $12 billion in debt relief under HIPC, the news was trumpeted as a major step forward in eliminating the country's debt burden.

Unfortunately, the major critiques of HIPC generally are applicable to the situation facing the DRC. First, many critics argue that HIPC criterion and goals are inappropriate: by focusing on debt "sustainability," the Bretton Woods institutions are essentially implying that what matters is how much a country can pay, not what that payment costs the country in reduced spending on health and education. In the DRC, debt was reduced drastically to what the IMF and World Bank deem to be sustainable levels ("the DRC will no longer face a heavy debt service burden in relation to its revenue and foreign exchange resources."), but this reduction does not address the issue of whether or not the remaining obligations are legitimate (in the case of the DRC, they are clearly not) or whether or not the remaining debt burden will still exact a heavy toll on the Congolese state. (IMF, 2010) On this second point, even after HIPC debt relief, the DRC still has a debt burden of several billion dollars despite a per capita GDP that ranks 228th in the world. (CIA, 2012)

Second, HIPC debt relief leaves countries trapped in reduced yet still onerous levels of debt. In the DRC, debt relief through HIPC has greatly reduced the country's debt burden, but it has not eliminated it, and it very much remains to be seen whether the remaining level of debt can or will ever be paid off.

Furthermore, when countries reach certain levels of debt, they become unable to pay their annual debt service, as was the case in the DRC before HIPC. As such, HIPC has not fundamentally changed much of anything: "A banking source said the write off was partly academic since the country has long since stopped servicing much of the debt, and creditors had for the last 20 years written it off their books, with no expectation that it would be repaid." (*Financial Times,* 2010)

If a view of the DRC's debt is taken that acknowledges the odiousness of its obligations rather than the "generosity" of those institutions that perpetuated Mobutu's rule and now seek to claim whatever payment they can from the remainder of the illegitimate debt, then HIPC can hardly be a solution to the DRC's debt problem.

Finally, the DRC's plight was exacerbated in horrific fashion in the late 1990's and early 2000's when "Africa's World War" exploded in the east of the country. This conflict can be directly traced both to Mobutu and to foreign interests, the former of which instigated the conflict through his attempts to remain in power, the latter of which actively worked with the war's aggressors. This conflict demonstrates the manner in which debt survives any particular loan or leader; even after his overthrow, Mobutu's actions continue to harm his country, while foreign interests directly and indirectly aided a devastating war that cost millions of lives and contributed to the DRC's debt.

Mobutu helped to instigate the war in 1994 when he invited the losing side of the Rwandan civil war to set up camp in his country. In this case, the losing side was the genocidal side: Hutu *genocidaires* and government officials who were fleeing the Tutsi rebel Rwandan Patriotic Front (RPF), accompanied by hundreds of thousands of Hutu civilians who fled with them, sometimes by choice, sometimes by force. "Mobutu saw an opportunity to regain the initiative. He agreed to host the refugees on Congolese soil and thereby became a partner to international aid organizations. The move also allowed him to regain some respectability, at least in the eyes of the French, who once again embraced him." (Olsson and Congdon, 2004)

This dynamic further demonstrates the problem of foreign support for a dictator: when a dictator understands the source of his power to come from abroad rather than from domestic legitimacy, he is bound to make decisions that cater to those foreign interests regardless of whether or not those decisions benefit his citizens. In this case, not only did the decision to allow the genocidal regime into Zaire not benefit Zaire's citizens, but "Mobutu used the inflow of Hutu to instigate hostilities towards the Banyamulenge, a people of Tutsi origin who had lived in eastern Congo for generations." (Olsson and Congdon, 2004) This further heightened hostilities, and the combination of anti-Tutsi persecution and the use of Zaire by Hutu militias as a base for attacking Rwanda's Tutsi government caused Rwanda to invade. This invasion ultimately led to Mobutu's downfall, but it also led directly to the second Congolese war in 1998 when Rwanda and Uganda, using the Hutu militias largely as an excuse, invaded the DRC and plundered its resources at the cost of millions of lives.

Meanwhile, foreign companies continued to profit from resource extraction in the eastern Congo during the war, even through cooperation with armed groups responsible for plunder and murder. In addition, "western politicians knowingly encouraged Rwanda and Uganda in the looting of resources from the Congo…As a Human Rights Watch report in 2003 explained, 'the British government has continued to support Uganda and Rwanda politically and financially. British authorities abstained from any open criticism of either Uganda or Rwanda." (Renton et al, 2007) The IMF chimed in by praising Uganda's "export-led growth," despite the fact that much of this growth was driven by Uganda's export of the DRC's stolen resources. (Human Rights Watch, 2004)

Similarly, Timothy Reid argues that "the continuation of western aid implicitly condoned both [the] occupation of the DRC and the associated human rights violations. Arguments by the donor community about the futility of suspending aid to both countries [Uganda and Rwanda] were disproved when temporary aid suspensions were either threatened or implemented. Even if suspending aid had been ineffective, it seems hard to understand why countries that have the resources to invade their neighbors would need donor support." (Reid, 2006)

More directly, multi-national corporations worked with rebel groups to prolong the war and plunder the country. The United Nations released a "devastating" report that stated that "foreign companies 'were ready to do business regardless of elements of unlawfulness…Companies trading minerals which the Panel considered to be the engine of the conflict in the Congo, have prepared the field for illegal mining activities in the country.'" (Renton et al, 2007) Rwanda's own government listed "thirty-five of the largest companies to profit from the mineral trade, of which twelve were based in Belgium, and five each in Germany and the Netherlands." (Renton et al, 2007) Other companies have been implicated in purchasing and/or mining gold, including in regions where Congolese citizens are forced to work in the mines by rebel armies connected to the companies and killed if they refuse. One such instance took place in 2002, more than one hundred years after the rubber terror of King Leopold.

Conclusion

The Democratic Republic of the Congo is the African country that best illustrates the Odious Debt System, both in scope and in depth. At first glance, it is easy to view the DRC as an outlier for a variety of reasons. First, it is rare that a country suffers so profoundly in so many different eras: from Leopold to Mobutu to Africa's World War, the Congo has had more than its share of misery. Second, the staggering depth of Mobutu's kleptocracy calls into question the degree to which the DRC's experience is representative of that of other countries. Finally, the above analysis simply illustrates how the DRC fits the model of the Odious Debt System, but it does not prove that this model is applicable to any other countries.

The next section of this paper will address all three of these concerns. In short, the DRC is an outlier only in the sense that its experience perfectly encapsulates a system that is perhaps usually only largely encapsulated by the experience of other countries. Yes, the Congo's horrors probably exceed those of many other countries, though comparing devastation is largely a fruitless exercise and Rwanda, Sudan, and Angola (among others) might disagree with this claim regardless. Yes, Mobutu's kleptocracy is legendary, though other dictators have certainly fallen short not for lack of effort. To illustrate a system, however, is to illustrate a general process, to show how each part fits together, and to better understand the end result. If the DRC is an outlier, it is only in the manner in which those pieces fit together so perfectly, with tragic results for its people.

CHAPTER 5

DATA AND CASE STUDIES

"[Rwandan Dictator Juvenal] Habyarimana…had an ally in [French Ambassador to Rwanda Georges] Martres, whose dedication to the regime gave rise to a joke in diplomatic circles that he was really the Rwandan ambassador to France."

-Daniela Kroslak, 2008 (Kroslak, 2008)

How prevalent is the Odious Debt System? A review of the forty-nine countries that comprise sub-Saharan Africa reveals that it is unfortunately far too prevalent. That said, there is certainly variation across the continent; many countries exhibit portions of the process, other countries are at different stages of the process, and still others have had the process altered either through warfare, through perpetual regime change, or through the complete collapse of state institutions. Still others have never experienced dictatorship.

This section will examine the quantitative scope and impact of the odious debt system. First, it will further reinforce the existence of this system by briefly detailing a sampling of African countries that have experienced it in much the same manner as the DRC. Second, it will examine the general trends and themes across the rest of the continent, addressing the question of why and how some countries have experienced the system differently than others, and why some countries have avoided it altogether. Third, it will provide a statistical overview of African debt and related social welfare indicators.

THE ODIOUS DEBT SYSTEM – SELECTED EXAMPLES

The Odious Debt System is not specific to the DRC; on the contrary, a number of African countries have followed a similar trajectory and serve to demonstrate the extent of the system.

