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Rethinking Sovereign Debt from Colonial Empires to Hegemony

Pierre Pénét and Juan Flores Zendejas

1.1 Imperial Solutions to Sovereign Debt Crises (1820–1933)

During the nineteenth century, free trade and financial integration contributed to what is often referred to as the first globalization wave (1820–1914) (Flandreau, 2013; Flandreau & Zumer, 2004; Mauro et al., 2006). As creditors began to expand the reach of their operations by investing in the bonds of foreign nations, sometime from overseas, lending became more perilous. For instance, British investors often knew little about the Latin American countries whose bonds they were purchasing.¹ Nineteenth-century cross-border lending exemplifies the problem of information asymmetries familiar to economists (Stiglitz, 2000). In this case, uncertainties were compounded by the fact that lenders in the sovereign sector could not mitigate default risk by collateralizing their loans: as a rule, ownership of public assets cannot be transferred to foreigners. To reduce the anxiety of long-distance investing, investors began to seek information pertaining to the trust and credit profile of foreign borrowers. Since investors did not always possess sufficient organizational capabilities and resources to examine the facts, risk analysis was delegated to intermediaries, in particular merchant banks. As informational third parties, merchant banks performed the important function of certifying the credit of debtors, thus providing a practicable solution to the problem of uncertainty in sovereign lending (Flandreau & Flores, 2009). Such banks owned a ‘brand’ that could grant borrowing states market access on more favourable terms. Gradually, the notion of creditworthiness became cardinal in international lending and borrowing.

Technologies of risk assessment played a cardinal role in the building of nineteenth-century debt markets (Carruthers, 2013). The tools of risk analysis which have become so ubiquitous recently can be traced back to the nineteenth

¹ The controversy about Poyais provides a good testimony of how difficult it was for creditors to invest abroad without reliable information to rely on. Poyais, as it turned out, was a fictitious country (Clavel, 2020).

century (Gaillard, 2012). At first crude, rough, and quasi-intuitive, these tools were then made more complex by international organizations: the League of Nations during the interwar and then (after 1945) by Bretton Woods institutions like the IMF and the World Bank and bilateral aid agencies like USAID (Kelber & Monnet, 2014; Pauly & Ferran, 1997, pp. 67–8). Even the private rating agencies, which have assumed an ever-increasing role in country risk analysis since the 1980s (Sinclair, 2005), were founded at the turn of the last century (Pénet, 2019).²

Risk analysis equipped creditors and shaped their repayment expectations. At the same time, dynamics of trust and reputation also shaped countries' perceptions of what it meant to be sovereign. As measures of creditworthiness entered and disciplined the subjectivities of debtor countries, repaying debt became integral to how nations saw themselves as belonging in the realm of civilization. Prominent lawyers also came to view the non-repayment of debt as a violation of the civilizational standard (Borchard, 1951; Moore & Wharton, 1906). Such cultural and moral framing of state responsibility continues to remain pervasive in current debates.

However, creditworthiness alone was often not sufficient to discipline debtor states. To protect themselves against risks of default, nineteenth-century creditors organized themselves into bondholder committees. Such committees furnished creditors with their most efficient method against recalcitrant debtors. They derived their authority from their capacity to sponsor market access to preferred customers and to refuse to list new bonds from a creditor in default (Flandreau, 2013; Hautcoeur & Riva, 2012). Given the prominence of London as the main international financial centre, the most important of such committees was the British Corporation of Foreign Bondholders (CFB) (Mauro & Yafeh, 2003). Thereafter, other CFBs-type organizations emerged in other European financial centres. CFBs also advised debtor countries, offering them additional loans in exchange of the repayment of extant ones, thus developing early conditionality frameworks that were later refined by the IMF and World Bank (Babb & Carruthers, 2008).

In most cases, this mixture of market sanctions and moral suasion exerted on debtor states were quite effective. Countries avoided defaulting on their financial obligations for fear of losing market access. Tomz finds that CFBs raised significantly the costs of defaulting by making it virtually impossible for defaulters to raise new capital (Tomz, 2006, pp. 17–19). CFBs often managed to bring defaulters back to the table of negotiation, thereby securing comparatively positive results for investors, as compared to instances of debt disputes in which these organizations did not participate (Esteves, 2013). Disputes were also solved with the

² Moody's issued its first sovereign risk report in 1900 and its first rating of foreign government bonds in 1918. Poor's (in 1922), Standard Statistics, and Fitch (in 1924) also began rating a small number of sovereigns. In 1920, Moody's rated 189 foreign bonds and ten countries (Pénet, 2014, p. 73).

collaboration of major merchant banks, such as Baring or Rothschild, whose dominant position in London's sovereign debt market permitted them to promise market access to governments that acceded to renegotiate unpaid debts (Flandreau & Flores, 2012).

In light of the above, many historiographies of nineteenth-century debt markets conclude with the observation that the expansion of international capital flows generated adequate market solutions to the problem of information asymmetries. While not under-estimating the performance of market tools of debt dispute resolution, it is hard to miss that such solutions were not always satisfactory. When financial uncertainties overwhelmed market-based solutions, creditors were left with little alternative but to seize control over a defaulter's customs or tax collection system. Such forceful extraction of repayment could produce desired results more expediently than market-based solutions, but these required coercive tools like military power which only states possessed.

This volume provides a close examination of the essential role of creditor states in the building of modern sovereign debt markets. The nineteenth-century context, often lauded as the triumph of self-regulating markets, actually turns out to be radically different upon closer inspection. Karl Polanyi famously saw the nineteenth-century rise of international markets as the outcome of 'conscious and often violent intervention on the part of government which imposed the market organization on society for noneconomic ends' (Polanyi, [1944] 2001, p. 258). The fast expansion of international capital markets was an achievement in which the British government participated in no small part. First of all, the British administration supported the overseas operations of its financial sector. British diplomats provided bondholder committees with some degree of cooperation with respect to routine tasks. They also served as liaison in the country where they operated. Besides such brokerage function, the British government occasionally lent military support to private creditors against defaulters. Based on the above, we claim that it is nearly impossible to understand the nineteenth-century development of global debt markets without taking into account the cycles of asymmetries of power between nations, which sovereign debt disputes both reflected and reproduced. On the one hand, creditors from the North benefited awesomely from the colonial wars waged by their home states on their behalf. On the other, private capital was an essential cog in the exploitative and extractive system that supported the building and maintaining of colonial empires.

In this volume, we emphasize imperial aspects in the rise of sovereign debt markets in Latin America and the Eastern Mediterranean, two regions of the world which clearly illustrated the interlinkages between debt disputes and imperial practice. Two directions of research are explored. First, we identify sovereign debt as a powerful tool of colonial empire-building. In the nineteenth century, capital market expansion encouraged the creditors of industrialized countries to invest heavily abroad. This influx of foreign capital dangerously inflated the debt

of peripheral countries, bringing them closer to insolvency. When default became a tangible threat, private creditors assisted by powerful states like Britain and France could resort to monetary and fiscal controls to ensure continuity in commercial and financial relations with countries mired into financial trouble. Scholars have used the concept of ‘informal empire’ (Hopkins, 1994; Knight, 2008) to characterize this imposition of foreign controls without territorial occupation (see Flores Zendejas & Cole in this volume). And in such cases that controls were insufficient, more punitive methods were available, such as the use of gunboats or the threatened use of them by imperial powers (Mitchener & Weidenmier, 2005). Two representative cases are Egypt and Tunisia, where the suspension of debt repayments provided justification for European powers to assert colonial control. Military invasion then led to full-fledged colonization (see Coşkun Tunçer in this volume). Colonial solutions to debt defaults led to new institutional relations with creditors, as colonial powers offered explicit imperial guarantees against private investment losses. Yet, colonial guarantees began to show signs of weakening after the First World War. For instance, in the 1930s, investors reassessed the likelihood that Britain, then facing financial turmoil, could honour its guarantee of Indian’s debts (see Degive & Oosterlinck in this volume).

