

A Robust Doctrine: Break the Taboo on Odious Debts and their Repudiation

The Challenges for the European Left regarding Debt and the Banks

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This English version of the interview originally published in French by the independent online journal *Le Vent Se Lève* (LVSL) has been fully revised and complemented by Eric Toussaint. [1]



Éric Toussaint has a PhD in Political Sciences and is spokesperson for the CADTM (Committee for the Abolition of Illegitimate Debts). He coordinated the work of the [Truth Committee on the Greek public debt](#) which had been created by the President of the Greek Parliament Zoe Konstantopoulou on 4 April 2015 and was shut down by the new president of the Greek Parliament on 12 November 2015. His latest book *The Debt System. A History of Sovereign Debts and their Repudiation* ([Haymarket](#), 2019) discusses the several instances in history when debts were repudiated. This was one of the issues we talked about.

Article :

LVSL - Do you consider that debt is not sufficiently covered in mainstream media? And if so, why do you think this is the case?

Éric Toussaint - It is often mentioned, but never in the sense in which the CADTM conceives of it. The discourse in mainstream media and by governments consists of repeating that there is too much public debt, too much public expenditure, that States must pay their debts and reduce their expenditure. With the CADTM, we are raising the questions of where those debts come from, whether the objectives for which debts were contracted were legitimate and whether they were contracted in a legal and legitimate manner. This is our approach, and yes, absolutely, this way of looking at things is not present in the mainstream media. They claim it is not related to their reality.



LVSL - Yes, you classify debts according to whether they are illegitimate and possibly odious. Can you tell us about the characteristics of these types of debts?

E.T.: First of all, a doctrine of odious debt was developed by Alexander Nahum Sack, a conservative Russian jurist and professor of Law at the University of Saint Petersburg under the Tsarist regime (Petrograd was the capital of the Russian Empire at the time). He developed the doctrine in reaction to the Soviets' repudiation of debt in 1918. He was not in agreement, and went into exile in France and then began compiling a list of all claims involving sovereign debts between the end of the 18th century and the 1920s. He studied the international arbitrations, the jurisprudence, the unilateral acts. Based on all that he created a doctrine of international law [2] that is partly applicable today. It establishes a general principle that holds that even in the case of a change of government, of regime, there is a continuity of international obligations.

Where do these debts come from? Were the goals being pursued legitimate? Were they contracted in a legitimate and legal way?

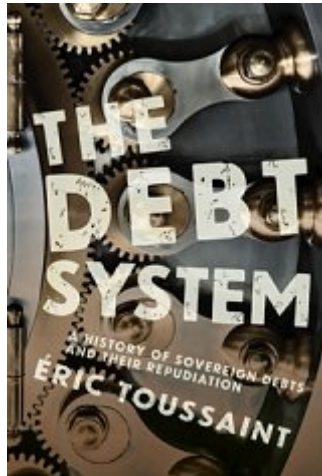
Nevertheless, the doctrine includes one fundamental exception: the concept of odious debt, which is based on two criteria. The first criterion is fulfilled if it can be demonstrated that the debts claimed against a State were contracted against the interests of the population of that State. The second criterion is met if the lenders were aware of that fact or cannot demonstrate that it was impossible for them to know that these debts were contracted against the interests of the population. If these two criteria are met, then these debts contracted by a previous government are odious, and the new regime and the population cannot be required to repay them. For the CADTM, this doctrine has to be brought up to date because the concept of what is against the interests of a given population has evolved since the 1920s, simply because [international law has evolved](#). That is true above all after the Second World War, when constraining legal instruments like the ICESCR ([International Covenant on Economic, Social and Cultural Rights](#)) and the ICCPR ([International Covenant on Civil and Political Rights](#)) were put in place and make it possible to determine what is or is not in the interests of a population.

ODIOUS DEBT:

- ▼ NO BENEFIT FOR THE POPULATION
- ▼ LIABILITY OF THE CREDITORS

As for illegitimate debt, it can be defined in less constraining terms. Such debt is qualified as illegitimate because it has been accumulated to promote the interests of privileged minorities and does not respect the general interest. For example, that is the case when public debt is contracted to bail out the major shareholders of banks, when in fact it is these same banks that are responsible for

the economic stagnation resulting from a banking crisis. In that context, the debts accumulated since the banking crisis of 2007-2008 in countries like France and the USA are illegitimate debts. Research conducted by the CAC (*Collectif pour un Audit Citoyen de la dette publique* – Collective for a Citizen Audit of Public Debt) in fact determined that 59% of the debt claimed against France is illegitimate (see [in French] [this article](#) and [this document](#)). This debt mass corresponds in part to the banking bailout, but also to a whole series of fiscal gifts given to major corporations which do not conform to the principles of fiscal and social justice. Further, the Eurozone States' refusal to finance state debt through the central bank and the marketing of that debt forces the States to pay higher interest rates than they would pay if they were able to get financing from the central bank. Therefore the amount of the accumulated debt resulting from that difference in interest rates should be deducted from the total.