GABON

Gabon gained independence from France in 1960, and “President” Omar Bongo was in power by 1967. His rule was thereafter funded heavily by the French, who also ensured its survival. “At various times through his long political career, when opposition elements got brash or multi-party democracy, which he allowed after 1993, became too lively, the French military base in Libreville would turn out the paratroopers for him.” (The Economist, 2009) They were successful: Bongo ruled for more than forty years until his death in 2009, at which point his son took power and French presidents Nicolas Sarkozy and Jacques Chirac attended his funeral. (The Economist, 2009)

Gabon is an example of the limits of economic statistics. "Gabon, which has only 1.5 million people but produces around 240,000 barrels of oil per day, became one of Africa's richest countries under Bongo's rule, with per capita GDP in excess of $14,000. You wouldn't know it from visiting the place. Gabon built an average of 5 km of roads per year during that period, and had one of the world's highest infant mortality rates." (Krakoff, 2012) Ndikumana and Boyce quote a *New York Times* reporter who visited Gabon's capital city of Libreville a few months after Bongo's death and described it as: "shacks and shanties stretching to the horizon…" (Ndikumana and Boyce, 2011)

Under Bongo's rule, the people of Gabon did not get rich, but Bongo did. During his rule, Bongo accumulated "66 bank accounts, 183 cars, and 39 luxury properties," four of which were on France's swanky Avenue Foch. (Ndikumana and Boyce, 2011) Bongo also made a fortune on corruption and kick-backs, including from a $4 billion railway project that was funded by commercial creditors after the World Bank declared the enterprise to be "economically unviable." (Ndikumana and Boyce, 2011) If the Bongos are ever ousted from power, these loans will be paid off by the Gabonese people. Oil-related corruption contributed to this process as well. "Bongo is said to have received from the French oil company Elf Aquitaine – acquired by Total in 2000 – a commission of $1 on every barrel of oil produced in Gabon. Over 42 years, that works out to more than $3.5 billion." (Krakoff, 2012)

During this time, Gabon's external debt skyrocketed, reaching over $4 billion at times and approaching $3 billion at the time of Bongo's death. (World Bank, 2012) Meanwhile, capital flight as of 2008 was estimated at a staggering $18 billion, or more than 125% of GDP. (Ndikumana and Boyce, 2011) And so while many in the west are familiar with Mr. Bongo only through his attempted seduction of Miss Peru (she accused him of sexual harassment after he invited her back to his palace after a pageant), it is not difficult to argue that this particular transgression is merely a symptom of a system in which one man was allowed –by the French, by private banks – to do whatever he wanted. The cost of Gabon's odious debt system is much higher: in Gabon, the infant mortality rate in 2011 placed it 44th worst in the world, or exactly 100 spots worse than Botswana, which has a similar per capita income. (Ndikumana and Boyce, 2011, and CIA, 2012)

LIBERIA

Liberia, settled by former American slaves, had a string of authoritarian governments that were propped up by United States money. The first such regime, headed by President William Tubman, had the usual markings of tyrannical one-man rule, including the torture of political opponents and journalists, but also had the support of the United States. "In September 1959, Liberia became the sole African state ever to conclude a mutual defense agreement with the United States," writes Peter Schwab. "…the pact would protect Tubman, and would thus ensure the United States of the continuance of a presidential client who was, in effect, representing U.S. interests in the region." (Schwab, 2004)

U.S. support was political (Tubman was anti-communist and at odds with socialist pan-Africanist leaders in Guinea and Ghana), economic (Firestone tire company had extensive investments in the country) and also probably historical given Liberia's roots. Regardless of the reason, however, American aid helped prop up the Tubman regime despite its human rights record and therefore gave it "generous resources for its internal security forces…and the Special Security Service created to protect the political elite." (Schwab, 2004)

The regime of Samuel Doe (1980-1990) also received extensive American support despite grave human rights abuses (including public executions) and a patronage system that put Tubman's "to shame." (Pham, 2004) When students protested the detention of a dean, "military units sealed off the

Monrovia campus and began a five-day spree of looting, rape, torture, and killing." (Pham, 2004) Meanwhile, "it was estimated that Doe and his surviving colleagues…looted the national treasury of some $300 million in public funds." (Pham, 2004) Nevertheless, all Doe had to do to secure American support for his regime was to scare the U.S. by reaching out to the Soviets; soon thereafter, American assistance represented more than one third of Liberia's budget. (Pham, 2004)

During the Doe era (1980-1990), Liberia's debt grew from less than $1 billion to more than $2 billion. (Index Mundi, 2012) It continued to skyrocket in the 1990's as Liberia was plunged into a brutal civil war and then proceeded to elect as its president the warlord primarily responsible for starting the war. So unpopular was the Doe regime (it had won a fraudulent electoral victory in the mid-1980's without protest from the United States) and the elite "Americo-Liberian" (descendants of freed American slaves as opposed to native Africans) regimes that had preceded it that warlord Charles Taylor was able to win election in 1996 under the slogan: "He killed my pa, he killed my ma, I'll vote for him." (Pham, 2004)

Taylor's election perfectly illustrates the lasting repercussions of the Odious Debt System. Bad governance begets bad governance, but it can also open the door to even more catastrophic manifestations of societal breakdown: failed states, civil wars, anarchy. In Liberia, successive regimes built on patronage, kleptocracy, and repression sowed the seeds of discontent that allowed a figure like Taylor to take power and in turn visit more horror on the country and its neighbors.

Today, Liberia has received one of the highest percentages of debt relief of any country under HIPC, and is ruled by the democratically-elected first female head of state in Africa. Still, its debt burden has not been eliminated and one private hedge fund has even been engaged in a legal campaign to squeeze money out of the desperately poor country. The remaining debt, likely in the hundreds of millions of dollars, still represents an enormous obstacle to positive development, and an odious one at that.

MALAWI

Malawi was ruled for thirty years by Hastings Banda, "the most totalitarian ruler in Africa." (The UK Independent, 1997) Banda, a doctor who had practiced in England, patronizingly talked of educating his African subjects, on whom he imposed a series of bizarre pseudo-puritanical measures: a ban on mini-skirts and pants for women, a ban on long hair for men, the establishment of a school that taught Greek and Latin for Malawi's elite children. (UK Independent, 1997)

Dissent was not allowed, and Banda referred to his opponents as "food for crocodiles" and infamously "became enraged, even hysterical" at the mention of a particular opponent who had been thrown in jail, screaming that the man should "Rot! Rot! Rot!" (The Economist, 1997) Human Rights Watch declared that "the 25 years of Life-President Hastings Kamuzu Banda's rule in Malawi have been synonymous with torture, extrajudicial killings, detentions without trial and severely circumscribed civil and political liberties." (Human Rights Watch, 1989)

These gross human rights violations did not prevent Banda from receiving extensive support from the United States, however, in part because of Banda's role as the lone Southern African leader to establish positive relations with Apartheid South Africa. (Human Rights Watch, 1989) He also received support from Margaret Thatcher, who declared that "Malawi is one of our closest friends" and "we in Britain have been pleased to be able to contribute to your success." (Thatcher, 1985)

By the time Banda left office, Malawi was roughly $2.2 billion in debt, and by 2008 it had lost almost exactly that amount in capital flight. (World Bank, 2012 and Ndikumana and Boyce, 2011) In its attempts to have its debt cancelled, Malawi's democratically elected successor government turned to the IMF, which pushed it to end agricultural subsidies and sell off reserve stores of grain "because they were seen as a distortion in trade," resulting in a massive famine that killed thousands of people. (Jubilee Debt Campaign UK, 2012)

Meanwhile, Banda enriched himself by "appropriating businesses and land amounting to a third of the country's GDP" which "gave him a huge source of patronage." (UK Independent, 1997) The BBC estimates that Banda may have been worth as much as $450 million, much of which was stored abroad. Efforts to find the money, however, have been unsuccessful as the late dictator's death certificate is deemed by the foreign banks as necessary documentation for anyone attempting to access his accounts. It is missing. (BBC, 2000)

RWANDA

Rwanda's President Juvenal Habyarimana took power in a "bloodless" coup (he simply starved his predecessor to death under house arrest rather than spill his blood) in 1973. Habyarimana was initially welcomed by many Rwandans, particularly ethnic-minority Tutsis who had suffered greatly under the previous regime, and by those who benefited from his increased attention to infrastructure development, education, and economic growth. "However," writes Daniela Kroslak, "appearances proved deceptive and at the same time Rwanda became an ever more unequal society, especially in the countryside." (Kroslak, 2008) A decline in coffee prices and an invasion of Tutsi refugees of the Rwandan Patriotic Front (RPF) from Uganda in 1990 signaled Rwanda's eventual descent into genocide.