To be sure, such episodes of gunboat diplomacy were rather infrequent (Flores, 2012; Tomz, 2006, pp. 114–57).³ States seldom intervened in debt disputes, performing only a passive, subsidiary role (Lipson, 1985). States were often reluctant to intervene to prevent moral hazard (Platt, 1968). For instance, the British government invoked on many occasions the so-called Palmerston doctrine—‘When people choose to lend money to a foreign country, they [do] so at their own risk’ (Williams, 1924, p. 18)—to deny state protection of private interests. This pledge of state neutrality was also reflected in US Secretary of State Bryan’s dictum: ‘When you go abroad you have to take your chances’ (Howland, 1928, p. 183). Public protection of private capital was therefore flexible, as it laid entirely within the political discretion of government (Waibel, 2011, p. 23). While states seldom intervened in debt disputes, they could act as the sword arm of private creditors when they found political and diplomatic interest to do so, as Britain and France found in Egypt and Tunisia, respectively. Far from mechanical, creditor state support required a great deal of persuasion from bondholders. It is this particular form of state protection of private capital, which we call *imperial debt diplomacies*, that this volume emphasizes.

The other avenue of research concerns the nineteenth-century development of international law which was connected in important ways to state power and

³ Between 1860 and 1913, we have computed forty-five defaults (to loans issued in London and Paris). Among them, ten led to some forms of foreign control, including colonial rule. Direct military interventions were exercised in only four cases (Mexico, Egypt, Tunisia, and Venezuela). Sources: Suter (1990), the Corporation of Foreign Bondholders Annual Reports, and Gleditsch (2004).

imperial policies. As international debt markets developed during the nineteenth century, important innovations took place in the world of debt contracting. Gradually, creditors inserted legal clauses in contracts to better define the duties of debtors, especially if repayment became contested (Flores Zendejas, 2016). Yet, in the nineteenth century, creditors had not yet forged the expectation that defaults could be adjudicated by an international court. The idea that extraterritorial courts could provide a relevant remedy to debt disputes was entirely foreign to the nineteenth-century investor. In fact, legal clauses did not open to litigation but served as a trigger to activate state power (Weidemaier, 2010). Up until 1914, creditors used legal discourses to convince their states to intervene on their behalf and force defaulters to repay their debt. Under such circumstances, we argue that the development of legal clauses was connected in important ways to imperial debt diplomacies.

1.2 Debt Disputes in the Age of Financial Repression: When Repayment Takes a Backseat (1933–70s)

The first financial globalization was brought to a close by the First World War and the Great Depression (James & James, 2009). The mechanisms that had bolstered international trade and capital flows during the nineteenth century were critically and durably weakened. During the war, the decline of international trade and capital flows eroded creditors' bargaining power. The threat to block a country's future debt issuances was persuasive only in a context of continuous sovereign debt borrowing. With the global retreat of external debt markets, debt issuances came to a halt and CFBs lost their dissuasive authority on defaulters (Jorgensen & Sachs, 1988). We also know from prior research that legal recourses like collective action clauses (CACs) or gold clauses did not perform as expected by creditors because the interwar context was too thinly legalized (Weidemaier, Gulati & Gelper, 2016).

In the light of these constraints, creditor governments and market actors launched an effort to rebuild the international economic system around new actors and forums of debt dispute adjudication. The League of Nations was empowered with a public coordination role in the management of trade and debt disputes, thus filling the private role previously assumed by CFBs. The League intervened in 1923 to help Austria deal with its financial problems (Flores Zendejas & Decorzant, 2016). There, the League ensured repayment using methods previously used in the nineteenth century, assuming direct control over Austria's fiscal and monetary institutions. The League would apply the same receipt in other Eastern European countries. While this experience has met with relative success, the League was too fragile to bring coordination and stability to rapidly multiplying international debt disputes. Beginning in 1931, the majority of states had no

alternative but to suspend interest payments on their foreign obligations. The economic consequences of the Great Depression combined with the rising political uncertainties in the years leading up to the Second World War would effectively postpone the negotiations between borrowers and bondholders to after 1945 (Eichengreen, 1991; Eichengreen & Portes, 1989). Even the countries which did not suspend repayment had to take protective measures. In 1933, in an effort to escape the Great Depression, Roosevelt announced plans to take the US off the gold standard and devalue the dollar. This decision, which involved cancelling all gold clauses inserted in past contracts, was widely interpreted by investors as a tacit form of debt repudiation (Edwards, 2018).

International debt markets did not return to pre-war levels until the 1980s, a period often characterized in the literature as the second financial globalization (Artis & Okubo, 2009; Bordo & Flandreau, 2003; Giddens, 2001). This period of transition between the first and the second globalization has not yet received the attention it deserves. In particular, while many economic historians and legal scholars have focused on the interwar years and the Great Depression in particular, the post-1945 context has remained largely unattended.⁴ This is a pity because these three decades—otherwise known as the ‘Glorious Thirty’—have witnessed the development of durable changes affecting creditor–debtor interactions in the sovereign sector, in particular with respect to conceptions of state responsibility and legal recourses (two components of sovereign debt diplomacies as highlighted in the introduction). With its focus on the post-war years, this volume extends the discussion on sovereign debt in two directions.

First, it examines important changes in the way sovereign debtors and creditors settled debt disputes in the turmoil of the post-1945 context. For debtors and creditors, the post-war settlement of debt disputes represented an enormous task not only because of the sheer amount of debt in default but also because old methods of debt settlement no longer applied. When the question of debt repayment resurfaced in 1945, capital markets were virtually shut down. In the face of uncooperative behaviour from defaulting and recalcitrant governments, the threat to block market access was no longer dissuasive. Having abandoned bond markets, states borrowed domestically or through public lending schemes such as Export Promotion Agencies or multilateral organizations. With CFBs in disarray, creditors sought diplomatic support from their government to remedy broken agreements. Yet, faced with the prospect of war (and after 1945 with the task of rebuilding the international order), powerful states (the US, the UK, and France) operated under a markedly different conception of state responsibility. Creditor states were not prepared to sponsor claims of debt repayment without

⁴ Lienau (2014) is a notable exception.

considering as well other concerns such as peace, international trade, reparation, and the building of a new international order. In the 1940s and 1950s, the US, the UK, and France took steps to significantly reduced the foreign debts of Egypt, Mexico, Germany, and Japan—to name a few—sometimes resorting to unilateral actions that hurt the interests of private creditors (see Del Angel & Pérez-Hernández and De la Villa in this volume). Debt forbearance guided state action towards defaulters because debt had become a secondary concern to the most pressing issue of bolstering diplomatic and trade ties with foreign allies.

We call this new regime of sovereign debt disputes *interstate debt diplomacies* because the locus of debt talks shifted to the interstate level and dispute resolution became firmly anchored within the ambit of state authority. After 1945, the functional control over international enforcement of sovereign debt claims was effectively transferred from creditor committees to creditor states. As states became the contractual enforcers of private debt claims, debt acquired a public and diplomatic meaning. From assuming the role of protector of private capital and debt contracts during the long nineteenth century (until 1914), states came to assume an alternative role as debt relief provider during the Cold War period. In the hands of states as ultimate enforcers, bond contracts lost their universal validity because their value became contingent upon diplomatic recognition. As a result, the sanctity of debt contracts was durably undermined. Debt became one layer or tranche of interests in the bundle of interests (peace, commercial interests, etc.) which a state was prepared to defend during interstate negotiations. This observation did not apply only to the high-profile cases of Mexico and Germany (in the 1940s and 1950s, respectively) but to the majority of debt restructuring cases after the Second World War (see Flores Zendejas, Pénet & Suter in this volume).

