

Iraq's Odious Debts

by Patricia Adams

Executive Summary

Most debts created by Saddam Hussein in the name of the Iraqi people would qualify as “odious” according to the international Doctrine of Odious Debts. This legal doctrine holds that debts not used in the public interest are not legally enforceable.

There is a widespread acknowledgment that the debts created by Saddam Hussein's regime bought weapons, palaces, and instruments of repression. Iraqi legislators should, as a first order of business, establish an arbitral process to determine the legitimacy of the estimated \$120 billion in claims against their people. Only after Iraqis have an accurate accounting of these claims against their nation, and determine which are legitimate, should they appeal to creditors for debt relief, if any is required. To do otherwise would allow creditors to evade responsibility for financing Saddam's regime against its people.

An odious debts arbitration would demonstrate to Iraqis that justice can be served by the

rule of law. An arbitration would also expose the role of foreign creditors and thus help establish accountability in other countries.

Fears that an Iraqi debt arbitration would threaten the stability of international finance are misplaced: most claims against Iraq are held by public creditors, not private; furthermore, an arbitral process would establish the due diligence that creditors need to observe in order to protect future loans against odious debt charges. By clarifying the responsibilities of creditors (or borrowers), and thus their rights to repayment (or repudiation), an odious debt arbitration would help reduce the moral hazard that has destabilized international finance for the past 60 years. More profoundly, by giving creditors an incentive to lend only for purposes that are transparent and of public benefit, future tyrants will lose their ability to finance their armies, and thus the war on terror and the cause of world peace will be better served.

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Introduction

Before the recent war in Iraq, Iraqi exiles expressed their hopes for a democratic post-Saddam Iraq. They addressed the moral question of how to deal with Saddam's debts. These Iraqis wanted the future administration of Iraq to review the debts accumulated under Saddam's regime, to pay back those loans that were used for benign purposes, and to repudiate those that were used for objectionable purposes.

Rubar Sandi, now chairman and CEO of Corporate Bank Business Group, an international finance and investment group based in Washington, D.C., was a leader among those Iraqi exiles. He left Iraq in 1975 following the Kurdish uprising. At a State Department Economic and Infrastructure Working Group on Iraq meeting in December 2002, he was asked whether he and fellow Iraqi participants would recommend that the new Iraqi government seek debt relief from its international creditors. Sandi explained that the participants described Iraq's debts as being of two types: civilian debts for food, textiles, and so forth, and military debts. The Working Group felt strongly that a new Iraqi government should honor civilian debts, but that military debts should be renegotiated because they were incurred by a government that was not representative of the population.¹ From the other side of the Atlantic, Iraqi dissident and economics professor Kazem Habib, who now lives in Germany, agrees: "The Iraqi people are not responsible for these debts. It was the regime."²

In September 2003, Mahdi al-Hafidh, minister of planning in the interim Iraqi government, denounced the continued payment of reparations to Kuwait, arguing that the rebuilding of Iraq would cost at least \$100 billion, and that the former regime, not the Iraqi people, invaded Kuwait and contracted enormous loans. He said that today's Iraq should not be burdened with these past obligations incurred by Saddam.³

Many other Iraqis support him. Hajim Al Hassani of the Iraqi Islamic Party was unequiv-

ocal: "Iraq is not responsible for any debts which supported the regime's war machine. They are asking us to pay for the knives they gave Saddam to slaughter us. Really it is the creditors who should be paying compensation to Iraq."⁴

Their argument rings true to ordinary Iraqi citizens. The Iraqi argument also captured the attention of western governments and the press, particularly when they learned that the Iraqi approach has a basis in law—it reflects a 100-year-old legal principle that has come to be known as the Doctrine of Odious Debts.

The Doctrine of Odious Debts: Its Origin and Development

Though the Doctrine of Odious Debts has not been used often, the principles that define it are well known to France, Russia, Germany, and the United States.⁵

In the United States, for example, following the Civil War, the Fourteenth Amendment repudiated the debts that the Confederate States incurred in an attempt to form a new regime as not being the responsibility of either U.S. citizens or the southern states. Section 4 of the amendment states: ". . . neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States . . . all such debts, obligations and claims shall be held illegal and void."⁶ To honor debts incurred for such dishonorable purposes would have been unconscionable, the U.S. government and the majority of the U.S. citizenry believed, particularly in light of the Reconstruction of the South.

After the Spanish-American War in 1898, the United States employed the principles of the doctrine in repudiating Cuba's Spanish debts, saying they were "imposed upon the people of Cuba without their consent and by force of arms."⁷ Furthermore, the American commissioners to the peace negotiations argued, much of the borrowing was designed to crush attempts by the Cuban population

to revolt against their domination, and was spent in a manner contrary to their interest.

“They are debts created by the Government of Spain, for its own purposes and through its own agents, in whose creation Cuba had no voice.”⁸ As such, the Americans argued, these debts could not be considered local (Cuban) debts, nor could they be binding on a successor state.

As for the lenders, the American commissioners replied, “the creditors, from the beginning, took the chances of the investment. The very pledge of the national credit, while it demonstrates on the one hand the national character of the debt, on the other hand proclaims the notorious risk that attended the debt in its origin, and has attended it ever since.”⁹

The dispute over the “Cuban debts” became one of the most contentious cases of debt repudiation—repudiation caused not because the debts imposed an excessive burden on the successor, but because illegitimate parties contracted them for illegitimate purposes. Such debts became known in law as “odious debts.”

The legal Doctrine of Odious Debts was given shape by Alexander Nahum Sack a quarter of a century after the settlement of the Spanish-American War. After the Russian Revolution of 1917, the Bolsheviks repudiated Russia’s debts indiscriminately. Sack, a professor of law in Paris and former minister in the Tsarist government, authored two major works on the obligations of successor systems and defined in law which debts are legitimate and which illegitimate. With colonial territories becoming independent nation states and colonies changing hands, with monarchies being replaced by republics and military rule by civilians, with constantly changing borders throughout Europe, and with the ascendant new ideologies of socialism, communism, and fascism overthrowing old orders, Sack’s debt theories dealt with the practical problems created by such transformations of state. Like many others, Sack believed that liability for public debts should remain intact, for these debts represent obli-

gations of the state—the state being the territory, rather than a specific governmental structure. This he based not on some strict dictate of natural justice but on the exigencies of international commerce. Without strong rules, he believed, chaos would reign in relations between nations and international trade and finance would break down.

But Sack believed that debts not created in the interests of “the state” should not be bound to this general rule. Some debts, he said, were “dettes odieuses.”