In 1990, Rwanda entered into a SAP with the IMF and World Bank, which immediately led to a devaluation of the country's currency. Prices for staple good rose and inflation "rocketed," leading to an increase in poverty and a decrease in food security, particularly as farmers attempted to increase production of coffee at the expense of crops for local consumption. (Andersen, 2000) There is evidence that this economic strain had "indirect links" to the genocide that followed, as Rwandans faced with increasing shortages of land and food found themselves more susceptible to the entreaties of racial extremists. (Andersen, 2000) The SAPs also added millions to Rwanda's debts.

The Habyarimana regime was marked by both corruption and foreign assistance, most notably from France. The circle of people around the President and his wife, known as the *Akazu*, profited from the unequal distribution of land and power that marked the regime. "Many Rwandans, suffering from over-population and increasingly reliant on food aid, bitterly resented the greed for land and power of a small clique around the President…[which] had become addicted to the corruption now prevalent in every area of the country's political life." (Wallis, 2007) Such greed included the type of lavish consumption that has marked so many African leaders involved in the Odious Debt System: "when you are Agathe Habyarimana buying white leather cocktail dresses and red acrylic hot pants [in Paris] with dollars that you have stolen from your country's international budget, it feels doubly right. You are, after all, only returning the money to the country from which it came." (Wallis, 2007) I.e. France. By 2008, Rwanda had lost more than $4 billion to capital flight. (Ndikumana and Boyce, 2011)

Indeed, Habyarimana received much more than money from the French. The RPF invasion, whatever its merits, brought about an internationally recognized peace process that might have delivered to Rwanda multi-party, multi-ethnic democracy and ended the racist kleptocracy that had been in power for decades. Tutsi civilians were being killed regularly at this point and French government documents show that officials in Paris were aware of the potential for mass murder. And yet during the period between the RPF invasion and the assassination of Habyarimana that officially ignited Rwanda's genocide, French involvement was entirely aimed at keeping the dictator in power. French troops helped repel the RPF advance. French officials intervened in such a heavily one-sided manner during the peace negotiations that the French ambassador to Rwanda was jokingly referred to by diplomats as the Rwandan ambassador to France. (Kroslak, 2008)

France's support of Habyarimana facilitated Rwanda's descent into genocide. By the time the RPF took over after winning the civil war, nearly one million Rwandans were dead and Rwanda was a scarred country filled with traumatized people. It was also more than one billion dollars in debt. (World Bank, 2012) This debt had been incurred exclusively by governments that had actively attempted to eliminate the country's largest ethnic minority group, and yet the RPF did not dare repudiate it for fear of alienating itself from foreign creditors and thus losing access to badly needed funds. Had France used its influence to push Habyarimana to create a multi-ethnic democratic government, the country might have moved in a very different direction. Instead, after the genocide, the RPF used Hutu atrocities to justify political repression and military intervention in the Congo. And still the Rwandan people are paying off odious debts.

SOMALIA

Much like Liberia, Somalia's Odious Debt System eventually ended in complete state collapse. Sadly, state collapse and civil war are not uncommon fates for countries exposed to this system, as the DRC and Rwanda further illustrate. Somalia's cycle began with the dictatorship of Siad Barre, who rose to power through a military coup in 1969, and instituted a personality cult in which he was the "father" of the country and the revolution that brought him to power was its "mother." (Lewis, 2002) Barre's repression included "public executions of persons accused of plotting against the state" and a robust security service that monitored such crimes as "lack of revolutionary zeal." (Lewis, 2002)

After Barre took power, he allied himself with the Soviet Union, which propped up his dictatorship with extensive military support and other aid. But when U.S.-Ethiopian relations deteriorated over Ethiopia's occupation of Eritrea, Ethiopia turned to the Soviet Union and began receiving Russian weapons and aid. This prompted Barre to turn to the Americans for assistance because of Somalia's discord with the Ethiopians. This entire episode highlights the nature of Cold War involvement in Africa: African dictators turned to whichever side would give them money and superpowers bought the allegiance of any country willing to sell it.

Regardless of which superpower propped up Barre, the end result was the same for the Somali people. Lewis notes that they initially cheered the departure of the Russians because the Soviet Union was "associated in most people's minds with the more oppressive aspects of Siyad's regime." (Lewis, 2002) Meanwhile, "despite Siad Barre's corruption, maladministration and blatant human rights violations, the US administrations…of…Reagan and…Bush…long committed themselves to unqualified support of his regime." (Ghalib, 1995) This support included military assistance to the regime when it was challenged by domestic opposition in the late 1980's, opposition it would crush ruthlessly through force.

By the time Barre's regime collapsed under the weight of violent domestic opposition and the complete absence of popular legitimacy in the early 1990's, it had accumulated more than $2 billion in external debt, the vast majority of which came during the 1980's. (AFRODAD, 2012) The subsequent utter collapse of the state, which continues to this day, and which has been perpetuated in part through the machinations of American anti-terrorism operations, has resulted in the slow but steady increase of the debt burden through lack of payment and accumulation of interest: as of 2009, it had almost reached $3 billion. (World Bank, 2012)

At the same time that Somalia's debt burden was climbing, Barre was not only becoming more repressive, he was becoming more kleptocratic. A system of corruption ran rampant in which officials would extort money from individuals and then send "tributes or bribes" (depending on one's perspective) up the chain of command to Barre's family and associates. (Ghalib, 1995) Such theft reached its astonishing apex when young university graduates attempted to build a working hospital in the city of Hargeisa with funds raised locally through community action. This action threatened "the vested interests of Siad Barre's officials" and was treated as a crime: the graduates were sentenced to terms that included life imprisonment, and were "held in isolation and solitary confinement," sparking the protest of groups such as Amnesty International. (Ghalib, 1995) Other acts of theft included "unaccountable expenditures and sometimes substantial income" diverted from public projects. (Ghalib, 1995)

The Hargeisa hospital project illustrates the lasting impact of odious debt. Long after Barre was deposed, the Somali people struggled to pick up the pieces from twenty-two years of official repression and neglect. As with Liberia, the dysfunctional foreign-supported weak state collapsed into warlordism, much in the way Reno articulates in his work. This descent only deepened the misery of the country and left its people that much less capable of rebuilding their country or paying off their massive debt. Unlike Liberia, Somalia has not yet regained any semblance of order.

TOGO

Togo gained its independence from France in 1960, and later came to be ruled for thirty-eight "brutal and fearful years" by Gnasssingbe Eyadema. (UK Guardian, 2005) Eyadema may or may not have been instrumental in West Africa's first post-independence coup, in which president Sylvanus Olympio was shot and killed; there is speculation that France was involved in the overthrow since Olympio had "shown too many signs of independence." (UK Guardian, 2005)

Eyadema's rule was marked by the hallmark personality cult (which only grew after he survived a plane crash) and absolutely brutal repression. Political dissidents were "either exiled or, like former Vice-President Meatchi and the popular army leader Colonel Koffi Kongo, died mysteriously." (UK Guardian, 2005) Amnesty International "reported a persistent pattern of killings, disappearances, torture and arbitrary arrests," while opposition activists allowed to speak at a national conference aimed at democratization in the early 1990's "gave harrowing first-hand accounts of detention, torture, and murder." (UK Telegraph, 2005 and Meredith, 2011)

Despite the blatant abuse of human rights, France heavily supported Eyadema. Early on, French advisers essentially "ran the government departments and created a Togo that was, according to critics, a 'reborn French colony in all but name.'" (UK Telegraph, 2005) Jacques Foccart, the "Machiavellian" adviser to French President Charles de Gaulle on African issues, "was said to rule Togo by telephone." (UK Telegraph, 2005 and UK Guardian, 2005)

Meanwhile, the country's economy was neglected badly. In 2004, after 37 years of Eyadema's rule, "Togo [was] rated 145 out of 175 nations on the UNDP's Human Development Index, and 35 percent of its people are not expected to survive past age 40. Forty-five percent of its population have no access to safe water." (Schwab, 2004) What wealth did exist in the country was dispensed through ethnicity-based patronage ("Eyadema's Kabye people, who make up no more than 15% of the population, scooped up the best government jobs") or stolen by the leader himself. "Mba Kabassema, Minister of Trade and Transport in Eyadema's government in 1977, alleged that Eyadema pillaged the country's resources with the connivance of a Moroccan adviser, Maurice Assor. Another…alleged that Eyadema's personal fortune was 800 billion CFA francs ($2.8 billion), most of it in foreign banks. He said that the Nangbeto dam project, costed at CFA 8 billion, rose to CFA 48 billion so that funds could be diverted into the wrong pockets. Eyadema spent CFA 50 billion to build a chateau at Pya, his hometown in north Togo." (Acquaah-Gaisie, 2008) When Eyadema died in 2005 (while still in power), Togo's debt stood at nearly $1.7 billion, meaning Eyadema could have paid it off in full from the money he stole from the country. (World Bank, 2012)

Divergent Strains in the Odious Debt System

While the odious debt system is prevalent across the African continent, many countries have experienced it in ways that differ from the "textbook" process detailed in the extended case study and in the brief case studies above. In some cases, the process is truncated due to various conditions; in other cases, the process never begins at all. And in still other instances, a combination of these two situations is apparent: in countries that fought prolonged civil wars shortly after independence, for instance, it may never be known if the ruling party would have led the country down the same road as Mobutu and his peers because the war became all consuming.