LVSL - Regarding repudiation, how are debts repudiated? In your book you cite many examples of debt repudiation. Is there a continuity in the political contexts that encourage these repudiations?

E.T.: First of all, in general, a change of regime or government leads to the debt accumulated up to the time of the change being called into question. For example, in 1837 in the USA, there was a citizen rebellion in four States (Mississippi, Arkansas, Florida and Michigan) that led to the overthrow of their governors, whom the people accused of corruption, of having made agreements with bankers to finance infrastructures that were never built. The new governors repudiated debts and the bankers affected by the repudiations brought suit in federal court. But they lost their case! It's a very interesting one. The repudiation was the result of a citizen mobilisation and a denunciation of the behaviour of certain authorities by an outraged population who rebelled against repayment of these debts. The creditors were mainly British. Alexander Nahum Sack writes in this regard: *"One of the main reasons justifying these repudiations was the squandering of the sums borrowed: they were usually borrowed to establish banks or build railways; but the banks failed and the railway lines were never built. These questionable operations were often the result of agreements between crooked members of the government and dishonest creditors."* (p. 158). Creditors who attempted to prosecute the States that had repudiated their debts in a US federal court had their suits thrown out. To justify its rejection of the actions, the Federal justice system used the Eleventh Amendment to the Constitution of the USA, which stipulates that *"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."* Consequently this unilateral act of repudiation was a success. [3]

In the USA, the repudiation was the result of a citizen mobilisation and a denunciation of the

behaviour of certain authorities As another example, in Mexico, the government of president Benito Juárez – which was liberal in the 19th-century sense, that is, it favoured separation of church and state and free, compulsory secular public education – was overthrown in 1858 by the French in league with the local Conservatives. They borrowed from French, Swiss and Mexican bankers to finance their illegal government. In 1861 when Benito Juárez returned to power with the support of the people, he repudiated the debts contracted by the Conservatives. In January 1862, the French government of Bonaparte declared war on Mexico under the pretext of obtaining repayment of the debt owed to the French bankers. A French expeditionary corps of 35,000 soldiers put the Austrian prince Maximilian I on the throne as Emperor of Mexico. But Benito Juárez returned to power once again, with popular support, and decided to repudiate the debts contracted by Maximilian of Austria's regime between 1862 and 1867. The results were very positive for the country. All the major powers recognized the Benito Juárez regime and signed commercial agreements with it, including France after the fall of Bonaparte in 1870.

Finally, we can mention the Russian Revolution, where the population was opposed to the expenditures of the Tsarist regime and to the wars it waged. And when the Soviets took power in October 1917, one result was the adoption of decrees that first suspended repayment and then repudiated the debt. [\[4\]](#)

These are examples of acts that can be referred to as unilateral.



Other examples of international intervention could be cited. In 1919, in Costa Rica, an anti-democratic regime was overthrown and there was a return to a democratic regime, associated with a decision by Costa Rica's parliament to repudiate debts contracted by the previous regime. Faced with the threat of British intervention, Costa Rica requested neutral arbitration. The two countries agreed to designate the former President and Chief Justice of the Supreme Court of the USA, William Howard Taft, as arbitrator, and the court ruled in favour of Costa Rica! It's an interesting case in terms of jurisprudence, and it served as a reference for Alexander Sack, since he was an admirer of the USA. In fact Taft ruled that the debt claimed against Costa Rica by a British bank, the Royal Bank of Canada, was a debt accumulated by President Federico Tinoco for his personal benefit and against the interests of the population. **The bank was not able to demonstrate that it did not know that the money was borrowed by Tinoco for purely personal ends.** And above all, at no point in his ruling does Taft refer to the despotic nature of the Tinoco regime, and Sack applied that principle in his doctrine: he affirmed that the nature of the preceding regime is unimportant and that what matters in judging the debt is the use to which the borrowed money was put. And from my point of view this is fundamental, because for years there was an erroneous interpretation of Sack's doctrine which limited the applicability of repudiation of odious debt to dictatorial regimes. Sack's doctrine is based on the notion of a "regular government" of a given territory, a regime exercising real power, and whether it is legitimate or not is not the question. Sack defines a regular

government as follows: “By a regular government is to be understood the supreme power that effectively exists within the limits of a given territory. Whether that government be monarchical (absolute or limited) or republican; whether it function by ‘the grace of God’ or ‘the will of the people’; whether it express ‘the will of the people’ or not, of all the people or only of some; whether it be legally established or not, etc., **none of that is relevant to the problem we are concerned with.**” (p. 6).

According to Sack, what are the two criteria that establish a debt as odious?