It is an understatement to say that creditors did not appreciate states meddling into their affairs, especially when state involvement led to significant haircuts imposed on their claims. But creditors were left with no other choice than to seek the mediation of their governments to press their rights. Of course, when debtor states were cooperative, creditors could still rely on the mediation provided by bondholder committees to reach a settlement. In Japan, for instance, US and British creditors obtained the resumption of debt service at the full contractual rates. But when a defaulting state had neither the will nor the capacity to repay, foreign creditors depended ultimately on brokerage resources from their representative states.

The second contribution concerns the ambiguous development of international law in post-1945 debt disputes. The post-war era fathered new habits and modes of legal reasoning. After 1945, state support being mostly unavailable, creditors began to contemplate making international courts the prime enforcers of broken contracts. In other words, what creditors could no longer obtain through the diplomatic channel (and through imperial policies), they began to pursue through

legal methods. Creditors began to raise the expectation—and we claim that this was a novel expectation—that they could elevate their claims to legal forums without the mediation of the creditor state. Although it is important to acknowledge that creditors raised new expectations that repayment could be pursued through legal means, it is also important to notice that this expectation was not immediately consequential. Debtor states being sovereign entities, international courts frequently denied jurisdiction. The 1950s dispute between French bondholders and Norway is interesting along those lines. When Norway refused to recognize the gold clause inserted into bond contracts, French creditors attempted to elevate debt claims against Norway to the International Court of Justice. But the Court was not receptive to French bondholders' claims because it deemed the dispute an interstate issue. The chance of successful legal action was limited under the principle of sovereign immunity which made it virtually impossible for bondholders to sue sovereign debtors.

The US legislative decisions to weaken the doctrine of sovereign immunity in the 1950s gave creditors a legitimate claim to bring a debtor state before a court of law. These decisions can be interpreted as a way to rebuild creditors' authority in the post-1945 context, when states' support to private creditors against defaulters grew weaker. In other words, we argue that twentieth-century development of international law was grafted onto the changing realities of state power, which were themselves linked to colonial history. We also suggest that the rising profile of international law in debt disputes was not a deliberate outcome sought by policymakers but rather an inadvertent outcome of states' attempts to solve other problems—among others, fostering national economic interests, international cooperation, and peacebuilding efforts during the Cold War and postcolonial context.⁵

1.3 Postcolonial Transitions and the Hopes for a New International Economic Order (1960s–80s)

The profile of international law was further enhanced during the postcolonial debt disputes of the 1960–70s. Postcolonial transitions gave rise to a new discourse in international public law, bringing into question the legitimacy and legality of sovereign debts contracted during the colonial times (Anghie, 2007, pp. 196–244; Mallard, 2019). Interestingly, the driving force of legal developments were actors from the South. In the 1960s, legal entrepreneurs from former colonies began to wage a battle to bring into the legal realm matters that were not previously deemed

⁵ This contribution reads very much like Krippner's (2011) argument that states created conditions conducive to the rise of financial markets during the 1960–70s, although this shift was not deliberate but the inadvertent result of economic, social, and political dilemmas that confronted policymakers.

legal. In substance, their quest entailed making the debt claims of former colonial powers conditional upon broader legal matters such as the meaning of sovereignty and the responsibility of lenders. Postcolonial debates are fascinating because they reflect an effort to make international law a resource not for creditors but for countries facing problems of over-indebtedness. Today, legal recourses are often construed as contractual resources to protect creditors' claims against recalcitrant debtors. But historical developments remind us that international law was not always confined to being a tool of redress available to creditors. During postcolonial transitions, legal recourses were also construed as a resource to emancipate debtor countries from the chains of colonial debt.

To be sure, this fundamental ambiguity that lies at the very heart of Cold War legal debates is not new and goes back to the initial formulation of the doctrine of odious debts during the interwar. The starting point of every modern discussion of odious debt is the work of the Russian lawyer Alexander Sack. When Sack published his influential treatise on odious debt (Sack, 1927), the examples of debt repudiation seemed to increase at a dangerous rate with the dissolution of the Austro-Hungarian and Ottoman empires and the Bolshevik revolution of 1917. In these cases, the process of debt collection was compromised because the states that had contracted the debts had ceased to exist. As a rule, Sack did not oppose the norm of repayment, as he endorsed the idea that debts were binding legal contracts and therefore had to be repaid. But his great innovation was to claim that certain debts should be treated differently from others, based on their origins and purpose (King, 2016; Pénet, 2018b).

The debate on odious debt resumed during the 1960–70s against the backdrop of the fall of colonial empires. Integral to what we call *postcolonial debt diplomacies* are the efforts from lawyers in debtor countries to weaponize international law on behalf of former colonies in order to place legal limits on the continuity of debt contracts. Mohamed Bedjaoui's effort to establish a Convention on the law of State Succession in respect to State Property, Archives and Debts was a central aspect in this debate (see Mallard & Waibel in this volume). Although his Convention (signed in 1983) has not yet been ratified, it would be misleading to judge Bedjaoui's legacy as one of failure. His influence on current debates is probably stronger than what we can assume if we take ratification as the main criterion of success. In fact, Bedjaoui's attempt to establish a 'New International Economic Order', was a source of inspiration for UNCTAD policies and it can be credited with having substantially influenced development economists and debt campaign movements in the 1960s–70s before it became the subject of countervailing measures (see Deforge & Lemoine in this volume). Even more, the principle of non-transmissibility of state debt pioneered in late nineteenth-century Latin America (see Flores Zendejas & Cole in this volume) and refined during postcolonial transitions (see Mallard and Waibel in this volume) is now available to the legal public as a recourse in present and future debt debates (see Gulati & Panizza in this volume).

1.4 Post–Cold War Sovereign Debt Disputes: Hegemony or Fragmentation?

The breakdown of Bretton Woods capital controls in 1971 and the ensuing deregulation of financial markets in the 1980s contributed to restore a lively sovereign debt market. Syndicated banking grew during the 1970s and soon government loans returned to pre-1914 levels. These trends converging in early 1980s are often referred to as the second era of globalization (Artis & Okubo, 2009; Bordo & Flandreau, 2003; Giddens, 2001). The initial momentum of financial liberalization accelerated with the widespread policy shift towards deregulation, as epitomized by the variety of changes in the law that both the Thatcher and Reagan administrations promoted in Great Britain and the United States, respectively (Boyer, 1996; Helleiner, 1996; Loriaux, 1997). With the loosening up of some key New Deal and post-war financial regulations, market actors gained greater freedom in their financial operations. Of course, political factors were instrumental to create these new investment opportunities, but they are insufficient to explain how creditors turned these opportunities into actual investment decisions.

Consistent with our focus on sovereign debt diplomacies, this volume concentrates on actual investment practices as defined in the interface between two orders: practical expectations about repayment and normative models about the meaning of sovereignty and debt and the limits placed on the continuity of debt contracts. The diplomatic action of creditors and debtors during the post-1980s context involves elements of change and continuity from the previous three regimes in several aspects.

The first aspect concerns risk analysis, the first component of sovereign debt diplomacies. Financial deregulation encouraged the multiplication of new entrants seeking access to capital markets. The opportunities associated with deregulation generated a significant increase in borrower diversity. Sovereign borrowers with poor or no credit history gained market access and began to raise capital by selling securities. The revival of external debt markets brought about uncertainties typical of investment decisions made at a distance. While deregulation and internationalization allowed investors to enter into new financial territories and capture highly lucrative investment opportunities, the prospect of making investment decisions overseas generated new financial uncertainties. It was thus crucial for lenders to turn the uncertainties that the breakdown of capital controls and the ensuing liberalization of capital markets had opened up into calculable risk and, therefore, actual investment opportunities (Eaton & Gersovitz, 1981; Eaton, Gersovitz & Stiglitz, 1986). This pattern of deregulation and internationalization increased the propensity of market actors to use credit ratings in investment decisions (Sinclair, 2005). During the 1980s, credit rating agencies (CRAs) became pivotal knowledge intermediaries for lending and borrowing

transactions. The number of countries seeking a rating to access international capital markets grew exponentially from a mere fifteen in 1980 to over a hundred in 1998 (Pénet, 2014, p. 146).