WAR DEBTS and HOSTILE FOREIGN INTERVENTION

In certain cases, including Mozambique and Angola, the Odious Debt system never began, but the country's debt burden is nevertheless distinctly odious. In those instances, African countries racked up enormous debt burdens to fund defensive civil wars against violent insurgency campaigns funded by foreign adversaries. While lending to war debtors can be viewed as a positive action (giving a country the funds necessary to defend itself), there remains a disconnect between the actors responsible for the debt (hostile foreign countries) and the actors responsible for paying it back (the people of the debtor country, usually the victims of the war). In this way, a war debtor's debt burden is odious, but in a different sense: *somebody* should pay back the debt, but not the people being called upon to do the paying.

Mozambique may offer the best example of this situation. Mozambique's ruling party took power in 1975, forcing out the Portuguese colonizers, who proceeded to trash the country as much as possible on their way out the door. Mozambique's new government was "unacceptable" to certain parties in the West for two reasons: its Marxist ideology and its support for Zimbabwean and South African freedom movements resisting minority-white rule. As a result, South Africa and what was then Rhodesia (now Zimbabwe) created a rebel army in Mozambique bent on destroying the country; Rhodesian intelligence was the primary entity responsible for this supposedly "domestic" rebellion.

RENAMO, as the rebel group was called, "entered Mozambique to burn villages, plunder agricultural cooperatives, attack railroad lines, and establish re-education camps…In August 1976, [Rhodesian militias allied with Renamo] massacred more than 600 refugees in a camp." (Fearon and Laitin, 2005) The end result was a 16-year civil war that was catastrophic for Mozambique, which "by the late 1980's…had dissolved into one of Africa's greatest humanitarian disasters, with the state moving toward total collapse." (Naidu, 2001) The *New York Times* estimated in 1990 that the civil war caused 100,000 deaths and turned 800,000 Mozambicans into refugees. (New York Times, 1990)

An IMF economist, Allesandro Rebucci, stated unequivocally that Mozambique's civil war was the primary cause of its debt burden, which by the end of the war was the highest debt burden per GDP in the world. (Plank, 1993) Today, despite HIPC assistance, Mozambique's debt burden is more than $4 billion dollars. (World Bank, 2012)

PERPETUAL REGIME CHANGE

Some countries have failed to initiate the Odious Debt System as it is understood by this paper simply because they have not had a stable dictatorial government for any length of time. As such, links to foreign governments are less likely to take on the client-patron relationship that marks the Odious Debt System. Still, these countries do accrue debt and this debt is passed on to any future civilian government, regardless of its odious character.

Burundi is one country that exemplifies this category. Situated just to the south of Rwanda, and sharing similar Hutu-Tutsi political dynamics, Burundi has had possibly an even more volatile history than its more well-known neighbor. Between 1965 and 2001, Burundi had twelve coups, four of which were successful, and two of which led to more than 100,000 deaths. (Marshall, 2004) Rule changed hands between Tutsi factions and the Hutu majority, and alternated between democratic government and authoritarianism. Evidence of foreign intervention is scarce. Further examples include the Central African Republic (11 coups in 38 years), and Nigeria (15 coups in 42 years), among others.

THE EXCEPTION TO PROVE THE RULE?

Botswana has never had a dictatorship, and until it was attacked by South Africa and Rhodesia during the fight for independence in those countries, it never even had an army. Economic growth has been steady, corruption rates have been among the best in Africa, and diamond revenues have been directed toward social services and economic development, rather than into the pockets of corrupt officials. Until 2009, Botswana's debt burden was stable and relatively low. (World Bank, 2012)

In this way, Botswana is the exception to prove the rule. All of those elements present in the odious debt system - kleptocracy, foreign intervention, dictatorship, capital flight – are largely absent in Botswana, and it has flourished. But simply painting this happy picture is misleading; Botswana, like any country anywhere, has had problems. Specifically, Botswana has the second highest AIDS rate in the world, and has seen its life expectancy dip severely as a result.

And yet, this fact might further illustrate the damage of the Odious Debt System. Faced with this crisis, Botswana has taken enormous steps to combat it, funneling large sums of money into prevention, education, and medicine, and generally doing what governments are supposed to do: represent their people. Botswana's efforts have had an impact: while generally one-third of babies born to HIV-positive women are expected to contract the disease from their mothers absent intervention, Botswana has cut that rate down to just 3%, "a rate comparable to the USA and Western Europe." (AVERT, 2012)

Botswana's debt burden, therefore, is a more complicated matter. On the one hand, it is difficult to argue that its debts are not legitimate, given the democratic and representative government that incurred them; on the other hand, what better country to receive debt relief than one committed to using the extra funds to improve the lives of its people? Whether or not Botswana's creditors should forgive its debts is beyond the scope of this paper. What is clear is this: without debt forgiveness or effective repudiation, other African countries will never be able to become the next Botswana. Without the cancellation of odious, illegitimate financial obligations, Africa will continue to have one and only one Botswana: depending on one's viewpoint, either a shining example of possibility or a galling reminder of what should have been.

Africa's Odious Debt Charts

The chart below illustrates the pervasiveness of the Odious Debt System in Africa. The category column denotes the particular manifestation of odious debt in a particular country. "Odious System" refers to the Odious Debt System discussed in this paper, while "War" refers to the type of conflict-fueled debt discussed above. The term "General Odious" refers to those countries that have dictator-incurred odious debt but which do not necessarily fit the Odious System model, while "None" refers to those countries that do not have odious debt. The "N/A" label is given to those countries for which additional research is required for a proper classification.

"Capital Flight/GDP" is noted to demonstrate the relative impact of capital flight on a country's economy, while "Debt Perpetuator" is the country or countries most responsible for the African nation's odious debt. In both categories, the "N/A" label is given when not enough information is available or there is no relevant foreign country involved. "HDI Rank" is the United Nations Human Development Index ranking from 2011, in which the country with the strongest levels of human development is ranked "1" and the country with the lowest is ranked "187." The DRC earns this particular dubious distinction.