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

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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.¹⁰

The Versailles Treaty of 1919 also applied the principles of the Doctrine of Odious Debts. The Reparation Commission refused to apportion debts to the newly liberated Poland that had been incurred by the German and Prussian governments to colonize Poland. The Commission termed this decision a just reversal of “one of the greatest wrongs of which history has record.”¹¹

These principles also were applied in an important case involving 1919 loan payments by the Royal Bank of Canada, a Canadian commercial bank, to Frederico Tinoco, the outgoing dictator of Costa Rica. The new Costa Rican government challenged the debt before Chief Justice Taft of the U.S. Supreme Court, who took a leave from his Supreme Court duties to sit as arbitrator.

In his 1923 ruling, Chief Justice Taft noted that the transactions in question were “full of irregularities.” They were also “made at a time when the popularity of the Tinoco Government had disappeared, and when the political and military movement aiming at the overthrow of that Government was gaining strength.”¹²

The payments, Justice Taft discovered, were made to cover either Tinoco’s expenses “in his approaching trip abroad,” or his brother’s salary and expenses in a diplomatic post to which Tinoco appointed him.

The Royal Bank, Justice Taft ruled, cannot base its case for repayment on “the mere form of the transaction” but must prove its good faith in lending the money “for the real use of the Costa Rican Government under

the Tinoco régime . . . for its legitimate use. It has not done so. The bank knew that this money was to be used by the retiring president, F. Tinoco, for his personal support after he had taken refuge in a foreign country. It could not hold his own government for the money paid to him for this purpose. The position was essentially the same in respect to the payments made to Tinoco’s brother.”¹³

In conclusion, Justice Taft ruled, “The Royal Bank of Canada cannot be deemed to have proved that the payments were made for legitimate governmental use. Its claim must fail.”¹⁴

Legal scholars from Montreal’s McGill University’s faculty of law examined these cases, and nearly a dozen other such precedents, in a recent study to determine the legal basis of the doctrine. They found that the doctrine has considerable support under international law. For example, state practice going back to the U.S. repudiation of Texan debts in the mid-1800s up to the recent dissolution of the former Yugoslavia demonstrates that the obligation to repay debts, the proceeds of which were spent against the interests of the people, has not been absolute. The McGill team cites various principles of law that reinforce the doctrine’s application. For example, the principle of “unjust enrichment” undermines an odious creditor’s rights to repayment and strengthens a legitimate creditor’s rights to repayment. For another, the law of domestic agency governs the way in which agents can create legally binding obligations for those they represent. A creditor dealing with an agent of questionable legitimacy, such as an illegitimate government, may be at risk. The common law and its equivalent under the civil law, argue the McGill team, provide a rich jurisprudence of the rights and obligations of the agent (government) and the principal (the state or population).¹⁵

McGill’s legal team concluded that, on the basis of state practice, general principles of law, the writings of highly qualified legal publicists, and judicial decisions, there are indeed legally persuasive arguments for the “morally compelling doctrine of odious debt.”¹⁶

Despite the apparent strength of the legal Doctrine of Odious Debts, successor governments in debtor countries have been reluctant to invoke the doctrine out of fear that international lenders would boycott a fledgling regime. This is the case in South Africa, where Archbishop Desmond Tutu's Truth and Reconciliation Commission supported an investigation into the odiousness of inherited debts, and many continue to campaign against the odious apartheid-era debts.

The fear of a lenders' boycott has just cause. Lenders, both public and private, are quick to threaten debtor successor governments with financial boycotts if they repudiate their debts, typically enlisting multilateral institutions such as the World Bank and the International Monetary Fund in their cause. When Ethiopia's successor government objected to the repayment of Soviet-era debts—"this was money given to the old regime to kill us," Ethiopians said—the IMF acted as an enforcer for Moscow's debts. "We had to tell the Ethiopians that you've got to negotiate with Russia" or the IMF couldn't approve loans to Ethiopia, a former IMF official admitted to the *Wall Street Journal* last year.¹⁷

Not only do creditor states treat default (or worse—repudiation) as taboo, they go out of their way to keep bankrupt debtors in a semblance of solvency. Creditor states do this by extending new loans through public multilateral agencies, such as the World Bank and the IMF, or through their bilateral agencies, such as foreign aid or export credit agencies, thereby helping debtors to service their old debts with new loans. At the same time, the creditor states relieve a little of the debtor states' burden by "rescheduling" their own claims against debtors through an informal collective of sovereign lenders called the Paris Club. Rescheduling typically involves some combination of interest rate reduction, principal write-offs, and extended repayment periods.

This combination of the carrot and the stick has helped ward off odious debts claims by Third World nations for the past 60 years. Iraqi creditor states are now scrambling to organize such a rescheduling package in the hope that the same strategy will work in Iraq,

which is now estimated to be the most heavily indebted nation in the world.

How Much Does Iraq Owe, to Whom, and for What?

No one knows precisely how much debt Saddam incurred in his people's name. Official government statistics weren't systematically kept; those that do exist aren't precise and don't add up; some documents have been looted; and the creditors, by and large, aren't talking.¹⁸ The World Bank and IMF haven't been in the country since the 1980s; hence the World Bank's table on external debt leaves the line for Iraq completely blank.¹⁹ After contacting some 50 countries, requesting information about any outstanding debt and arrears owed to them by Iraq, the IMF completed its "debt sustainability analysis" in May 2004 but refused to make it public because, according to IMF spokesman Thomas Dawson, it contains confidential information supplied by creditor nations.²⁰ IMF officials admit that they still don't know the total claims against Iraq and that they have "no way of verifying" the claims they are aware of.²¹

The best estimates, indeed the ones that have been adopted by everyone who is trying to evaluate how serviceable or crippling the debt might be, come from the Center for Strategic and International Studies. Authors Frederick Barton and Bathsheba Crocker estimate Iraq's total potential obligation at \$383 billion: \$127 billion in debt; \$57 billion in pending contracts; and \$199 billion in actual and potential Gulf War compensation claims.²²

But, if the details of the debt aren't precise, the distribution of debts is. The overwhelming majority of claims against Iraq come from state, not private, lenders. Iraq's debt crisis is a crisis for governments that lent state funds to Saddam Hussein's government. Taxpayers are largely at risk here, not shareholders.

