Jeff King

_The Doctrine of Odious Debt in International Law. A Restatement._

This book deals with some of the major questions that a human rights lawyer could pose in finance. Must debts arising out of transactions that aided the defeated country in preparing war against the successor state be repaid (war debts)? Must debts contracted by an illegal occupying power be repaid by the occupied country (illegal occupation debts)? Must debts procured through bribery or corruption of a state representative be repaid (corruption debts)? Must debts taken for the purpose of facilitating the violation of _jus cogens_ norms, perpetration of flagrant or serious violations of human rights, humanitarian law, or other fundamental international law principles to the detriment of the population of the debtor state, be repaid (subjugation debts)? As King himself acknowledges, this last debt category is the most controversial, and the focus of my review will be on these so-called subjugation debts.

The book makes a number of important contributions to the debate on odious debts. One of them is that what really matters is the legal principle on which this concept might be based, rather than its label (odious, illegitimate or illegal debt). The author begins by tracking down the origins of the doctrine. The Russian jurist Alexander Nahum Sack was the first scholar to propose the odious debt doctrine in 1927.1 His work has considerably shaped the ideas of a number of legal scholars and civil society organizations that in the nineties rediscovered Sack’s work.2 Jeff King also presents in a very detailed fashion the international practices that support (and sometimes contradict) the odious

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1 Alexander Nahum Sack, _Les effets des transformations des Etats sur leurs dettes publiques et autres obligations financières: traité juridique et financier_ (Sirey 1927).
2 See, for example, Patricia Adams, _Odious Debts: Loose Lending Corruption and the Third Worlds_ (Earthscan 1991).
debt doctrine. As the author suggests, most of this practice does not really support the idea that, without a state succession (i.e. being about government change only), debts can be considered odious and therefore not be repaid.

The author openly challenges the classical (Sackian) odious debt doctrine by presenting his own (see his definition above), which, in my view, is compelling if limited to *jus cogens* (including humanitarian law) norms: nobody is allowed to facilitate international crimes and this has nothing to do with government changes or state successions.

Anyway, as the author’s definition of odious debt does include the purpose of facilitating the violation of *jus cogens* norms, this leads us to the notion of responsibility for complicity. It is for this same reason that the next step should be undertaking a more thorough review of what international human right treaties and jurisprudence establish in terms of economic complicity. Actually, the term ‘complicit’ is mentioned only a couple of times in the book (pp. 3, 99, 146–7), while subjugation debts are actually about being financial accomplice with serious human rights violations. In my view, if this analysis were carried out at greater depth, King’s proposal would be supported by overwhelming legal evidence.

It is true, the author goes further than *jus cogens* violations as he suggests that debts may be odious if they facilitated flagrant or serious violations of human rights or other fundamental international law principles. Here we enter into an extremely controversial area.

The starting point is that there is no unanimity on what these fundamental international law principles include. For example, debt sustainability might be seen as a crucial principle in international law because of its implications for the world economy, but it remains to be seen how many people might think that the reckless loans lent to Greece must be regarded as odious.

‘*There is life after Sack*’ seems to be the message King wants to give to those who believe that finance must not assist with the commission of atrocities, but rather be a force for the realization of human rights. After making this strong case about the illegality of financial transactions that facilitate the commission of *jus cogens* violations, the author discusses (pp. 188–191) what I believe is the most complex aspect of odious debts: the causal link between debts and the human rights violations. King is right; reality can be so complex!

King suggests that what really matters is the purpose of the loan (p. 69), whether or not it aims at facilitating serious human rights abuses. Let me problematize it a bit more.

Lending to regimes that commit gross human rights violations in principle contributes to regime consolidation, prolongs disrespect for human rights and increases the likelihood of gross violations of human rights. This is what