COUNTRY	ODIOUS DEBT CATEGORY	CAPITAL FLIGHT / GDP (%)*	DEBT PERPETUATOR**	HDI RANK (2011) (1 – 187)***
Angola	War	85.8%	USA	148
Benin	Odious System	N/A	FRANCE	167
Botswana	NONE	14.1%	N/A	118
Burkina Faso	Odious System	14.3%	FRANCE	181
Burundi	General Odious	383.9%	N/A	185
Cameroon	Odious System	102.8%	FRANCE	150
Cape Verde	General Odious	199.8%	N/A	133

Cent. Afr. Rep.	Odious System	121.8%	FRANCE	179
Chad	Odious System	24.3%	FRANCE	183
Comoros	Odious System	N/A	FRANCE	163
Dem. Rep. Congo	Odious System	265.1%	USA	187
Djibouti	Odious System	N/A	FRANCE/USA	165
Equatorial Guinea	Odious System	N/A	USA	136
Eritrea	General Odious	N/A	N/A	177
Ethiopia	General Odious	76%	VARIOUS	174
Gabon	Odious System	125.8%	FRANCE	106
Gambia	General Odious	N/A	N/A	168
Ghana	General Odious	65.8%	VARIOUS	135
Guinea	Odious System	21.5%	VARIOUS	178
Guinea-Bissau	General Odious	N/A	N/A	176
Ivory Coast	Odious System	194.1%	FRANCE	170
Kenya	Odious System	20.6%	World Bank/IMF	143
Lesotho	General Odious	43.5%	N/A	160
Liberia	Odious System	N/A	USA	182
Madagascar	Odious System	104.5%	VARIOUS	151
Malawi	Odious System	53.7%	USA/UK	171
Mali	Odious System	N/A	VARIOUS	175
Mauritania	Odious System	126.2%	FRANCE	159
Mauritius	NONE	N/A	N/A	77
Mozambique	War	149.2%	RHODESIA	184
Namibia	NONE	N/A	N/A	120
Niger	Odious System	N/A	FRANCE	186
Nigeria	Odious System	139.7%	VARIOUS	156
Rep. of Congo	Odious System	223.4%	FRANCE	137
Rwanda	Odious System	99.1%	FRANCE	166
Senegal	NONE^	N/A	World Bank/IMF	155
Seychelles	Odious System	492.7%	VARIOUS	52
Sierra Leone	General Odious	311.9%	N/A	180
Somalia	Odious System	N/A	USA	Not Ranked
South Africa	Odious System	13.1%	USA/ISRAEL	123
South Sudan	NONE	N/A	N/A	Not Ranked
Sudan	Odious System	32.1%	RUSSIA/CHINA	169
Swaziland	Odious System	79.8%	VARIOUS	140
Sao Tome & Prin.	General Odious	614.6%	VARIOUS	144
Tanzania	NONE	32.8%	N/A	152
Togo	Odious System	N/A	FRANCE	162
Uganda	Odious System	116.8%	VARIOUS	161
Zambia	Odious System	170.5%	VARIOUS	164
Zimbabwe	Odious System	807.6%	VARIOUS	173

*Total Real Capital flight as of 2008, (Ndikumana and Boyce, 2011)

** Country primarily responsible for perpetuating autocratic rule or fomenting armed conflict and thus deepening country's debt crisis

***(United Nations, 2012)

^SAP worsened the economy and increased debt burden

The following chart illustrates the extent of the accrual of debt under dictatorship in Africa in a selected group of countries. The first column notes the country's level of debt before the onset of dictatorship. This figure is often unavailable because most African countries endured dictatorship very early in the post-colonial era before the buildup of substantial debt. In those cases, the term "independence" denotes that the country either had no debt or had odious debt inherited from colonial rule. The second column notes the amount of debt at the end of the period of dictatorship, while the third column lists the country's current debt as of 2010. The final column notes the proportion of debt to Gross National Income.

COUNTRY	DEBT PRIOR TO DICTATORSHIP (millions)*	DEBT AT END OF DICTATORSHIP (millions)	CURRENT DEBT (2010 millions)**	DEBT/GNI (%)**
Angola	Independence	$8,739	$18,562	26%
Burkina Faso^	$827.4	ONGOING	$2,053	25%
Cameroon^	$2,803	ONGOING	$2,964	13%
Chad	$220.5	ONGOING	$1,733	27%
Comoros	$44.0	$211.2	$485.4	91%
Dem. Rep. Congo	Independence	$12,337	$5,774	52%
Eritrea	$29.1	ONGOING	$1,010	57%
Gabon^	Independence	ONGOING	$2,331	21%
Ivory Coast	Independence	$19,070	$11,430	52%
Kenya	Independence	$6,122	$8,400	28%
Liberia	$685.7	$2,056	$228.0	31%
Malawi	Independence	$2,020	$921.6	20%
Rwanda	Independence	$952.3	$794.6	15%
Somalia	Independence	$2,449	$2,942	N/A
South Africa	(1961)	$21,671	$45,165	15%

*Or in case of war-related debt, debt given is at time of outset of war

^Country received HIPC debt relief during dictator's reign

**World Bank, 2012

CHAPTER 6

PROPOSED SOLUTIONS FOR A NON-ODIOUS FUTURE

"History will one day have its say, but it will not be the history that Brussels, Paris, Washington, or the United Nations will teach…my faith will remain unshakable…We are not alone. Africa, Asia, and the free and liberated people from every corner of the world…they will not abandon the light until the day comes when there are no more colonizers and their mercenaries in our country. The future of the Congo is beautiful…" (Renton et al, 2007)

-Congolese Prime Minister Patrice Lumumba in his final letter to his wife before being assassinated by Belgian and rebel soldiers, 1960.

This paper has argued for the existence of an Odious Debt System that has plagued scores of countries in sub-Saharan Africa. This system has caused enormous human suffering and has resulted in many of these countries being saddled with substantial debt burdens despite the odious means to which the original borrowed funds were put. While it is sadly too late to do anything about much of the suffering, the odious debt burdens of these African countries remains as a tangible problem that can be addressed. But how?

Three general viewpoints dominate the debate surrounding what to do about odious debt. The first school of thought is that odious debt is not an issue that needs solving for one of two reasons: either because debt incurred by sovereign nations is the responsibility of those nations, regardless of how or why it was incurred, or because the odious debt doctrine, while well-intentioned, would result in more harm to third-world countries and their people. The second viewpoint is that of the World Bank and IMF: unsustainable debt burdens are the problem, regardless of whether or not the debt is odious, and the goal should be to reduce them to sustainable levels provided the debtor country implements a series of reforms. The third perspective is that odious debt is a problem, and a system should be created either to label previous debts as odious or to prevent future illegitimate lending by labeling regimes or future lending as odious.

THE FIRST APPROACH: DO NOTHING

The two aspects that comprise the first perspective are best captured by the work of Cheng and of Posner and Choi. Cheng's argument is that there is no legal standing for the doctrine of odious debt, that determinations of odiousness should be made in the negotiating process of "claims and counterclaims backed by varying degrees of power and authority," and that the doctrine "inadequately supports the human-rights policies that its proponents identify as its normative basis." (Cheng, 2007)

The first point is a matter of controversy, heavily disputed by numerous other legal scholars, but it is also the least important. Whether or not there is a legal precedent for the odious debt doctrine only matters if one believes that the solution to solving the odious debt crisis lies in the judicial realm. If the solution to odious debt is political, however, as this paper will argue, then Cheng's critique is irrelevant.

Cheng's argument regarding the proper role of the odious debt doctrine is premised on the notion that "the international decision making process accommodates human-rights concerns in more nuanced ways than the brute doctrine of odious debts." (Cheng, 2007) He argues that the odiousness of debts can be part of any negotiations regarding debt relief after a state succession, much as it was in the case of post-Saddam Iraq. "Through this flexible decision making process," he writes, "international law balances the competing policies of preserving the global infrastructure and of attending to human rights according to the specific circumstances of each succession." (Cheng, 2007)

This is a decidedly questionable claim. International actors, be they countries, multi-lateral banks, or commercial creditors, pursue their own interests first and foremost. At times, these interests may coincide with the interests of poorer, less powerful actors, such as the people of an African country, but many times they do not. Even when they do, the implication is that the right of African people to not pay off the debts of their oppressors is a gift bestowed on them by more powerful international actors, often the very actors that were responsible for propping up the oppressive regimes in question. This is a highly patronizing assumption with numerous disturbing implications. The intersection of those interests, in any event, is rare. As Damle points out in his assessment of Iraq's debt forgiveness negotiations, the odious debt doctrine was used with some effectiveness as a bargaining tool because the United States actively sought Iraqi debt forgiveness, a measure of support not available to most countries.

But perhaps more to the point, there are two major problems with Cheng's line of thinking. First, Cheng's notion that international negotiations somehow inherently balance human rights with other concerns is premised on the idea that odious debts are being negotiated by parties uninvolved in the original problem: neutral creditors, successor governments, and other relevant international players. In reality, of course, the very actors that promulgated the Odious Debt System are the ones now negotiating debt forgiveness. The people of Gabon, for instance, have been stolen from, repressed, and shackled with debt by a regime that owes its existence to the French. Would Cheng suggest that negotiations between a hypothetical democratic Gabonese government (the existence of which France has worked hard to avoid) and the French would inevitably balance human rights with the interests of French officials and commercial entities?

Second, the evidence speaks for itself: no African country has ever attempted to repudiate its debt on grounds of odiousness, let alone successfully do so. If human rights were truly a priority in international negotiations, there are a host of countries in Africa that would have no external debt. Instead, these countries are forced to beg multi-lateral banks for partial debt forgiveness, despite the fact that these banks often played a role in the accumulation of such debt in the first place.