Of Iraq's total estimated debt, some \$3 billion is owed to private banks that are members of the so-called London Club of creditor

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Table 1
Iraqi Debt by Size of Claim (in US \$ billion)
 (bold states are Paris Club members, italic states are Gulf States)

Source	CSIS (Center for Strategic and International Studies, Washington D.C.)			Exotix (London)	Paris Club (Press release, July 10, 2003)	Jubilee Iraq (additional sources)	Sources
	Compensation	Debt	Contracts				
<i>Kuwait</i>	68.800	17.000		85.800			(MEES)
Russia		12.000	52.000	64.000	3.450**	27.000	(Channel News Asia)
<i>Saudi-Arabia</i>	12.040			12.040			
Jordan	13.760	0.295		14.055		1.000	(<i>The Hindu</i> , 04/14/03)
India	6.880			6.880	0.9308	1.600	(<i>Daily Telegraph</i> , 04/16/03)
UK	6.880	6.880				5.580	(Asahi.com)
Japan			6.880		4.1086	7.000	(Bloomberg, 06/10/03)
Netherlands	1.720		3.600	5.320	0.0967		
Germany	5.160			5.160	2.4039		
Egypt	3.440		0.740	4.180			
Turkey	3.440	0.800		4.240			
Italy	3.440			3.440	1.7260		
United States						5.000	(Dow Jones, 03/29/03)
France	3.440			3.440	2.1920	4.000 (incl. interest)	(Iraq's Economy: Past, Present, Future—U.S. Congress, 06/03/03)
Serbia	1.720		0.073	1.793	2.9937	4.000	(Review of Int. Social Questions, 04/09/03)
Canada	1.720			1.720	0.5642	1.8 to 2	(website of Serbian government)
Syria	1.720			1.720			
Israel	1.720			1.000			
Bulgaria		1.000				1.512	(22nd Bulgarian-Iraq Committee on Cooperation)
Austria					0.8131		
China		0.080		0.080		> 2	(ABC)
<i>U.A.E.</i>		0.703		0.703			
Yugoslavia							
				0.700			

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Table 1 *continued*

Source	CSIS (Center for Strategic and International Studies, Washington D.C.)			Exotix (London)	Paris Club (Press release, July 10, 2003)	Jubilee Iraq (additional sources)	Sources
	Compensation	Debt	Contracts				
Romania				0.530	0.4993	1.700	(<i>Bucharest Business Week</i> , 04/21/03)
Australia							
Poland		0.500		0.530		0.700	(<i>Boston Globe</i> , 04/20/03)
Spain					0.3212		
Brazil					0.1929		
Sweden					0.1858		
Belgium					0.1845		
Finland					0.1522		
Switzerland					0.1175		
Czech Republic				0.530		0.06 to 0.1	(<i>Boston Globe</i> , 04/20/03)
Korea					0.0547	1.100	(<i>Dow Jones</i> , 03/29/03)
Denmark					0.0308	1.100	(<i>Dow Jones</i> , 03/29/03)
Morocco		0.032		0.032			
Hungary		0.017		0.017			
<i>Gulf States</i>		30.000		30.000			
London Club				17.500			
Paris Club (without France and Russia)				2.600	9.500	11.000	(<i>Herald Tribune</i> , 04/26/03)
Multilateral Organizations							
Others	36.120	18.357		1.100			
Other Trade Claims				26.100			
Remaining obligations	27.000			2.200			
Interest	199.000	127.000	57.196	116.490	21.0179		

* Definition of debt concerned: the figures cover, from the debtor side, the amounts due by the public sector. From the creditors point of view, the figures include credits and loans granted, or guaranteed by, the governments or their appropriate institutions. Basically, private claims (debt owed to private creditors) as well as private debt (owed by private Iraqi institutions without public guarantee) are excluded from this recollection.

** Russian claims: this figure represents the amounts due to Russia after a simulation of the adjustment on Soviet-era claims consistent with Paris Club methodology.

Iraq's major creditors were Japan, Russia, France, and Germany.

banks, and some \$10 billion is owed to corporate creditors.²³ “Saddam was, after all, under United Nations sanctions for 13 years, and that was enough to drive away private lenders who might otherwise have been well-disposed toward lending to an oil-rich nation. So in this one case, private lenders are largely free of sin,” says George Melloan, in the *Wall Street Journal*.²⁴ Iraq's major creditors, by far, were sovereign nations, the largest being Japan, Russia, France, and Germany. Adds Melloan, “All of it had to do with politics, in one way or another.”

Those state creditors' claims vary, depending on who is counting (see Table 1). The Paris Club of creditors, an informal organization of official (state) creditors, estimates that its members, plus Brazil, Korea, and Russia, are owed \$21 billion for principal and that much again for interest payments on the debts.²⁵ Japan, Russia, France and Germany account for nearly two-thirds of Paris Club debt. The IMF estimates that the balance owed to non-Paris Club official creditors is probably \$60–\$65 billion.²⁶

But although very little precise detail is known about how the money was spent, it is clear that the borrowed funds were used, in the words of Deputy Secretary of Defense Paul Wolfowitz, “to buy weapons and to build palaces and to building instruments of repression.”²⁷

According to economist Robert Looney at the Naval Postgraduate School in Monterey, California, many of the loans “were contracted for purely military or defense related purposes: \$37 billion is in loans from the Gulf States (\$17 billion from Kuwait alone) for support during the 1980–88 war with Iran. France is owed \$4 billion, much of it to pay for F1 fighters and Exocet air-to-surface missiles, and \$9 billion is owed to Russia for purchases of MIG fighters and helicopters.”²⁸ These loans made no contribution to the country's debt-servicing capability.

Other sources confirm the same. Marek Belka, a former Polish finance minister who spearheaded the fundraising efforts of the U.S.-led Coalition Provisional Authority in

Baghdad, estimated “about 90% of Iraq's potential, virtual debt is war-related.”²⁹ James Baker, former secretary of state under the previous President Bush, now the special presidential envoy on Iraqi debt to President George W. Bush, said former communist nations in Eastern Europe are owed a “surprising amount of debt.” Serbia claims payment of approximately \$2.5 billion, while Romania and Bulgaria are each claiming over one billion. “It's all arms [sales] during the Cold War, probably,” he said.³⁰

Meanwhile, details about how old, unpaid debts were converted into oil concessions after Saddam went into arrears are coming to light. According to the Iraqi-Canadian Society for Writing-off Iraqi Debts in a letter to the prime minister of Canada, Russia renegotiated its debts with Saddam in 1994 and linked debt settlements with oil concessions to the Russians.³¹ In 2001, the *Washington Post* reported that Russian foreign minister Igor Ivanov was warning that Moscow would veto the U.S.-based sanctions resolution because it threatened Russia's commercial relations with Baghdad. That article noted that Iraq owed Russia about \$8 billion, largely for arms sales made during the Soviet era, and that Russian companies were major middlemen in the Iraqi oil trade.³² According to London's *Observer*, as of October 2002 Iraq had reportedly signed several multibillion-dollar deals with foreign oil companies, mainly from China, France, and Russia.³³ “Among these, Russia, which is owed billions of dollars by Iraq for past arms deliveries, has the strongest interest in Iraqi oil development, including a \$3.5 billion, 23-year deal to rehabilitate oilfields.”³⁴ According to Alan Murray in the *Wall Street Journal*, Russia is owed \$12 billion by Iraq for past loans, and 15 percent of Iraq's total debt is made up of pending contracts that Saddam issued. “Russia is the biggest player here as well,” says Allan Murray, “with 90% of the contract total, or about \$50 billion in contracts to help Iraq develop its oil fields. France, China and the Netherlands also have sizable contracts.”³⁵