The second aspect—and perhaps the most debated one in recent debt studies—concerns the increasing legalization of sovereign debt markets. The Foreign Sovereign Immunities Act of 1976 gave a more restrictive interpretation of the principles protecting sovereign debtors and allowed debtors to sue a foreign government in US courts (Brownlie, 2003, p. 325). The US repeal of sovereign debt immunity provided impetus for debtor litigation and arbitration as means to sanction recalcitrant borrowers (Buchheit, 1995). Since the 1970s, the legal tools governing the management and repayment of public debt have grown more diverse and sophisticated. Creditors and third parties (e.g., courts, communities of experts, international organizations, central banks) have invested considerable efforts and resources to design mechanisms of enforcement and sanctions. This was expected to improve the continuity in debt repayment or, at the least, allow sovereign defaults to occur in a somewhat orderly fashion. Yet, despite these efforts, there is no conclusive evidence that countries end up repaying their debt in full and in time any more than before. Far from adding more certainty and predictability into the financial world, the increasing legalization of sovereign debt markets has been credited with generating additional financial uncertainties. Studies in law and society have noted that international law is not nearly as triumphant as it is usually felt. Not only litigation delays the resolution process (Trebesch, 2008) but it also weakens the prospect of effective resolution (Bi, Chamon & Zettelmeyer, 2011; Krueger, 2002). Another recent development is arbitration, in particular the initiative to take a defaulting country before the International Centre for Settlement of Investment Disputes (ICSID). This legal option has also yet to produce the desired results (Waibel, 2007). This is not to say that international law is not consequential in sovereign debt. But its function in the stabilization of creditor–debtor interactions is ambiguous—some would say more wish than reality.

The third defining feature concerns the multilateral tools and forums that creditors use to increase coordination and press for repayment. Central to the management of post-1980s debt disputes is the International Monetary Fund's (the IMF or 'the Fund') conditionality framework. When a country is unable to service its debt, it can turn to the Fund for loans, provided that its debt is deemed sustainable by IMF experts. Conditionality is the activity of making the provision of financial resources contingent on a set of policy conditions that the recipient country must consent before aid disbursement (Flores Zendejas, 2016). UNCTAD, the Paris Club, the World Bank, regional development banks, and bilateral organizations also use conditionality frameworks in their country financing operations (Babb & Carruthers, 2008). At the IMF, conditionality-setting is typically understood by sociologists and political scientists as an 'epistemic' activity, shaped by internal

experts and their belief systems and ideational filters (Clift, 2018; Nelson, 2017). A useful counterpoint to this epistemic approach comes from studies showing the prevalence of state interests in the IO system (Kentikelenis & Seabrooke, 2017; Knill, Bayerlein, Enkler & Grohs, 2018). From the 1980s onward, powerful shareholders like the US and Europe traditionally seek to influence IMF's programmes in terms of their own political, geopolitical, or even military interests (Stone, 2002). Multilateral forums such as the IMF work as a strong vehicle of state interests (Abbott & Snidal, 1998; Pénet, 2018a; Strange, 1996). And in many cases, states act through international organization to help private creditors recover their loans. The role of international organizations in sovereign debt disputes has turned controversial since the Argentinian crisis of the early 2000s. Organizations like UNCTAD have criticized the heavy social and economic costs that IMF arrangements often impose on debtor countries. As suggested in this volume, these critiques are reminiscent of debates which arose during postcolonial transitions about the mandate of international organizations and their responsibility to bring about an international financial order more representative of the economic interests of the developing world.

The last aspect concerns the perceptions of sovereign debt problems by powerful states. After the end of the Cold War, solving private debt crises was no longer a preferred way to make allies because there was no global enemy left. After the demise of the Soviet Union, Western states ceased to defend the interest of debtor nations as a way to bolster their diplomatic standing. In the past two decades, sovereign debt has remained a state-to-state exchange only on rare occasions, for instance, China's lending in Africa or Russia's lending in Venezuela. That said, Western states did not quite assume a passive and subsidiary role in debt disputes. Since the 1980s, states have reverted to their nineteenth-century role of protectors of private capital (Abdelal, 2007), offering their mediation to help banks remedy broken contracts.

So where does that leave us? To some, the current regime is a direct continuation of imperial practices (Amin, 2001; Toussaint, 1999). While sovereign debt remains a binding mechanism that can result in the subjugation of debtor states to their creditors, we claim, however, that the current context is only superficially similar to what we call imperial debt diplomacies. State actions no longer entail the use of military tools like gunboats against defaulters. Gunboats have disappeared, and violence is no longer an acceptable means of recovering debt. In our view, this is sufficient to justify distinguishing the current predicament of sovereign debt from the imperial debt diplomacies that prevailed in the nineteenth century. Nonetheless, the current context is uniquely unforgiving of irregularities of debt repayment, a feature that contrasts strongly with the interstate (1933–1970s) and postcolonial (1960s–80s) regimes of debt diplomacies.

To characterize the post-1980s context, we prefer an alternative narrative that borrows from classical as well as more recent studies of financial hegemony

(Kindleberger, 1986; Strange, 1987; Yeates, 2002). The frame of hegemony builds on the observation that creditors continue to exert tremendous power on debtor states through indebtedness. But the means of coercion have changed to a significant extent. Debt repayment mobilizes multilateral organizations like the IMF, the World Bank, and the Paris Club, whose practices of conditionality are hard to resist, even by Western countries, such as Greece recently (Pénet, 2018a). Hegemonic norms and rules of financial exchange may appear softer and more respectful of the sovereignty of debtor countries than colonial tools of debt dispute. But they are not less consequential. In many ways, one can observe that the former has a universal reach which no colonial empire (for instance the British Empire before 1914) ever had before. Structural adjustment policies, austerity programmes, and privatization plans have been likened to the ‘Washington consensus’ (Williamson, 1990). But in reality, these prescriptions enjoy universal appeal well beyond US policies. The requirements of austerity, privatization, and liberalization have become integral to the world consensus about how to manage fiscal policies from Africa to South America and East Asia (Bear, 2015; Stiglitz, 2002). Even more, these requirements rank as axiomatic in Europe, as was evidenced in the terms and conditions that the European Commission and European Central Bank imposed on southern European countries during the European debt crisis (Blyth, 2013; Dyson, 2014).

The three essential features of what we call *hegemonic debt diplomacies* are deterritorialization, universality, and uniformity. The current regime is deterritorialized because diplomatic involvement in debt disputes no longer reflects the preference of a territorial centrality, be it a powerful state or a capital (e.g., London, Paris, Washington). Unlike previous regimes, the current regime appears more universal in reach. The British Empire was immense and Britain the only nation to ascend to truly global power. But it was not quite hegemonic insofar as there was a strong competitor, the French Empire, and that it did not encompass important regions of the globe like China and Japan. The US ascendance to global power after 1945 was not any more universal. During the Cold War, the Soviet Union kept exclusive economic ties with its satellite states and other regions of the world such as India and Northern Africa. The expansion of Western capital markets also excluded the People’s Republic of China and its sphere of influence in Asia. And recall that, until the 1980s, the New International Economic Order initiative (NIEO) led by Third World countries entertained the promise that a counter-model for the organization of global financial affairs was possible. But the NIEO did not survive the rise of Washington Consensus policies in the 1980s and 1990s.