Cheng's argument that the odious debt doctrine does not necessarily serve the human rights purpose for which it is designed rests on the ideas that debt repudiation would bring with it the termination of future capital, thus causing more harm to the citizenry than is caused by debt service, and that the outright cancellation of debts would cause shockwaves throughout the international community, harming millions of people who would be impacted by the harm done to creditor institutions. Meanwhile, Posner and Choi make a slightly different argument: "loan sanctions pressure dictators to give up power and may deter would be dictators from taking power in the first place, but they also harm the dictatorship's public when dictators are not deterred, and they interfere with diplomatic efforts to obtain cooperation from dictators in matters of general interest." (Choi and Posner, 2007) All three of these claims merit discussion.

Cheng's first argument correctly identifies odious debt as a system and not a category of loans. Because of the threat of being alienated from future lending, successor governments do not repudiate debts, no matter how odious, and this is to the detriment of their citizens. The problem in this scenario is the connection between repudiating bad loans and not being offered good ones: this unfair dynamic demonstrates that odious debt is not bad lending, it's a bad system. Because this system exists, and because debt repudiation is certain to be punished (if not, in certain circumstances, spark a foreign-funded attempt at regime change), the ability to expunge Africa's odious debts has been effectively removed from African hands. Cheng recognizes this unfortunate reality, but as noted earlier, seems to believe that the very perpetrators of this system can be trusted to protect African human rights in lieu of an African-based repudiation movement.

Cheng's second point is valid in that it recognizes that creditors will likely pass on the costs of debt cancellation to the rest of us, despite the fact that in many cases such lenders have already recouped the initial sum of their loan plus enormous amounts of interest. The idea that millions of people around the world would be impacted by such an action – lost income, lost jobs, higher interest rates, etc. – is clearly lamentable, but its deleterious consequences pale in comparison to what is happening right now: the entire brunt of that burden is being carried by the world's poorest people. Spreading those costs across millions of people in developed countries can hardly be worse.

Posner and Choi argue that people living under dictatorship would be harmed by loan sanctions (the labeling of regimes as odious and the subsequent banning of loans to such regimes) because such penalties would leave the dictator with less incentive to invest in his country. In essence, the authors argue that loan sanctions would create a zero-sum game in which the dictator, cut off from foreign funding, attempts to monopolize his country's resources exclusively to retain power, even if such monopolization is economically inefficient. The short critique of this argument is that loan sanctions are not a solution to the system of odious debt in any event, and therefore their use is of minimal value at best. But there are also more direct critiques of this argument.

Most notably, as Bayart, Reno, and others have demonstrated extensively, African states *already* exhibit the markings of a zero-sum battle for resources, in which the elites in the regime attempt to monopolize every available resource to maintain power through coercive force and patronage. Moreover, such efforts are already often economically inefficient. Posner and Choi are correct when they state that dictators do make "quasi-public" investments - expenditures that benefit the public either partially or incidentally - and that such investments would likely be cut drastically by loan sanctions. (Posner and Choi, 2007) But incidentally beneficial spending would not be altered if the dictator's motive for such spending is self-interested. Partially beneficial spending might decrease, but, and this is the critical point, so would spending that perpetuated dictatorial rule. In fact, the biggest problem with Choi and Posner's logic is that it fails to take into account the manner in which foreign loans enable dictators to monopolize resources. Mobutu certainly attempted to monopolize the resources of the Shaba region, but without the help of U.S. troops and weapons, it is possible that region would have successfully removed itself from his sphere of influence in the late 1970's. Had that happened, Mobutu's ability to repress the rest of Zaire would have been circumscribed.

The idea that nothing should be done about the problem of Africa's odious debts, or that what should be done can be entrusted to the very institutions largely responsible for the debts in the first place, is lacking. Even the notion that odious debt is immoral but that efforts to eradicate it could have negative unintended consequences, the least problematic of the viewpoints discussed above, fails to acknowledge that there is a political solution to the problem, provided the political will is there to implement it. As such, it consigns hundreds of millions of people to odious debt bondage rather than explore the possibility of dynamic change. This section will now explore some of the more active, but still flawed, approaches to the odious debt problem.

THE SECOND APPROACH: PARTIAL DEBT-FORGIVENESS THROUGH HIPC

The World Bank and IMF, under pressure from civil society groups, crafted the Heavily Indebted Poor Country initiative (HIPC) in the late 1990's. This program was then enhanced under further external pressure to include more debt relief and to be predicated on fewer conditions. As of 2011, HIPC had delivered almost $180 billion in debt relief to roughly 40 countries around the world. (World Bank, 2011)

According to the World Bank, HIPC is solely about "debt sustainability." As such, its job is not to forgive debts based on odiousness or to cancel debts altogether, but rather to reduce debt burdens to "sustainable" levels on the condition that recipient countries address macroeconomic concerns and offer a plan for poverty reduction (in the form of a Poverty Reduction Strategy Paper, or PRSP). Whether or not HIPC achieves its sustainability goals is likely a question that will remain unanswered for some time, as some HIPC countries have seen their debt burdens start to rise slightly after sharp declines. Regardless, HIPC does not offer an effective solution to the problems posed by the Odious Debt System.

HIPC is an ineffective solution to odious debt for a number of reasons. First and foremost, HIPC is framed as a solution to an entirely different problem (debt sustainability) and thus fails, predictably, to solve a problem it does not acknowledge exists. This disconnect goes beyond simply a difference in objectives, and speaks to the institutional nature of the World Bank and the IMF. To read the World Bank's description of its own program is to understand the entire process described in this paper in technocratic terms: "During the 1970s, governments in poor countries borrowed heavily, based on the predominant development thinking that low-income countries should invest in industry, particularly import-substitution industrialization and infrastructure." (World Bank, 2012) There is no mention of borrowing for the suppression of domestic opposition or the purchase of luxury homes.

There is also little mention of the role of creditors in the explosion of debt, except an acknowledgement that "poor public sector management, *including, at times, poor project selection by donors,* meant the loan funds which were designed to increase productivity and generate exports failed to produce the expected yields and brought no long-term benefit in terms of capacity to earn foreign exchange." (World Bank, 2012, emphasis added) In a substantial reinforcement of the work of Ferguson and Harrison, politics is completely absent from the discourse and the actions of western institutions are assumed to be largely value-neutral, at worst well-intentioned but misguided.

It is unsurprising, therefore, that HIPC does not solve an entirely different problem than the one it seeks to address. Whether or not, for example, the DRC's debt burden is sustainable, it is certainly not legitimate, and it is certainly not just for the DRC's people to pay back any portion of their remaining obligations, particularly in light of the fact that they already have paid back enormous sums in debt service despite the odious nature of the debts in question. The only appropriate "solution," a dubious term to begin with given the irrevocable damage caused, to the Odious Debt System is the complete elimination of debts incurred under the system, if not a process of reparations. HIPC falls short of this measure.

It is legitimate, however, to inquire as to whether or not HIPC at least offers a positive first step toward debt justice. After all, it has substantially reduced debt burdens in many countries, and is consistent with the notion that important political and historical changes often occur in stages rather than all at once. Unfortunately, there is ample evidence that this notion is overly optimistic. Specifically, HIPC has failed to alter the system of power that is the hallmark of the Odious Debt System, does not offer in most cases a substantial alteration to the status quo of debt burdens in real terms, and creates an obstacle to real debt relief by giving the appearance of solving the debt problem.

Inherent in HIPC are two dynamics that reinforce the problematic power relations that helped cause the Odious Debt System to begin with: one is largely symbolic while the other is very much tangible. First, HIPC is presented as "debt relief," and thus as a gift from the West to the developing world. It is, moreover, a gift to be earned through proper economic stewardship and sufficient concern for the plight of the poor; failure to meet these objectives results in the withdrawal of the gift. After studying the Odious Debt System, it is easy to see the problem with this perspective. The Congolese might ask, for instance, how it is that debt relief from the World Bank (given, for example, the history of Inga-Shaba) can be viewed as a gift and not simply the return of stolen funds, albeit only a portion of those funds.