Other oil concessions are believed to have been awarded to the French and Chinese by

Saddam Hussein in lieu of repayment on military debts. Paris has reportedly had close relations with Baghdad since at least the 1970s, when then Premier Jacques Chirac, now French president, increased arms sales to Iraq. France also sold anti-ship missiles, Mirage fighter bombers, and other aircraft to Iraq in the 1980s when it backed the country in its war against Iran.³⁶ According to Holman Jenkins Jr. of the *Wall Street Journal*, the huge Majnoun and Nahr Umr fields were reserved for TotalFinaElf, partly owned by the French government. "Not even Jacques Chirac can pretend that such concessions weren't France's reward for acquiescing in Iraq's diligent strategy to escape sanctions and resume its pursuit of exotic weapons," Jenkins wrote.³⁷ The *Wall Street Journal* later reported that, according to analysts, "French companies, historically among Iraq's biggest trading partners, have written off the money owed them by Mr. Hussein's regime." The article went on to say that a report prepared for the French National Assembly's Defense Commission estimated Iraq's unpaid bills to France, for weapons and other purchases, at between \$2.26 and \$2.59 billion.³⁸

While precise detail about individual debts and obligations is rare, an exposé in the UK-based *Guardian* newspaper gives a glimpse into the shadowy world of financing Saddam's regime. As U.S. and British troops were amassing along the Iraqi border in March 2003, the *Guardian* ran a series of articles that described a chemical plant that the United States said was a key component in Iraq's chemical warfare arsenal. The plant was secretly built in 1985 behind the backs of the Americans, with loans from the U.K. government. Documents showed that British ministers in the Thatcher government knew at the time that the £14 million plant, called Falluja 2, was likely to be used for mustard and nerve gas production and that the deal should be kept secret from the American administration, which was pressing for controls on such exports, and from the British public, which was financing the deal with insurance guarantees through the Export Credits Guarantee Department

(the U.K. equivalent of the U.S. Export-Import Bank). Communications between the company that was building the plant, Uhde Ltd., a U.K. subsidiary of German chemical giant Uhde, and SEPP, Iraq's state enterprise for pesticide production, broke down with the onset of the Iraq-Kuwait war. "Associated trade debtors have been written down to the amount recoverable from the ECGD," Uhde's final set of records said. The ECGD admitted that it subsequently wrote a government check to the company for around £300,000.³⁹ Repayment for this insurance claim may well be part of the U.K.'s \$1 billion claim from Iraq through the Paris Club.

Surely, not every loan and credit to Iraq was odious. Doubtless, some loans and parts of loans were intended for, and were used for, legitimate governmental purposes and in the interests of the public. Indeed, some of the most offensive expenditures may have been financed from Iraq's oil revenues.⁴⁰ But it is clear that many, if not most, went to a repressive state machinery, to arms, and to palaces. And some of it likely went to enhance Saddam's vast personal wealth. After his capture, Saddam admitted that he seized some \$40 billion in state assets during the years he was in power and stashed it in accounts in Switzerland, Japan, Germany, and other unnamed countries.⁴¹ Matein Khalid, general manager of Dubai International Securities Investment, noted that "While Iraqis starved and their children died under U.N. sanctions, Saddam has built almost 50 lavish palaces since Desert Storm, an example of the most callous private extravagance amid public misery by a dictator since the Roman emperor Nero."⁴²

With a population of roughly 24 million people, Iraq's per capita debt works out to \$16,000, compared to a per capita gross domestic product of \$2,500 (optimistically estimated by the Central Intelligence Agency). "So, for the average person, financial obligations exceed income by a ratio of more than six to one," notes Princeton University economist Alan Krueger.⁴³

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the most heavily indebted nation on earth. As the credit rating agency Fitch says in its Special Report on Iraq released earlier this year, “Iraq’s net external debt ratios greatly exceed those of all other sovereigns rated by Fitch.” Even if the war reparations are set aside, says Fitch, Iraq’s estimated external debt “is exceptionally high.”⁴⁴ If 50 percent of Iraq’s future export income is diverted to paying down the debt—more than three times the percentage extracted from Germany for its World War I reparations—it would take more than 35 years to pay off current obligations fully.⁴⁵

“We are dealing with a post-conflict economy after ten years of sanctions, three wars, and over three decades of dictatorship and misrule,” said James Baker. “Iraq’s debts can never be paid in full, even under the most optimistic scenarios.”⁴⁶

Paris Club Would Cover Up the West’s Odious Loans to Saddam

In the world of international finance, bad public-sector loans are negotiated at the Paris Club, an informal group of major creditor governments coordinated by the French finance ministry.⁴⁷ Bad commercial loans are then generally and subsequently negotiated at the London Club, which is made up solely of commercial banks. These clubs operate in secret and informally, avoiding embarrassment to lenders and borrowers alike. Iraq’s creditors would prefer to write off some of Saddam’s debts in these venues to avoid the alternative—an embarrassing public challenge.

But Iraqis should beware conciliatory creditors enticing them to the Paris Club. This club would treat the debts of Saddam Hussein’s regime as debts of the Iraqi people, legitimizing them in the process.

The Paris Club hosts regular sessions with debtor countries to “find coordinated and sustainable solutions to their payment difficulties and to agree on specific terms of restructuring of their debts”⁴⁸ under the aus-

pices of an IMF-approved structural adjustment program. Official creditors bring their claims to the Paris Club table, but only in aggregate form, not on a loan-by-loan basis.⁴⁹ While some details of the restructuring packages are announced publicly, claim-by-claim details are kept well under wraps. The creditors then “reschedule” their claims against impoverished debtors with a mix of principal and interest rate reduction and extended grace periods.

In practice, the Paris Club is the world’s premier bailout agency, using western taxpayer dollars to rescue misplaced loans by public lenders for politically motivated purposes. Paris Club members bury their mistakes under the ruse of “an orderly restructuring process.” Eugene Rotberg, a former treasurer of the World Bank, described rescheduling as a “financial charade” and “*de facto* forgiveness.”⁵⁰

Iraq’s other creditors—private creditors with relatively small claims—would then likely use a Paris Club settlement as a model in their own debt negotiations through, for example, the London Club.

The Paris Club machinery is well in motion for Iraq—the Club estimated in July 2003 that its members are owed \$42 billion, including arrears, resulting from debts contracted with Saddam Hussein.