The current regime is also unprecedented in terms of its uniformity. Today, borrowing nations are beholden to market forces in a way not seen in the post-war years (Boyer & Drache, 2005). Debtor–creditor relationships are anchored in global metrics of performance and indicators of good governance (Davis, Fisher, Kingsbury & Merry, 2012; Ralph, 2015). Private credit ratings offer a good

example of ‘governance by indicators’ with respect to financial and investment decisions (Pénet & Mallard, 2014). Such deterritorialized tools and norms have contributed to naturalize market discipline and creditors’ expectations of repayment (Arewa et al., 2018; Lemoine, 2016). Be it the IMF, the US Federal Reserve, the Eurozone financial institutions, or even the globalized elites from the Global South, the baseline expectation is that debt must be repaid, no matter the costs.

Despite this disagreement over the neo-colonial character of current sovereign debt markets, we wish to emphasize several methodological affinities with post-colonial studies. Our colonial perspective on sovereign debt and, in particular, the ‘history from below’ approach that many volume contributors have adopted resonates with the work of de Sousa Santos & Rodríguez-Garavito (2005) and Jaffe (2015). This approach is key to understand the paradox whereby the economic elites of formerly Third World nations have come to accept, and even in some cases, promoted conservative policies of international debt management. Understanding how and why debtor countries gave their assent to structural adjustment policies, austerity programmes and privatization plans are instrumental to better understanding how the current hegemonic regime of sovereign debt disputes came into being and how it is reproduced. With a focus on subaltern agency (Spivak, 1988), this volume usefully complements the traditional elite perspective on financial imperialism favoured by the Cambridge school of empire history and by many scholars in the globalization studies.

This volume also identifies important cracks in the current sovereign debt regime. Hegemonic debt diplomacies have not erased ‘global legal pluralism’ or the ‘distinctive institutional and normative characteristics which shape the production implementation and enforcement of rules’ (Snyder, 1999, p. 372). First, the constraints imposed on debtor countries by international organizations and market actors have produced contestation, resistance, and opposition (Yeates, 2002). Creditor states and large investors themselves have recently showed signs of exasperation at the legalistic behaviour adopted by vulture funds in debt disputes. In Europe, new anti-vulture funds legislations represent an important step forward in the regulation of opportunistic behaviour created by the legalization of sovereign debt (see Datz in this volume). The adoption of bail-in rules following the 2008 crisis are another example. We suggest that these new developments require additional research.

The return of the legal doctrine of odious debt is another important development that warrants closer scrutiny in research. Since the legal treatise published by Alexander Sack (1927), the term broadly refers to the debts of a nation incurred against the interests of its population. Debts are odious and should not be repaid when they were incurred by irregular regimes and for improper uses (King, 2016). Odious debt has made a spectacular comeback in the international conversation about Venezuelan debt (see Gulati & Panizza in this volume). The legal doctrine has been used to admonish the decision of US creditors to lend to the Maduro

government. The scope and application criteria of odious debt have elicited considerable interest and debate among academic and civil society circles in recent years (Nehru & Thomas, 2009). Some are calling for a broader and more flexible doctrine in recognition of the fact that most states currently burdened with crushing debt are democratic states (Pénet, 2018b). This lively debate on odious debt, and more broadly, on the problem of debt repayment, testifies to the fact that the universal sanctity and validity of debt contracts remains a contested subject in the current sovereign debt regime.

Overall, the current development of international law is more ambiguous than it seems if we consider that political actors retain significant authority to impose limits on creditors' uncompromising and legalistic behaviour in negotiations over broken contracts. Furthermore, another source of ambiguity lies in the identification of the beneficiaries of the growing legalization of sovereign debt. We argue in this volume that investors and bondholders are not the only actors benefiting from such legalization. As evidence in the recent discussions surrounding odious debt, international law is a development that may also benefit debtors, since it limits creditors' claims against politically unsettled countries. The same applies to legal clauses which not only benefit creditors (who use them to enhance their expectations of repayment) but also debtors, in particular the 'quasi-sovereign' states which can find legal clauses a source of stability during times of uncertainty (see Chari and Leary in this volume).

1.5 Organization of the Volume

This volume is organized into four sections, each one analysing a cluster of sovereign debt disputes according to a mode diplomatic involvement: the nineteenth-century default episodes (imperial debt diplomacies), the interwar wave of defaults (interstate debt diplomacies), defaults arising from postcolonial transitions in the 1960s–70s (postcolonial debt diplomacies), and post-1980s cases (hegemonic debt diplomacies). This chronological organization is meant to display contextual similarities and variations in sovereign debt diplomacies and highlight logics of path dependency between contexts. Some volume contributions offer a thick analysis of a single case of sovereign debt dispute while others survey a larger number of cases. As we explain below, the selected cases were chosen on the basis of their representativeness in the period concerned.

Imperial Debt Diplomacies (1820–1933)

The first section unpacks the nineteenth-century relationships between sovereign debt markets and colonial history. This section covers several prominent cases of

debt default which prompted imperial powers to expand and consolidate colonial rule. Scholars in the colonial and postcolonial studies have typically assessed the building of empires in the broader political context of civilizing missions and their consequences on people, bodies, and cultures (Conklin, 1997; Cooper & Stoler, 1997). The first section of this volume complements these studies by surveying financial drivers to empire-building projects.

The first two chapters by Flores Zendejas and Cole and by Coşkun Tunçer compare the imperial responses to sovereign debt defaults and their effects on defaulters in Latin America and the Mediterranean region. Drawing on archival data, Flores Zendejas and Cole (chapter 2) attempt a broad survey of the role of Britain and private intermediaries in controlling and limiting the sovereignty of Latin American nations during the first globalization wave beginning in 1820. Following an ‘informal empire’ perspective, they show that British merchant banks played the central role as mediators and arbitrators between defaulting states and international creditors. The originality of this chapter is to survey the development of new legal methods of contractual enforcement pioneered by European states and creditors such as the use of diplomatic conventions for debt repayment or the adoption of direct contracting, a kind of settlement in which the holders of defaulting bonds could obtain physical assets and shares of companies in the services or transportation sectors. Flores Zendejas and Cole suggest that while prior debt dispute cases were often considered on a case-by-case basis, it was in late nineteenth century that European states (in particular Britain) and Latin American debtor states codified for the first time legal templates for the resolution of disputes over broken contracts.

Ultimately, Flores Zendejas and Cole show that Latin American debt disputes were seldom accompanied by armed interventions. Because of geographical distance and the (relative) absence of European geopolitical interests in Latin America, European states mostly refrained from military intervention and limited bondholder support to the diplomatic arena. Only on rare occasions—France and England in Mexico (1862) and Britain, Germany, and Italy in Venezuela (1902)—did European States use the military force against defaulting countries. But they show that these episodes were primarily motivated by geopolitical interests and territorial disputes and only remotely concerned with debt collection. These interventions produced important debates among European and Latin American jurists about the legality of such military interventions and the applicability of legal remedies to prevent them. These debates did not prevent further foreign interventions, this time by the US in Central America in the early twentieth century, but they are valuable to study in this volume because they would later serve as focal points in twentieth century debates about sovereign debt.

In chapter 3, Coşkun Tunçer compares the process of debt build-up, default, and establishment of colonial rule in Egypt and Tunisia. There, defaults led to military interventions and territorial conquests by the dominant powers—the

French in Tunisia and British in Egypt. Drawing on archival data, he argues that the building of colonial rule was a gradual process. The first stage in the process involved bondholder committees' attempts to impose fiscal controls on defaulting nations and force extraction of repayment. But financial controls were not an efficient method because of local opposition to harsh tax. Such attempts often being unsuccessful, bondholders would then, in a second stage, ask their governments for support. Coşkun Tunçer's analysis of governmental responses to creditors' requests for assistance therefore complicates how we understand nineteenth-century colonial expansion in the Eastern Mediterranean. In particular, he shows that British and French colonial expansion in Egypt and Tunisia did not follow a preconceived plan. Instead, territorial expansion was the outcome of a series of contingent decisions and local improvisations.