More importantly, however, HIPC continues the undemocratic nature of the debt paradigm, removing from African people the power to make certain economic decisions while at the same time imposing further conditions that go well beyond poverty reduction. First, HIPC was not instituted in a democratic manner: "ostensible 'participation' by civil society did not reform the HIPC and PRSP process." (Bond, 2005) Indeed, according to Patrick Bond, at least one study demonstrated that citizen-based coalitions "have been unable to influence macro-economic policy [under HIPC] or even engage governments in dialogue about it." (Bond, 2005)

Second, by attaching conditions to relief, the IMF and World Bank further the erosion of autonomy in African countries as governments on the continent are forced to accept whatever is demanded of them in exchange for the relief of debt that is illegitimate to begin with. These conditions are largely contained within the PRSPs, which to their credit emphasize poverty and health outcomes in contrast to the macroeconomic focus of SAPs, but which "maintain an insistence on the neoliberal fundamentals of economic management [including] strong and austere financial and budgetary management." (Harrison, 2010) Whether or not these policies are economically effective is subject to debate, but not by the debtor countries themselves, which must accept them regardless. Meanwhile, while PRSPs are ostensibly created by the debtor country itself and simply approved by the IMF, the "substance of 'ownership' is very slight: because of the high levels of dependence on external funding, governments usually write PRSPs in ways that will meet the approval of the IFIs." (Harrison, 2010)

Perhaps the biggest critique of HIPC, however, is based on whether or not it achieves even the modest aims to which it devotes itself. Many critics have noted, for instance, that the World Bank was overly optimistic regarding such data as export earnings, which led some countries to fail to reach the so-called "completion point" of HIPC. (Bond, 2005) This then calls into question the projections made by the World Bank in determining what level of debt is sustainable for a country moving forward. Meanwhile, HIPC "is…the starting point for a new raft of lending programs (which might make heavily indebted countries *more* indebted in the medium term)." (Harrison, 2010) Other critics contend that HIPC debt relief simply does not do enough to help countries break out of the poverty trap in which they find themselves, and thus inevitably debt levels will begin to rise again as the country attempts to borrow its way to prosperity. HIPC, in this sense, does not make heavily-indebted economies self-sustainable.

The numbers support these critiques. Benin, for example, was more than $1.5 billion in debt in 2005 before HIPC relief cut its debt burden to roughly $600 million, a sizeable reduction. (World Bank, 2012) Since that time, however, Benin's debt burden has risen steadily every single year, topping $1.2 billion in 2010. (World Bank, 2012) Below is a summary of the debt burdens of SSA HIPC countries before and after debt relief and again in 2010.

(Key: Countries in yellow have had debt rise since HIPC relief. Countries in pink have had debt rise above pre-relief levels.)

COUNTRY	BEFORE HIPC	AFTER HIPC	PRESENT DAY (2010)
Benin	$1.537 billion	$641 million	$1.22 billion
Burkina Faso	$1.99 billion	$1.12 billion	$2.05 billion
Burundi	$1.44 billion	$512 million	$537 million
Cameroon	$10.30 billion	$3.20 billion	$2.96 billion
Cent African Rep	$954 million	$394 million	$384 million
Dem Rep of Congo	$12.28 billion	$5.77 billion	$5.77 billion
Ethiopia	$6.20 billion	$2.28 billion	$7.15 billion
Gabon	$4.19 billion	$2.85 billion	$2.33 billion
Ghana	$6.78 billion	$3.32 billion	$8.37 billion
Gambia	$692 million	$365 million	$470 million
Liberia	$3.72 billion	$228 million	$228 million
Madagascar	$4.94 billion	$1.49 billion	$2.30 billion
Malawi	$3.18 billion	$848 million	$922 million
Mali	$3.20 billion	$1.59 billion	$2.33 billion
Mauritania	$2.3 billion	$1.60 billion	$2.46 billion
Mozambique	$5.00 billion	$2.60 billion	$4.12 billion
Niger	$2.00 billion	$828 million	$1.13 billion
Republic of Congo	$5.9 billion	$3.78 billion	$3.78 billion
Rwanda	$1.5 billion	$413 million	$795 million
Sao Tome	$351 million	$165 million	$170 million
Senegal	$3.83 billion	$1.90 billion	$3.68 billion
Sierra Leone	$1.75 billion	$523 million	$778 million
Togo	$1.96 billion	$1.63 billion	$1.73 billion
Uganda	$4.39 billion	$1.23 billion	$2.99 billion
Zambia	$7.45 billion	$2.27 billion	$3.69 billion

(World Bank, 2012)

What is notable about these numbers is not that these countries have seen increased debt since HIPC relief, since debt can grow apace with economic growth. What is notable is how quickly and how far these figures have risen: the vast majority of these countries received HIPC relief within the past seven years.

Furthermore, as Bond and others have pointed out, HIPC debt relief is largely cosmetic in that it forgives debts that were mostly not being paid back anyway. “Most of the [HIPC] countries….have vast debts – measured as a proportion of GDP – that can never be repaid; the countries are, in accounting terms, bankrupt. The notional reduction of these debts is effectively meaningless." (Bond, 2005) The Institute for International Economics (IIE) further estimated that about 90% of HIPC debt relief is meaningless for this very same reason. (Birdsall and Williamson, 2002)

This ties directly into the final reason why HIPC does not offer a positive step toward full debt relief: the public relations smokescreen it provides. HIPC, after all, began largely because of the advocacy of Jubilee, an international consortium of debt relief advocates that argues for a one-time complete cancellation of all poor country debts, regardless of odiousness. HIPC was initiated in response, and then "enhanced" in response to criticisms of the original program. To the extent that policy makers consider it to be a solution to the problem of odious debt, HIPC will hamper efforts by grassroots organizations to achieve meaningful debt relief for African countries. The problem, contrary to World Bank pronouncements, is not debt sustainability. We can now examine a series of proposed solutions that acknowledge the issue of odiousness.

THE THIRD APPROACH: THE ODIOUS DEBT DOCTRINE SCHEMES: TRIBUNALS, SANCTIONS, COURTS

As noted in the review of the literature, a number of different proposals have been put forward to address the problem of odious debt. While these approaches largely do not recognize the systemic nature of odious debt, if implemented in ideal circumstances they would still hold the potential to drastically alter the debt situation in African countries both in the present and the future. Unfortunately, each proposal has a major flaw that renders it incapable of succeeding. What is lacking, however, is not better design; a strong case can be made that the failure to recognize odious debt as a system is the *reason* why such proposals are not viable.

Ex-Ante

The ex-ante system proposed by Bolton and Skeel, among others, would empower an international institution to declare whether or not a particular regime is odious, thus warning creditors ahead of time that any loans to this regime can be legally repudiated by its successor. For example, if this international tribunal were to declare today that the new government in Gabon headed by Omar Bongo's son is odious, previous lending would not be impacted, but future lending would be subject to repudiation.

The problems with the ex-ante system are pronounced. First and foremost, the failure to address the massive volume of past debt is by itself a glaring omission. Africa's *current* odious debts are so enormous, so debilitating, and so costly to the human beings tasked with paying them back that any proposal for addressing odious debt must deal with the here and now. Notions of past justice aside, the future of African countries depends on the acknowledgement of this fact. As Ndikumana and Boyce argue in criticizing the ex-ante approach, "African countries therefore would remain snared in the debt trap left by irresponsible borrowing and complacent lending…" (Ndikumana and Boyce, 2011)

Certainly, the architects of the ex-ante system argue, its implementation would be preferable to the status quo. Kremer and Jayachandran make that very point in acknowledging some of the problems with the ex-ante scheme when they note that it would still be worth it if "even one such regime were denied loans." (Kremer and Jayachandran, 2002) But this is debatable. The design of the ex-ante system in fact raises a series of questions that may in fact support the argument that it could do more harm than good.

First, any proposal to solve the odious debt problem that incorporates the existence of an international body charged with making determinations much confront the inherent political bias of that institution. To succeed, such an institution would necessarily attract the support of powerful creditor nations without being subsumed by their interests, a feat that has yet to be accomplished by any international institution in history. The International Criminal Court (ICC), for instance, failed to attract the participation of the United States when the U.S. felt its interests were threatened by it. The United Nations is dominated by its security council, which in turn is dominated by the five countries that have the most prevalent ties to African dictators of perhaps all the other non-African countries in the world. Declaring Sudan to be odious, for example, would likely be vetoed by the Chinese and/or the Russians. Gabon would be protected by France, Rwanda by the United States, among many, many other examples.