While all governments agree that the Paris Club is the place for “inter-creditor coordination” and view it as the key to an orderly restructuring process,⁵¹ until the end of 2003, Germany, France, and Russia refused to consider debt forgiveness for Iraq. The German finance minister, Hans Eichel, vowed in October 2003 that “We do not only expect to get our money back, we will get our money back.”⁵² Similarly, Russia said it would not forgive Iraqi debt. As President Putin told the *New York Times*, “We pay old Soviet Union debts, though it is not clear why we have to. I would never have agreed to it, but the previous leadership agreed, made that decision and we fulfill these stupid obligations to pay for all the former republics of the Soviet Union. Russia is not a rich country” whereas Iraq “is capable of paying its debts.”⁵³

This resistance from Europe caused an uproar in the U.S. Congress when members were asked to vote on a reconstruction-financing bill for Iraq. Members believed the bill would finance the repayment of loans to the opponents of the war such as Russia, France, and Germany.⁵⁴

In November 2003 the United States announced and accelerated the timetable for transferring power to a Transitional National Assembly by June 30, 2004. Members believed the bill would finance the repayment of loans to opponents of the war, such as Russia, France, and Germany.

The positions of the major opponents of the war and of debt relief—Russia, Germany, and France—began to shift. “We have not forgotten what helped Germany after World War II. Without the Americans’ generous repayment plan, there would not have been reconstruction and an economic miracle in Germany,” the German chancellor said in an interview with *Der Spiegel*, adding that “Germany will provide its help” with regards to Iraq’s debt repayment.⁵⁵ Russian President Putin announced that Moscow would begin negotiations over relieving Baghdad’s debt to his country, “taking into account the economic interests of Russia and Russian companies.” Although the debt talks and the participation of Russian companies in postwar Iraq are separate issues, said Deputy Foreign Minister Yuri Fedotov, “progress in settling one of them will undoubtedly help reach success in talks about the other.”⁵⁶

The Paris Club, meanwhile, announced a change in its rules to make middle-income countries that are oil rich but debt poor eligible for Paris Club relief. Iraq suddenly qualified for a Paris Club rescheduling. But to secure that relief—as much as a 95 percent write-off—Iraq would need to follow this process:⁵⁷

1. Power must be transferred from the Coalition Provisional Authority to a “legitimate” Iraqi government.
2. The provisional Iraqi government must agree to a credible economic recovery program and financial support from

the IMF. (The IMF is expected to have such a program in place by the end of September 2004. The IMF is expected to recommend that an acceptable level of debt would be \$70–\$80 billion, based on export earning predictions of \$30 billion a year.)

3. Iraq would sign a debt-reduction agreement with the Paris Club possibly as early as October or November 2004.

4. The Paris Club members would fulfill the phased implementation of the debt reduction, which would likely be stretched out over three years with each year’s reduction linked to meeting performance targets under a new IMF program.

But the Paris Club’s inherent conflict of interest extinguishes its legitimacy in orchestrating a debt work-out: in the Paris Club, the creditors themselves are judge, jury, and executioner. Because the creditors do not want to be exposed for any complicity in financing a vicious dictator against his people, they are keeping the details of their claims against the Iraqi people under wraps and negotiating behind closed doors to forgive those debts, as if they were legitimate and legally enforceable, before the Iraqi people can repudiate them. Iraqis are correctly wary of a Paris Club-IMF “work-out” package.

As Sheikh Mauyed of the Abu Khanifa Mosque, arguably the most influential Sunni cleric in Iraq, explained it, “In the Paris Club process, the enemy is the judge, this cannot be fair.”⁵⁸

Prominent Western commentators share Iraqi’s reservations. David Mulford, chairman of Credit Suisse First Boston investment bank, and a former U.S. Treasury official, warned that European Paris Club members have been reluctant in the past to admit to being owed military debt and that “loans that financed internal repression, weapons, and military adventurism should not be made whole at the cost of U.S. and British blood spilt to liberate Iraq.” The Paris Club “should not be the forum for negotiations. Anything less would compound the tragedy suffered by the Iraqi people

The Paris Club would treat the debts of Saddam Hussein’s regime as debts of the Iraqi people.

**The Paris Club
is the world's
premier bailout
agency, using
western taxpayer
dollars to rescue
misplaced loans
by public lenders.**

during decades of Ba'athist oppression."⁵⁹
The UK-based *Economist* concurred:

There is an overwhelming case, both in terms of economic expediency and justice, for writing off most of Iraq's debts . . . The Paris [Club] . . . will no doubt belatedly negotiate some sort of re-scheduling. . . . But they will almost certainly do so on the basis of what lenders judge to be Iraq's ability to pay—which will no doubt be on the high side—not on the rightness of its having to do so.⁶⁰

Before agreeing to a debt relief program under the Paris Club, Iraq should first establish the extent of legitimate debts for which it is responsible. Conceivably, the great majority of debts would be found to be illegitimate, leaving Iraq with a manageable debt load that it could refinance without aid of Paris Club bailouts. If it does need relief, the relief should reflect legitimate, not illegitimate debt. To do otherwise would provide France and Russia, as well as other lenders such as Germany, with a moral victory and a partial bailout. To the extent that these nations hold odious debt, they are entitled to neither.

A Paris Club restructuring of the so-called Iraqi debts would not only ill-serve Iraqis, it would also ill-serve Americans and other citizens of the Paris Club country members who are largely ignorant of their role in bailing out ill-advised loans. A Paris Club restructuring for Iraq—as for all other countries—would also be damaging to a well-functioning international lending system because the Paris Club lets both negligent lenders and corrupt borrowers off the hook.

What Iraqis Should Do about Saddam's Debts

Instead of accepting a backroom political deal in which the creditors are the judges and Iraqis have to plead for mercy, the new Iraqi administration should follow the rule of law to determine the validity of claims against

their people: they should not agree to repay any debt incurred under Saddam's regime until creditors submit proof of the legitimacy of the debts.

In requiring this proof, the Iraqi people do not need, nor should they feel compelled to seek, approval from other governments or international bodies such as the UN, the Paris Club, or the IMF. On the Iraqis' side are justice and fairness. The Iraqi people are entitled to be informed about the claims against them, in detail, not just in aggregate; they are entitled to a fair hearing in which they can make legal representation; and they are entitled to an unbiased adjudication of claims in which no adjudicator has an interest—pecuniary or proprietary—in the outcome.

Also on the side of the Iraqi people is widespread public support, at least in North America. From the media coverage and the number of sympathetic editorials, it is clear that a great many people believe that it is fundamentally unjust for the Iraqi people to be held responsible for the debts incurred by the regime of Saddam Hussein.⁶¹

Having stated its intention to follow a process based on the rule of law to determine the validity of the claims against the Iraqi people, the new Iraqi government would then have a variety of options open to it. The secretive nature of Saddam's regime, and the destruction of records that occurred during the Iraq war, requires a fact-finding stage to determine the extent of debts and their nature.