While the first two contributions examine debt as an empire-building instrument, chapter 4 concentrates on the weakening effects of imperialism on government debt markets during the interwar years, using India and Australia as cases in point. Degive and Oosterlinck's main objective is to test the 'empire effect', i.e., the impact of colonial status on borrowing costs. The literature on empire effects has yet to produce a consensus as to how and whether colonial status affects borrowing costs. For some, membership to the British Empire led to privileged capital market access and lower borrowing costs, partly due to an implicit imperial guarantee to the loans issued by the colonial governments (Accominotti, Flandreau & Rezzik, 2011). The empirical evidence remains controversial, in part because studies have focused exclusively on the nineteenth century. Oosterlinck and Degive innovate by adopting an interwar perspective on empire effects. The interwar context is valuable because colonial guarantors faced their own sets of economic difficulties and because the rise of independence movements in the colonies made a default a real possibility, thus undermining the strength of the colonial guarantee and shifting foreign investors' perceptions of the creditworthiness of colonized territories.

Their main finding is that the British colonial rule offered a guarantee against high borrowing costs, albeit this function was not uniform across countries. Investors developed rival interpretations about the credibility of the colonial guarantee. Oosterlinck and Degive hint at two understandings of the British colonial guarantee: *protection against repudiation* in India and *protection against economic default* in Australia. To understand these differences, the authors depart from a conventional understanding of investors' behaviour as shaped primarily by tools of risk analysis and legal clauses. They show that these differences were patterned onto the political and diplomatic realities of British Empire in the two countries. In India, investors were less concerned about the colony's ability to pay than about the threat of independence and political repudiation, which became credible in the 1930s. In Australia, prices reflected the country's own macroeconomic fragilities. The coexistence of different pricing rationalities within the

British Empire is a fascinating finding that revisits how we understand the complex financial realities within the British Empire. Ultimately, the notion of implicit guarantee and the various interpretations that it produces suggests that, from the British Empire to the Eurozone debt crisis, the role of the official sector as protector of private capital has always elicited competing understandings.

Interstate Debt Diplomacies (1933–70s)

The three chapters in this section examine important changes in the way sovereign debtors and creditors settled debt disputes in the turmoil of the Second World War and in the post-war context. Our assessment of post-war debt diplomacies concentrates on the context immediately preceding and following the war, a crucial period in the history of sovereign debt which is often neglected by historians.⁶ The post-war context provides empirical illustration of the claim made by Lienau (2014) that the norm of debt repayment is politically and historically variable. The three chapters show that the sanctity of debt contracts varies according to the identity of the agent charged with conducting debt talks. So long as private creditors were the main negotiator agents, debt talks were strictly restricted to one background expectation: repayment. But as states began to assume a more explicit role as enforcer of debt contracts after the Great Depression, negotiating on behalf of their domestic bondholders, debt acquired a broader public and diplomatic meaning. Creditor states did not give consideration to debt repayment without considering as well other concerns such as peace, trade, reparation, and the building of a new international order. As a result, the sanctity of debt contracts was durably undermined. No longer universal, the value of debt claims became contingent upon creditor states' recognition.

Chapters 5 and 6 trace two cases of interstate debt diplomacies. Del Angel and Pérez-Hernández focus on the little-known Mexico debt agreement of 1942 and De la Villa revisits the 1953 London Debt Agreement on German Debts (LDA). The German and Mexican cases stand out from the rest of dispute settlements of that time because their debt overhang was restructured in a unitary fashion.⁷ In chapter 5, Del Angel and Pérez-Hernández examine the conditions that allowed a resolution so favourable to a government that had been negotiating for decades with creditors without success. The originality of this chapter is to provide the

⁶ The early interwar period and, in particular, the question of German reparations, is not covered in this volume. But the legacy of interwar problems is visible in our analysis of post-war debt disputes. For instance, the spirit of forbearance that prevailed at the London Conference on German debts can be explained in part by the concern shared by creditors not to repeat the mistakes of the Versailles Treaty, which Germans regarded as a national humiliation.

⁷ In comparison, the restructuring of Japanese debt led to separate agreements with US, British, and French bondholders. As for the defaulted debts of Russia and China, they would not be addressed until the end of the twentieth century.

perspective of the Mexican debtor. Previous literature has emphasized the US government's strategic interest to forbear Mexican debt as the main driver behind decisions to cancel Mexican debt (Borchard, 1951). This externalist reading gives President Roosevelt the leading role: it was he who coerced US creditors into accepting major losses in order to build strong diplomatic and commercial interests with Mexico. While this political argument is essential, it provides only a partial explanation. More problematic in this story is that Mexico is often featured on the receiving end of decisions taken in Washington. In contrast, Del Angel and Pérez-Hernández follow an internalist 'state capacity' argument that recalls the perspective pioneered by Skocpol and Finegold (1982). They observe that since the onset of the Mexican Revolution, the government of Mexico was weak and therefore lacked international credibility to remedy its long and problematic history with US creditors. Important changes in leadership at the Ministry of Finance in the 1930s improved the negotiation position of Mexico. In particular, he highlights the role of the Mexican elite and business groups in placing debt negotiations in a broader set of bilateral negotiations, including the signature of trade agreements and the thorny question of state compensation for expropriations of US citizens and nationalization of oil companies during the Mexican revolution. This grand bargain proposed by Mexican elites played a major role in the normalization of Mexico-US bilateral relationships.

Germany was another prominent case of debt forbearance. In chapter 6, De la Villa shows that creditor states enforced a 'principle-based' approach in their restructuration of German debt. The three principles that facilitated the outcome of the LDA were: 1) capacity to repay, 2) equality of treatment, and 3) majority acceptance. The main innovation of the LDA, she suggests, was to prioritize the economic recovery of Germany over creditors' claims of repayment. De la Villa argues that these principles should not be equated with plain and simple discretionary politics. To be sure, the negotiations between Germany and foreign creditors took place under Allied control and according to the principles settled by foreign powers. But creditors were not entirely passive. They were, in fact, an important contributing force in shaping the outcome of the LDA. This is an interesting claim given that much of the literature on debt disputes has been attracted either by the figure of the inflexible creditor (claiming that debt must be repaid in time and in full) or that of the rogue state (evading their legal obligations). De la Villa identifies in the LDA a peculiar equilibrium where creditors and states were willing to meet each other halfway between full repayment and default. To the current observer, it is quite amazing to observe that creditors were willing to settle for less, without even putting up a legal fight. Having lost most of their bargaining power, private creditors were ready to accept losses on their investments that most current creditors (think, for instance, German creditors to Greece) would deem unacceptable. Therefore, the German case evidences an

important fact about the norm debt repayment: far from being stable and inevitable, the debt continuity norm is inherently political and historically variable.

One may legitimately ask whether the experience of Mexico and Germany can find generalization in the post-Second World War context. Drawing on archival data collected on a broad sample of high-profile cases of debt restructuring, Flores Zendejas, Pénet, and Suter show in chapter 7 that, as states gradually became the contractual enforcers of private debt claims after the Second World War, debt contracts ‘took the backseat’ to other concerns perceived as more important such as peace, trade, reparation, and the building of a new international order. For major powers like the US, France, and Britain, the resumption of international trade—rather than the resumption of capital markets—was seen as the essential objective of debt negotiations. Thus, the unpaid debt that remained from the 1930s wave of defaults lost strategic relevance in the eyes of financial powers. This new order of priority enhanced the bargaining power of defaulters and weakened the position of bondholders. Under this new conception of state responsibility which emphasized the rebuilding of the international order, the previous relationship between sovereign debt and imperialism also vanished.