Supporters of ex-ante would again argue that if universally reviled regimes were the only ones cut off from lending, this would at least be a step in the right direction. But Ndikumana and Boyce point out that such a system would implicitly give free rein to dictators lucky enough to avoid being labeled as odious to borrow and loot at will. Furthermore, what is the definition of an odious regime? How could even a politically unbiased institution properly label certain regimes as odious and others as non-odious?

That last point leads some proponents of the ex-ante system to advocate for a process that labels loans, rather than regimes, as odious. Odious loans can be defined perhaps more easily than can regimes, as the money loaned is spent in some manner, which can in turn be measured by its benefit to the population. But as Paul Stephan points out, the fungibility of money is a severe obstacle to this concept. If a dictator spends loan money building hospitals and then uses tax money to build palaces, the loans would not be deemed as odious. On the one hand, this is surely an improvement on the status quo, in which dictators spend both loan and tax money on whatever they please. On the other hand, loan money deemed to be not odious can be used to fund patronage systems in a variety of ways that might appear to benefit the population as a whole, thus prolonging the dictator’s rule and thus his ability to appropriate public money for his own gain. Again, this also bestows a veneer of respectability upon regimes that likely are not very respectable, while simultaneously doing nothing about the billions of dollars in past loans.

Ex-Post

The ex-post approach, on the other hand, addresses the issue of past loans by creating a tribunal or legal institution that would label such loans as odious or not odious and thus offer a path to repudiation. Advocates such as Ndikumana and Boyce argue that this is far superior to the ex-ante approach in that it addresses the issue of past loans while simultaneously sending a signal to creditors regarding the potential for repudiation of future loans. Unfortunately, the ex-post approach is seriously flawed as well.

First, ex-post requires the creation of a tribunal or legal institution that will adjudicate the odiousness of loans, and thus replicates the serious problem inherent in the ex-ante system. Such an institution will inevitably represent the interests of its strongest participants or else fail to induce their participation; this dynamic holds whether the institution created is political (i.e. UN) or legal (ICC) in nature. This alone is enough to question the merits of the ex-post process, but other problems arise in its application as well.

Bryan Thomas of the CISDL, for instance, notes that the endless restructuring agreements and loan forgiveness programs that marked the 1980's and 1990's and are continued today through HIPC render the debt burdens of developing countries incapable of separation into individual loans. (Thomas, 2003) Even a clear-cut case such as Inga-Shaba, for example, cannot be properly separated from hypothetically non-odious loans made to the DRC over the past thirty years: was the $1 billion spent on Inga-Shaba part of the money forgiven as part of HIPC or not? It is impossible to know because none of these measures to reduce, delay, or even increase third-world debt has ever referenced odiousness as a motivating factor. There is also the smaller problem of so-called "partially odious debts," in which money is spent on a legitimate development project but part of it is siphoned off by corrupt officials. Again, sorting out the final resting place of these funds is virtually impossible, particularly in countries where government officials had a vested interest in not diligently maintaining a paper trail.

Finally, ex-post, like ex-ante, does not solve the odious debt problem because it does not recognize its systemic nature. To sort out loans made to Mobutu is to miss the far bigger picture: a system was in place that allowed Mobutu to indefinitely elongate and deepen his rule such that the amount of any individual loan does not capture its true economic or social impact. Even if every single loan made to Mobutu were forgiven, one by one, this would not capture the lost revenue caused by Zaire's economic decline, nor would it capture intangibles such as the interest on capital flight or the impact of SAPs imposed because of the escalating debt burden. Nor could such forgiveness even cover the true cost of the debt by itself given the fact that many countries have paid back more in interest (and at high interest rates) than they ever received in loans.

Other innovative proposals fall short for similar reasons. Shafter's "due diligence" model in which regimes are labeled as "odious-debt prone" and future loans are thus more carefully scrutinized is creative and flexible. (Shafter, 2008) It does not, however, address past loans, nor does it escape the problem of creating an international institution that plagues other approaches. Ginsburg and Ulen's market incentive approach is similarly creative, and it involves offering debtor countries market incentives to promote the repudiation of debt. (Ginsburg and Ulen, 2007) This notion is an innovative method of dealing with the classical definition of odious debt (as opposed to the systemic notion), and successfully addresses the issue of past loans. The only question, then, is what institution or entity would provide the incentives. The authors reference the United Nations and the IMF/World Bank, and conclude that the IMF/World Bank would be a better option. Unfortunately, therefore, it seems like a significant institutional shift would have to occur within those institutions for the market incentive plan to work. If such a shift did occur, the creation of the market-incentive plan would likely be the least of the victories claimed by the debt relief movement as a result.

IN THAT CASE, "WHAT IS TO BE DONE?"

In *The Anti-Politics Machine*, James Ferguson devotes nearly 300 pages to critiquing World Bank development projects in Lesotho before turning to a more hopeful question with regards to the intractable problem of African poverty: "what is to be done?"   (Ferguson, 1994) He notes a number of questions within that larger inquiry, including "what should they do?" ("they" meaning Africans), to which he replies "they are already doing it!" (Ferguson, 1994) He then turns to the next question that follows: "what should we do?" ("we" meaning well-intentioned westerners) to which he gives a powerful answer. (Ferguson, 1994) "Making 'development' the form of one's intellectual political engagement would seem to imply the view that democracy, equality, and empowerment are to be worked for and brought about through the benevolent intervention of state agencies…" (Ferguson, 1994) Africans are capable of designing their own societies and economies and do not need the help of western "experts."

What Westerners *should* do, Ferguson argues, is engage in the "political participation in one's own society that is appropriate to any citizen. This is perhaps particularly true for citizens of a country like the United States, where – thanks to an imperialistic power projected all across the globe – national politics powerfully impacts upon the rest of the world." (Ferguson, 1994) It is in this understanding of the role of well-meaning western citizens that a solution to the Odious Debt System may be found.

Throughout history, it is rare that a powerful injustice is ended without sustained action by coalitions of grassroots individuals. From slavery to colonialism to Apartheid, Africa has been a perfect example of this, and is probably the area of the world that stands to benefit the most today from sustained direct political action. It is the conclusion of this paper that only this type of action offers a meaningful solution to the Odious Debt System.

If western countries and multi-lateral banks are unwilling to acknowledge the existence of odious debt (except when it is politically convenient) and African nations are unable to repudiate such debt for fear of being denied future credit, it is the role of ordinary citizens to pressure those governments and institutions to do what is in the interest of African peoples. Only through direct political pressure from the outside can institutional logic be altered and powerful interests overcome.

Already there exists a vehicle for such a movement: the Jubilee Network. Founded in the 1990's, Jubilee is active in both the developing and developed worlds, with offices in Washington and London but also across the global South. In the United States, Jubilee has built a broad political coalition that includes both some of the most liberal and some of the most conservative members of Congress. It works actively with the IMF and World Bank to push those institutions to act in the interest of ending global poverty, while simultaneously organizing outside activism to pressure lawmakers to pass relevant legislation.

The Odious Debt System is not going to be ended without a significant change in international power relations, a change that will not come about simply through the creation of a new institution, or the invention of a creative scheme. If Africa's current odious debts are to be expunged, they will have to be expunged by force of will; if African governments are unable to repudiate them directly, western governments must be pressured to cancel them unilaterally. If future odious debts are to be pre-empted, western creditors of all kinds must be dissuaded from supporting African dictators; governments can be influenced through political pressure, banks through economic pressure. And if African dictators are to no longer receive the support of western governments, the force of will necessary to cancel debts must be extended into long-term pressure aimed at altering the foreign policy decisions of powerful nations.

Specifically, this paper advocates the following:

- An international advocacy movement aimed at cancelling all third-world debt, with a particular focus on the odiousness of the vast majority of that debt.
- Individual national debt audits in developed countries along the lines of the one recently announced by Norway. Such audits would shed light on the past history of odious lending and further the advocacy goals advanced in point one.
- Increased collaboration between African and western debt-relief advocates in the interest of building long-term relationships that can help avert future odious relationships between western governments and despotic regimes.

Mobutu Sese Seko once told his Rwandan counterpart, Juvenal Habyarimana: "I told you not to build any roads…building roads never did any good…I've been in power in Zaire for thirty years and I never built one road. Now they are driving down them to get you." (Meier/Stiglitz, World Bank, 2001) By "them," Mobutu was referring to the armed soldiers of the RPF who were marching toward Kigali. If Africa is to have a brighter future, it is time for a very different type of movement to emerge on the horizon, and to travel down that road to capitals everywhere, African and Western alike.