The new Iraqi government could invite creditors to make claims, possibly through a public forum such as an Internet site. The government could make arrangements to pay those debts it finds legitimate and it could unilaterally repudiate those debts it finds odious. For the many debts that would be in dispute—for example, those that were partly odious, partly legitimate, and those where the facts were in dispute—the Iraqi government could invite an arbitration of the debts. Creditors, of course, would always have the option of suing for repayment in the jurisdictions specified in each contract but

they would by no means be assured of success in court. For one thing, if the debts were odious, the associated contracts may have been too, allowing Iraq to challenge the jurisdiction specified in the contracts.

Knowing that the Iraqis would demand proof of how the money was spent, and that details of the loans would be available in a public forum, many creditors—particularly the public lenders that provided Saddam’s regime with most of its funds—might simply opt not to submit their claims at all, to the extent they were odious.

If the creditors were to cry foul and threaten a financial boycott of Iraq, the new Iraqi government should ignore them. A boycott is unlikely to be successful because contracts worth tens if not hundreds of billions of dollars are likely to be awarded in the coming years. The competition among financiers for a share of this market will end any hopes of a lenders’ cartel against Iraq.⁶² As well, many of the past debts have already been deeply discounted, giving lenders little to gain and much to lose.

Alternatively, the new Iraqi government could preempt the debt debate by initiating its own judicial debt arbitration process. An Iraq Debt Tribunal would first carry out a fact-finding process to establish the exact value of claims by creditors against the former regime of Saddam Hussein, and then determine the legal validity of those claims against the Iraqi people.

One model being proposed⁶³ is the Iran-United States Claims Tribunal established in 1981 to settle claims between Iran and the United States arising from the Iranian Revolution. The tribunal resulted from negotiations between the United States and Iran, in which each had significant bargaining power: the United States had frozen nearly \$12 billion in Iranian assets by presidential order,⁶⁴ and Iran held several hundred American hostages. The parties resorted to the Government of Algeria for mediation and eventually concluded the Algiers Accords on January 19, 1981. The purpose of the accords was for Iran to repatriate the American

hostages and the United States to lift the freeze order and terminate relevant litigation in U.S. courts.

The arbitral tribunal, whose terms and procedures were set by the two states, was empowered to deal with claims between nationals of the United States against Iran, nationals of Iran against the United States, and claims between the United States and Iran. Its subject matter was “debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations, or other measures affecting property rights.”⁶⁵ The Iranian government agreed to turn over the hostages in return for an executive act terminating all litigation over the assets, in favor of binding arbitration. One billion dollars of the frozen assets was transferred to a security account for the eventual payment of successful awards to U.S. nationals. A total of 3,816 claims were filed before the deadline. The first decision was rendered in 1981, and the tribunal continues to process claims to this day.

The massive caseload considered by this body provides a well-developed body of jurisprudence and practice concerning the application of public international law, mixed claims (those between private creditors and public debtors), and public and private law concepts to commercial contracts, expropriation, and debt agreements. The tribunal, which adopted the UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules⁶⁶ (General Assembly Resolution 31/98) and modified them to suit the special requirements of the parties, illustrates the structure, procedure, and legitimacy of adjudicating so-called mixed claims.

An Iraq Debt Tribunal could be created through negotiations among Iraq, the creditor states, and the states with which the private creditors are nationals. This would parallel the formation of the Iran-U.S. Claims Tribunal, where the source of authority for the establishment of the tribunal was negotiation between the two states. Under one possible scenario, Iraq could propose to create an arbitral tribunal that would assess all debts according to one set of legal standards. That tribunal would

Iraq should first establish the extent of legitimate debts for which it is responsible.

The Doctrine of Odious Debts would promote creditor scrutiny of loans, discourage reckless lending, and provide diligent creditors with security vis-à-vis future loans.

determine the measure by which Iraq, in fact, benefited from the transactions.

To demonstrate its good faith, assuming it has the capacity to do so, Iraq could place a portion of the debt money into an escrow account for payment of arbitral awards.

An Iraq Debt Tribunal's composition and procedures could be determined by adopting a version of the UNCITRAL Arbitration Rules. Under such rules, Iraq and its creditors would each choose one-third of the arbitrators, and those arbitrators would then select the remaining third. In the event that the arbitrators could not agree among themselves, a provision would provide for an appointing authority (a person or institution) to make the choice.

In whatever arbitral process is chosen,⁶⁷ the Doctrine of Odious Debts would be but one principle used. Other legal and equitable principles relating to representative capacity, fraud, corruption, unjust enrichment, as well as general principles of private law, would guide the arbitrators in their decisionmaking. To establish its legitimacy, the tribunal's proceedings would have to be conducted in public.

The Doctrine of Odious Debts: Chaos or Order for Financial Markets?

Some commentators predict financial doom for Iraq if it pursues an odious debt arbitration to settle its debt obligations.

The international financial community "has felt and held very strongly," says Joseph Siegle of the Council on Foreign Relations in Washington, that new governments are expected to assume responsibility for a toppled regime's debt.⁶⁸

Though debt repudiation under the doctrine of odious debt "is attractive" and the mere possibility that repudiation "would stop lending to such tyrants in the future has merit," says Susan Lee, *Wall Street Journal* editorial board member, employing the doctrine of odious debt retrospectively generates "some giant problems."⁶⁹ For example, lending to countries with dubious forms of gov-

ernment, such as China, would likely freeze up and risk premiums would rise. And, finally, "odious debt would not help Iraq regain its place in the global financial system. Rather, potential new creditors would be happy to see Iraq paying off existing debts and such payments would allow Iraq to make a swifter return to international credit markets to get fresh credit."⁷⁰

Mark Medish, former deputy assistant secretary of the U.S. Treasury and now an international lawyer representing corporations that are owed money by Iraq, concurs, calling odious debt arbitration "misguided." According to Medish, acting on the charge that Iraq's debts are odious "would be bad for Iraq and would set a damaging precedent for the international financial system. For Iraq to normalize its external financial relations, it must respect one of the first principles of the rule of law: contracts should be honored. Without this presumption, markets cannot work," and chaos will ensue.⁷¹

These critics imply that using the Doctrine of Odious Debts would be an affront to the rule of law, damaging to Iraq's financial security, in particular, and to international financial markets in general. They are wrong on all counts.