Additionally, Flores Zendejas, Pénet, and Suter show how private creditors sought to challenge the outcome of interstate debt disputes, notably in relation to equality of treatment between creditors. They emphasize several cases of creditors attempting to elevate debt disputes to international legal forums. Although such attempts failed, they are significant because they foreshadow many aspects and problems in the current debate about debt dispute adjudication. Finally, the authors assess the efficiency of interstate tools of debt settlements against metrics of performance. They find that interstate diplomacies resulted in longer periods of debt negotiations and higher losses for bondholders than during the previous financial periods.

Overall, this interstate regime of debt diplomacy accounts for an intermediate phase in the history of sovereign debt disputes between what we called imperial debt diplomacies and the post-1980s period of hegemonic debt diplomacies. The post-war context was marked by the role of states in limiting the bargaining power of creditors and creditors’ lower expectations of repayment. The repayment difficulties facing creditors continued throughout the postcolonial transitions of the 1960–70s when the contractual claims contracted during colonial times became contested with the breakdown of European empires.

Postcolonial Debt Diplomacies (1960s–80s)

The entangled histories of sovereign debt and colonialism returned to the surface during the breakdown of colonial empires, when the continuity in debt repayment became a controversial issue. Postcolonial transitions raised the issue of debt continuity in the context of state succession. Postcolonial transitions pointed to

a difficult trade-off for newly independent states: if they repaid their debt, self-determination could run the risk of becoming *de facto* illusory because these states would be burdened with unsustainable debt. At the same time, for these newly independent states, paying off debt was a prerequisite for being recognized by the international community and gaining capital market access. This trade-off between *de facto* and *de jure* sovereignty was implicit in the legal debate on state succession that opened in the 1960s.

Chapters 8 and 9 by Mallard and Waibel can be read in tandem. They show that postcolonial transitions gave rise to a new discourse in international public law on the legitimacy and legality of sovereign debts contracted during colonial times. The legal debate was polarized into two positions embodied by Daniel Patrick O'Connell and Mohammed Bedjaoui, the two foremost scholars on the law of state succession. Mallard and Waibel trace the intellectual trajectories of Bedjaoui and O'Connell, respectively, highlighting their theoretical contributions to legal philosophies on state succession and, more broadly, how postcolonial transitions affected the historical developments of the legal profession.

In chapter 8, Mallard concentrates on Mohamed Bedjaoui, whose work at the International Law Commission (ILC) had a major influence on legal philosophies of state succession. An Algerian legal scholar trained in France, Bedjaoui was also a member of the Provisional Government of the Algerian Republic during the War of Independence. At the ILC (1965–82), Bedjaoui was tasked with identifying existing trends in state succession and the issues it raised in matters of public property, archives, and debts. Bedjaoui, perceiving that extant international laws had been written by former metropolises to protect their economic interests in the postcolonial era, set to work on a convention. Bedjaoui endorsed the idea that the colonizer's obligations are extinguished on independence. This 'clean slate' theory (in the words of Waibel) provides that no state debt of the predecessor state shall pass to the successor state, unless an agreement between the newly independent state and the predecessor state provides otherwise.

Waibel's contribution on Daniel Patrick O'Connell (chapter 9) usefully complements Mallard's study. If Bedjaoui was a proponent of clean slate theory, O'Connell (trained in the UK and Chichele Professor of International Law at Oxford University) was a foremost proponent of the 'equitable doctrine' holding that creditors retain 'acquired rights' that allow them to claim compensation for debts incurred by predecessor governments. This doctrinal conflict between Bedjaoui and O'Connell reflected larger political interests and asymmetries of power between the North and the South. Mallard and Waibel provide a detailed description of the rivalry between these two approaches, and, through them, the competition between *people* (networks of lawyers) and *places* (the particular forums where doctrines were elaborated).

While Mallard and Waibel work from a history of ideas perspective, their contribution is valuable to this volume because they are also interested in the

international diffusion of legal ideas and their impact on actual negotiation practices. At first glance, Bedjaoui and O'Connell do not seem to have made a lasting impact in the legal world. The main outcome of Bedjaoui's legal activism was the 1983 Vienna Convention on the Succession of States in Respect of State Property, Archives and Debts. This Convention has neither attracted broad state participation nor has it had a major impact on subsequent state practice. O'Connell's equitable doctrine also failed to become part of customary international law. Waibel reflects on the problem of failure and asks: who has an interest in the absence of a legally ratified convention on colonial debts? This is a key question whose relevance extends to the recent failed IMF proposal (Krueger, 2002) to establish a sovereign debt restructuring mechanism (SDRM). As Waibel suggests, the crux of the matter is deceptively simple but crucial to recall: state practice is tangled, conflicted, and, as such, it resists codification. In light of the complexity of the problems involved with state succession, the solutions adopted have so far remained highly case specific.

The legacy of Bedjaoui and O'Connell is deeply ambiguous, as their proposals were not codified into hard, legal principles of international debt restructuring (although it should be noted that Bedjaoui had a direct influence on the debt dispute between Algeria and France). Yet, it would be misleading to judge their legacy as one of failure. Their influence on current debates is probably stronger than what we can assume if we take ratification as the main criterion of success. Deforge and Lemoine (chapter 10) show that the legal innovations arising from postcolonial transitions, in particular Bedjaoui's attempt to establish a 'New International Economic Order', deeply influenced the United Nations Conference on Trade and Development (UNCTAD), the Geneva-based organization founded in 1964 and whose history is closely linked to the history of postcolonial transitions. Bedjaoui's work was a source of inspiration for UNCTAD policies and it can be credited with having substantially influenced development economists and debt campaign movements in the 1960s–70s before it became the subject of countervailing measures. Drawing on archival sources and international diplomatic cables, Deforge and Lemoine explain how and why UNCTAD's projects for structural reform of the international financial architecture were contested and ultimately rejected in the late 1970s. Such defeats were a blow to the transformative goals that UNCTAD had initially set out to achieve. The author shows that in the 1980s, UNCTAD gradually became a technical agency and its mandate restricted to providing technical assistance to developing countries during their negotiations with the Paris Club. Overall, rather than providing a more symmetric relationship between the North and the South, the authors argue that UNCTAD is merely restating the 'good governance' prescriptions which conventional wisdom sees necessary to attract foreign capital (e.g., creating a 'business-friendly' environment).

The originality of this chapter is to accommodate the perspective of developing countries as agents of political and social change. Deforge and Lemoine suggest that the hegemony of market recipes to financial uncertainties owes much to the disappearance of a 'non-aligned' movement. The paucity of cooperation mechanisms between developing countries is in stark contrast with the situation that prevailed in the 1960s–70s, when political linkages between developing countries triggered off-market forms of exchange. For instance, foreign loans extended by the Soviet Union to developing countries were not premised on the sort of market-based evaluations of creditworthiness that prevail today but on principles of political solidarity and strategic forms of interstate coordination. What transpires in Deforge and Lemoine is that developing nations now seem reluctant or even unwilling to propose an alternative framework challenging the current market-based sovereign debt regime. These forms of solidarity have vanished and debt is now fully embedded into market-based rationalities. Ultimately, internal changes at UNCTAD and broader ideological shifts affecting developing nations go hand in hand with reproducing the current market-based regime.

As we are coming to the end of this section, we can legitimately wonder if the hopes of an alternative system for the organization of global financial have been quashed. Deforge and Lemoine suggest that the dogma of the necessary uniformity of national regimes under the supervision of transnational actors has become hard to resist. Yet, the last section of our volume offers an alternative, perhaps more optimistic, outlook on the current sovereign debt regime.

Hegemonic Debt Diplomacies? (1990s–present)

The last section concludes the cycle of legal and political innovations in sovereign debt that began during the postcolonial context. Volume contributions are complementary because each focus on a particular facet of the current hegemony of legal actors in debt disputes, which some have referred to as the increasing 'legalization' of sovereign debt. Each of the three chapters provides a different viewpoint on the current development of international law and its ambiguous effects on sovereign debt disputes since the 1990s.