The corollary to Medish's first principle of law, that "contracts should be honored," is the principle that "illegitimate contracts need not be honored." Indeed, illegitimate contracts *should not be* honored, in order to secure the honor of legitimate contracts. Furthermore, fears that an odious debt arbitration would be arbitrary and unilateral, thereby undermining respect for the rule of law, are without foundation. To the contrary, the opposite would happen. The doctrine can only be invoked by a properly constituted international tribunal and not by governments acting unilaterally: the Doctrine of Odious Debts therefore protects against arbitrary state action.

Iraqis would make their case that particular loans did not fulfill the test of legitimacy, followed by creditors who would then be invited to produce evidence that the proceeds of their loans were used for legitimate public

purposes. This “due diligence” is neither unusual nor onerous. Indeed, in much lending and project financing today, the lenders know the purpose of the loan and an elaborate set of representations and warranties binds the borrower. Funds are disbursed periodically as conditions are fulfilled. When conditions are not fulfilled, the loan is canceled and the debt becomes due immediately. The legitimacy or illegitimacy of such loans can readily be determined.⁷² Creditors who finance dictatorial and oppressive regimes without any questions asked ought to know that to provide money could strengthen the regime against the people. No creditors could in good faith defend such loans. If the creditors, on the other hand, were diligent in ensuring the proceeds were used for public purposes, the debtor state could not make out a legitimate argument under the doctrine.

In cases where borrowing takes place through bond offerings, there is less dialogue between borrower and lender, but the use of proceeds is still usually identified. The creditor has less control in structuring terms, but just as much reason to inquire after the use of proceeds.

With debt traded on secondary debt markets, where creditors buy up sovereign debt for a fraction of its value and hope to eventually sue or sell for a much higher amount, establishing a debt’s bona fides need not differ from the above forms of debt. Buyers who “specialize in the debt of ‘pariah’ states,” have walked in with their eyes open: they have already internalized the inherent risk associated with obligations of odious debtors. They cannot claim good faith.⁷³

An arbitral process for Iraq’s debts would convince lenders that the legitimacy of a borrower, and thus his ability to create binding financial obligations, matters. So, too, does the use to which funds are put. Lenders would need to beware. They would learn that, if their funds were used to buy weapons, palaces, and instruments of repression, under the Doctrine of Odious Debts, their claims against the people of Iraq would be legally unenforceable.

The Doctrine of Odious Debts would pro-

mote creditor scrutiny of loans of an allegedly public nature, discourage reckless lending, and provide diligent creditors with security vis-à-vis future loans.

Today, most lenders to oppressive governments assume that, no matter how heinous the governments’ nature and expenditures, these countries will force their citizens to repay debts. That expectation has created moral hazard in sovereign borrowing, risky loans, and chronic loan defaults. In contrast, the Doctrine of Odious Debts would help eliminate that moral hazard by distinguishing between debts that are tied to a regime and debts that would survive the regime. By clarifying the responsibilities of creditors (or borrowers), and thus their rights to repayment (or repudiation), an odious debt arbitration would help eliminate the moral hazard that has destabilized international finance in the past 60 years.

As for Iraq, the critics are wrong-headed to predict that Iraq would be hurt if it resorts to due process and the rule of law to settle claims against its people. The stability and predictability created by the rule of law would attract international capital and promote diversified and healthy market activity. And international lenders will figure out quickly enough that they can easily make their future loans and bonds “odious debt-proof.”⁷⁴

Meanwhile, the Paris Club alternative to a public arbitral process—closed-door negotiations by creditors who decide on Iraq’s ability to pay—would spawn conspiracy theories, breed cynicism, and be deeply resented by Iraqis. The Paris Club alternative would appear to be no more than an international fix in which Iraq’s resources were pawns of the creditors, including Russia, France, and the United States. Many Iraqis predicted in interviews conducted last year by the debt campaigning group, Jubilee Iraq, that if the creditors refused to recognize the odiousness of much of Saddam’s debt, one of the first actions of an elected Iraqi government would be to repudiate all debts. Chaos could well ensue if creditors refuse an odious debt arbitration, convincing Iraq to repudiate unilater-

The existing model for international finance does not well serve the interests of either borrower or lender.

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ally.

More important, by giving creditors an incentive to lend only for purposes that are transparent and of public benefit, future Saddams will lose the ability to finance their armies and their foreign bank accounts.

Harvard Proposal Would Entrench Moral Hazard

In past decades, debt negotiations between Third World debtors and international creditors have been failures. When countries have gone hopelessly into debt, creditors and debtors have agreed to “restructure” the loans with stretch-outs of the repayment period, lowered principal, and so forth, all designed to reduce the repayment burden on the debtor. Usually these “restructurings” are accompanied by new financing from agencies like the World Bank and IMF: this helps turn “non-performing” loans into “performing” ones, but at the expense of renewed indebtedness.

The existing model for international finance does not well serve the legitimate interests of either borrower or lender. For this reason, and because of widespread public opinion that it is fundamentally unjust for Iraqis to be burdened with Saddam’s debts, experts such as Harvard economists Michael Kremer and Seema Jayachandran and organizations such as Oxfam have seized on odious debts as a solution.⁷⁵ Unfortunately, they propose to apply it in a way that would entrench odious debts rather than eradicate them.

Instead of assessing the legitimacy of individual loans, as the Doctrine of Odious Debts suggests, these parties want to assess the odiousness of entire regimes. They would create an international body that would sit in judgment of the world’s governments. Through some process, good governments would be labeled as worthy while corrupt and repressive governments would be labeled as odious. Creditors would then be forewarned that loans to odious governments would be in jeopardy should those governments be replaced.

This proposal, which places so much faith

in the performance of international institutions, flies in the face of the experience of the last 60 years. During this period, unaccountable lending and bailouts of corrupt and unrepresentative governments have come precisely from international agencies such as the United Nations, the World Bank, and the IMF. The politicized governance structure of international agencies guarantees that odious regimes will rarely be classed as such. Indeed these regimes’ very membership in international institutions has been an implicit endorsement of their credibility as borrowers. Take the case of Iraq. Had a Harvard-Oxfam-style odious debts system existed, it is difficult to imagine that France, Germany, and Russia would have allowed Saddam to be blacklisted.

Even if an international agency could somehow make unpoliticized judgments, that approach would only entrench the moral hazard that created odious debts in the first place. Any financial institution, public or private, that extended credit to a government that had received the seal of good housekeeping from the “odious government rating agency” would not have to exercise the due diligence needed to ensure that its loans were used in the interest of the state. Indeed, the endorsement could become a powerful defense for the creditor against the public in the debtor country, should the latter ever wish to challenge the legitimacy of a particular loan. This insurance against financial negligence can only raise the moral hazard of both the creditor and debtor to new heights.

Conclusion

While there is little doubt that much of Iraq’s debt is odious, most creditors are loath to admit it. Nevertheless, creditors, seeing the writing on the wall, are prepared to write off their odious loans under a “no fault” process of debt cancellation in which they can avoid embarrassment and make their gesture seem magnanimous.

According to best estimates, close to 90

percent of claims against the former regime of Iraq are held by governments that should have known that to finance Saddam was to finance him against the interest of the Iraqi people. Despite the fact that the loans were politically determined, and not market driven, those public creditors now disingenuously claim that markets will suffer if Iraq resorts to the rule of law to determine the legal enforceability of these claims against the Iraqi people.

For the following reasons, the new Iraqi legislators should seek to determine the legal enforceability of those claims through an arbitral process which, among other legal principles, should be guided by the international legal Doctrine of Odious Debts. The United States should support this approach.

Deciding the disposition of Iraq's debts by the rule of law, through a public judicial process that allows Iraqis, the domestic and international press, and anyone else to understand who lent how much to whom and for what purpose, would give Iraqis confidence that government can work in their interest. The United States should also support an Iraqi debt arbitration regime because it would promote transparency and accountability in creditor states such as Canada and European countries where information about the lending activities of state enterprises are generally unavailable to taxpayers. If these taxpayers knew how their governments contributed to the personal and political security of Saddam Hussein, they would be better able to exercise their own democratic rights to restrain their governments in the future. The United States should also support an Iraqi debt arbitration as a precedent to warn future reckless creditors, reassure diligent creditors, and thereby stabilize international financial markets.

Finally, the United States should support an odious debt legal regime to further the war on terror. The United States has found that many western countries are reluctant to force lenders—be they state agencies or well-connected private lenders—to disclose their loans. The U.S. goal of somehow regulating the countless transactions involving terrorist

entities becomes infinitely easier when self-regulation augments state regulation. When lenders from France, Germany, the United Kingdom, Canada, or anywhere else realize that repayment from an Iraq under Saddam, a Syria, a North Korea, a Cuba, depends on the regime staying in power long enough to see the money repaid, they will think twice about making the loans to finance the armies and foreign bank accounts of dictators, and demand a higher premium if they do. An odious debt legal regime would help the United States cut off many sources of funding to terrorist states without having to lobby other creditor governments. And that would be profoundly good, not only for Iraqis, but also for world peace and future generations.

Notes

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47. The Paris Club website describes the club as a "strictly informal . . . non-institution," <http://www.clubdeparis.org/en/>.
48. The Paris Club, www.clubdeparis.org/en.
49. An e-mail message from Delphine d'Amarzit, Paris Club secretariat, to the author, dated June 17, 2003, states that "our data would be ready in July, and our expectation is that creditors would indeed like to publish global figures. This point has still to be agreed on a consensual basis by creditors when we have the numbers next month. Whether we would disclose country by country data would be a decision of our members (the data being the individual members' property). As far as project by project (and agency by agency) data is concerned, we don't collect such information. Any published information will be put on our website at www.clubdeparis.org."
50. Quoted in Lenny Glynn, "Look Whose Turn It Is to Bite the Bullet," *Global Finance*, March 1990.
51. Paris Club, "Iraq's Situation towards Paris Club Creditors."
52. Colin Donald, "Nations Ponder Iraq's 'Odious' Debt Millstone," *New Zealand Herald*, October 22, 2003.
53. "Interview with President Putin," *New York Times*, October 5, 2003.
54. Stephan Dinan and David Sands, "Iraqi Funding Bill Is Kept Intact," *Washington Times*, October 1, 2003.

55. "Schroder Calls for Iraq Debt Relief," *Sydney Morning Herald*, November 24, 2003.
56. Vladimir Isachenkov, "Russia Links Iraq Debt Relief, Companies," *Mississippi Sun Herald*, December 19, 2003.
57. Lex Rieffel, "Reducing Iraq's Foreign Debt," *Miami Herald*, February 6, 2004.
58. *Iraqi Views on Debt and Reparations*, Jubilee Iraq, October 22, 2003.
59. David Mulford and Michael Monderer, "Iraqi Debt, Like War, Divides the West," *Financial Times*, June 22, 2003.
60. "Reconstructing Iraq: Those Odious Debts," *The Economist*, October 18, 2003.
61. For quotes on Iraq's odious debts, see <http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=titles&SubID=712>.
62. Stiffing the holders of the original loans won't do much for Iraq's reputation internationally, but it may not impede Baghdad's ability to get new loans, says Didier de Baere of East-West Debt, an Antwerp-based debt collection firm that holds some Iraqi loan paper. "Iraq has one incredible asset: oil," says de Baere. "There will be a number of banks that will be very happy to do business with them." See Chana R. Schoenberger, "Gambling on Iraq's Reconstruction," *Forbes.com*, April 4, 2003.
63. This tribunal is being examined by Iraqi and non-Iraqi, legal scholars, arbitrators, and debt campaigners. Much of the legal background for this proposal has been prepared by Jeff King, coauthor of "Advancing the Odious Debt Doctrine." For further details see www.jubileeiraq.org.
64. C. N. Brower and J. D. Brueschke, *The Iran–United States Claims Tribunal* (The Hague: Martinus-Nijhoff, 1998). General information, background documents, and lists of awards can be found at <http://www.iusct.org/index-english.html>.
65. Claims Settlement Declaration, Art. II, para. 1.
66. UNCITRAL Arbitration Rules (1976) (Adopted by the General Assembly on December 15, 1976), United Nations Commission on International Trade Law, <http://www.uncitral.org/english/texts/arbitration/arb-rules.htm>.
67. For example, Permanent Court of Arbitration, <http://www.pca-cpa.org/ENGLISH/GI/>; International Court of Arbitration of International Chamber of Commerce; London Court of International Arbitration.
68. Quoted in Ken Guggenheim, "Why Did the West Lend So Much to Iraq?" *Guardian* (London), December 19, 2003.
69. Susan Lee, "Why Iraq's Debt Needs a Good Haircut," *Wall Street Journal*, October 22, 2003.
70. Ibid.
71. Medish.
72. Jeff King, "Saddam's Evil Debts," *National Post* (Toronto), October 23, 2003.
73. Ibid.
74. Indeed, some private sector creditors may believe that they exercised the due diligence needed to defend their credits in an arbitration process. These creditors may choose to break away from the common debt-rescheduling front that the Paris and London Clubs have traditionally formed and, on their own, argue for better repayment terms. In this case, odious debts arbitration would reward diligent private sector creditors and spawn a schism between the London and Paris Clubs.
75. Michael Kremer and Seema Jayachandran, "Odious Debt," *Finance and Development*, June 2002, page 36–39; and "A Fresh Start for Iraq: The Case for Debt Relief," Oxfam Briefing Paper 48, May, 2003.