In chapter 11, Datz demonstrates that state legislators retain significant authority to impose limits on creditors' legalistic behaviour in negotiations over broken contracts. Her main focus is on anti-vulture funds legislations in Britain, France, and Belgium. Since the 1990s, legal manoeuvres by holdout creditors have been a source of financial uncertainty for both debtor countries and large investors. In Argentina, for instance, the uncompromising behaviour adopted by vulture funds disrupted the debt restructuring that the majority of bondholders wish to make. National legislators have reacted to such legal tactics with legislative and contractual changes. These efforts suggest that lessons can be learnt, even if reform can be

slow in the making. Datz claims that anti-vulture funds legislations reaffirm the importance of ‘place’ in what have been usually conceived as global, footloose bond finance. National lawmakers have attempted to counter the growing deterritorialization of sovereign debt with domestic policies designed to protect domestic financial players against the uncertainty produced by vulture funds. She suggests that the global significance of international norm-providers does not diminish the relevance of states in sovereign debt disputes. The literature has often suggested that private creditors still need the state on their side to facilitate its operations and maximize expectations of repayment when countries are unable to assume their financial obligations (Evans, 1997; Pooley, 1991). As Datz shows, the role of states also extends into drafting legislations. Thirty years after the financial deregulation reforms of the 1990s, states are ‘back in’ with national anti-vulture funds legislation to curb a haphazard system of debt adjudication that lacks a universal set of rules. She suggests that the current anti-vulture funds legislations represent a step backward, namely a way to re-embed litigation firmly within the perimeter of the state.

It remains to be seen what effects—if any—these legislations will have on creditor–debtor interactions and on vulture funds whose power could be, after all, fragile and reversible. But these initiatives already suggest several important insights into current debates about sovereign debt. First, a fascinating aspect in Datz’s chapter is the fact that such countervailing measures are originating from European governments, acting as institutional entrepreneurs. Back in the 1960s, the proponents for a New International Economic Order were countries of the South, mostly postcolonial states. Today, EU anti-vulture funds legislations can be understood as a countervailing action against US judges (Judge Griesa most particularly) and, more broadly, the idea hegemonic in the current debt regime that debt must be repaid regardless of the costs of repayment on debtor states. Datz concludes her investigation by suggesting that a geographical rift has recently opened between Europe and the US over the meaning of international law. Second, this chapter suggests that domestic tools afford key solutions to global problems. Anti-vulture funds legislations demonstrate that state legislation remains relevant to bring about important transformations in the world of sovereign debt.

In chapter 12, Gulati and Panizza examine the current ambiguity of international law from a different angle. Their chapter takes up the classic question of odious debt to understand whether successor governments can be held liable for debts issued by a former administration. Their case is Venezuela, an already much discussed case and one that will likely become more controversial in the years to come. The scope and application criteria of odious debt have elicited considerable interest and debate among academic and civil society circles in recent years (Nehru & Thomas, 2009; Pénet, 2018b; Toussaint, 2017) but there continues to be a great deal of scepticism among lawyers about whether odious debt can find recognition in international customary law (Buchheit, Gulati & Thompson, 2007;

King, 2016). This chapter suggests, quite innovatively, that the doctrine of odious debt could take a more prominent role in sovereign debt markets.

The true originality of the chapter is to address the question of odious debt ‘in-the-making’. Most studies of odious debt tend to adopt a rear-view-mirror approach, using old cases to explore the legal meaning of odious debt, and its costs and benefits on international law. This chapter adopts a different perspective: the authors look at how possible accusations of unauthorized, invalid, and illegitimate debt are shaping investors’ decisions to invest in bonds. Venezuela offers an experimental case to analyse how investors price bonds which might be odious but whose character of odiousness was not yet formally recognized by a court of law. Drawing on quantitative methods, they show that, although the legal basis for repudiation is very uncertain in Venezuela, the threat of odiousness was nevertheless internalized in bond prices, thanks in no small part to the activism of Harvard economist and former Venezuelan Minister of Planning Ricardo Hausmann.

The Hausmann–Gorky effect makes up for an interesting case of legal performativity.⁸ Around the globe, lawyers affect markets by saying what markets are and what they should do. But, despite these facts, lawyers are still largely thought of as professionals whose activity is restricted to the courtroom. Gulati and Panizza boldly challenge this view by showing that odious debt does not need to be legally enforceable to produce real-world effects. Simply that investors might believe the threat of odiousness is a credible one would thus be sufficient to make the debt odious. Ultimately, this contribution shows that international law remains fundamentally an ambiguous development in the contemporary debt world, being at once a development that bolsters and limits creditors’ claims against recalcitrant debtors. Whereas Mallard’s and Waibel’s chapters surveyed the failed attempts to adopt comprehensive laws on state succession, Gulati and Panizza offer a more optimistic outlook by showing that odious debt can find meaningful application even outside the courtroom. Altogether, this chapter engages into a relevant debate about the meaning of law and the role of lawyers and ‘legal entrepreneurs’ in the world of sovereign debt from Sack to Bedjaoui and O’Connell and Hausmann.

In chapter 13, Anusha Chari and Ryan Leary investigate how credit risk affects the pricing of contractual provisions. The authors demonstrate the significance of legal clauses in the current functioning of sovereign debt markets. Their case is the Puerto Rican debt restructuring, the most significant municipal restructuring in US history. Puerto Rico offers an experimental case to analyse how ‘quasi-sovereign’ entities deal with sovereign debt disputes. Quasi-sovereignty is problematic for the issuing state because it sends mixed signals to investors (Gelpern,

⁸ The influential concept of performativity comes from economic sociology and has so far been applied to financial models (Callon, 1998; MacKenzie, 2006). Gulati and Panizza’s contribution extends this concept to legal clauses.

2011). This problem typically concerns formerly colonized territories or peripheral countries. The case of Puerto Rico is useful to compare with Greece: both countries belong in a larger constituency of interests (the Eurozone, the US, a regional monetary union) but do not control monetary institutions, which undermines policy reactivity after a financial shock. Drawing on results from the inspection of the yields and legal components of over 4,000 Puerto Rican bonds spanning a decade, the authors show that legal clauses are most valued by bondholders when credit risk is highest. For the borrowing country, legal clauses also afford a protection against higher yields when a restructuring becomes more likely. This contribution can be read in tandem with the previous chapter as providing an interesting avenue of research on the benefits of legal clauses not just for creditors (who use them to enhance their expectations of repayment) but also for debtors who can find in them a source of stability during times of uncertainty.

The concluding remarks (chapter 14) by Odette Lienau reflect back on this volume and ponder the relevance of investigating sovereign debt from a diplomatic perspective, from the building of colonial empires to the recent debates about hegemony. She begins by noting that the terms that we have used to characterize debt diplomacies (colonial, postcolonial, hegemonic) are very much alive in the contemporary world since they are regularly used by activists and resonant with broader populations. Beyond the popular salience of these terms, Lienau suggests that these terms have value for scholarship because they connect ‘to the search for a responsible actor in international financial relations’. Finding a responsible governing actor is often difficult in global financial affairs, particularly in sovereign debt, where creditor–debtor relationships involve multiple forums and mechanisms of powers.

Ultimately, Lienau suggests that there may be value in asking two layers of questions that align with the idea of sovereign debt diplomacies. The first, taken up more directly by this volume’s contributions, involves a study of sovereign debt in light of the concepts of (neo)colonialism, (neo)imperialism, and hegemony in ways that blur disciplinary boundaries and that adopt pragmatic rather than formalistic approaches to these issues. A second layer, implicitly suggested by volume contributors, takes up more explicitly the matter of how these politically laden terms themselves frame discussions of sovereign debt in ways that have impact in the world.

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