There is no doubt about Sack’s position: that a regime be despotic is not a sine qua non condition that makes debts odious and susceptible to repudiation. [5] According to Sack, all regular governments, whether despotic or democratic of some kind, may be accused of having agreed to odious debts.

What are the two criteria that establish a debt as odious?

“Consequently, for a debt, regularly incurred by a regular government to be considered incontestably odious with all the consequences that follow, the following conditions must be fulfilled:

1. — The new government must prove and an international tribunal recognise that the following is established:

*a) that the purpose which the former government wanted to cover by the debt in question was odious and clearly against the interests of the population of the whole or part of the territory, and
b) that the creditors, at the moment of the issuance of the loan, were aware of its odious purpose.*

2. — once these two points are established, the burden of proof that the funds were used for the general or special needs of the State and were not of an odious character, would be upon the creditors.” (p. 170)

Sack clearly mentions the interests of the population, in particular in the context of a very specific case: the Treaty of Versailles of June 1919. The treaty says that the debts contracted by Germany to colonise Poland cannot be claimed against Poland once it was restored to its existence as an independent State, since the debt was contracted precisely for the purpose of colonising Poland and is therefore counter to the interests of the Polish people. In the same treaty it is stated that the people of the former German territories in Africa (Namibia, Tanganyika, Cameroon, Togo, Ruanda-Urundi) cannot be held responsible for debts contracted by Germany to colonise those territories. Sack cites an extract of the reply that the Allies made to Germany, which was not inclined to accept forgiveness of the debt of its ex-colonies, because Germany would have to continue the repayments itself. The Allies replied: *“The colonies should not bear any portion of the German debt, nor remain under any obligation to refund to Germany the expenses incurred by the Imperial administration of the protectorate. In fact, it would be unjust to burden the natives with expenditure which appears to have been incurred in Germany’s own interest(...).”* [6]

This is where the notion of the interest of the people, which took on meaning beginning with that period, comes to the fore. The president of the USA at the time, Woodrow Wilson, [published a declaration in January 1918](#) proclaiming the right of peoples to self-determination. According to that principle, a debt accumulated to colonise a given population calls the right of that people to self-determination into question.

It would be unjust to burden the natives with expenditure which appears to have been incurred in Germany’s own interest

This evolution of law justifies my position, which is that we should use the criteria Sack developed

on the basis of jurisprudence, but also take into account the evolution of international law.

LVSL - How do you explain the fact that when dealing with economic history, in particular in universities, the issue of debt is rarely if ever mentioned?

Yes, it's never brought up, simply because it's a taboo. That's really quite astounding, when in fact it's not only non-mainstream authors who write about debt. For example there are people like Kenneth Rogoff, who was chief economist at the IMF, and Carmen M. Reinhart, former Senior Policy Advisor and Deputy Director at the IMF and researcher at the NBER (National Bureau of Economic Research), who co-wrote a book called [*This Time Is Different: Eight Centuries of Financial Folly*](#) (Princeton University Press, 2009), in which they discuss the issue of sovereign debt in depth. There is extensive literature on debt from classical and neo-classical economists, but as you point out it's rarely taught in the universities – in European universities in any case, despite its being a vital issue from a socio-economic and legal point of view. However it's beginning to be taught in the Law faculties in American universities, for example by major figures like [Mitu Gulati, who is a professor at Duke University](#), and Odette Lienau, an associate professor of Law at Cornell University, who has written a monograph entitled *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*. [7] But as public debt again becomes a central issue, the dinosaurs and conservatives in the universities will no longer be able to avoid debate on subjects such as odious debt, suspension of payment and debt repudiation.

Often disparaged and widely avoided or ignored in university courses, the doctrine of odious debt has nevertheless been the topic of hundreds of articles and dozens of specialised books by a range of experts. They include:

The United Nations International Law Commission, [8] the IMF, [9] the World Bank, [10] the UN Conference on Trade and Development, [11] the UN independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, [12] Ecuador's Commission for the full audit of public debt set up in 2007 by President Rafael Correa, [13] the Committee for the Abolition of Third World Debt, now known as the Committee for the Abolition of Illegitimate Debt (CADTM) [14] and the Greek Debt Truth Commission set up by the president of the Hellenic Parliament in 2015 [15] have published documents, taken a stand and organised seminars on the topic, as debts whose legitimacy and validity may be questioned are constantly under discussion in the field of international relations.

Recent academic publications on the subject include: Salomon, Margot E. Salomon and Robert Howse, « Odious Debt, Adverse Creditors, and the Democratic Ideal » (November 27, 2018), London School of Economics Legal Studies Working Paper No. 20/2018, [available at SSRN](#) ; Ilias Bantekas and Renaud Vivien, « [The Odiousness of Greek Debt in Light of the Findings of the Debt Truth Committee](#) » Vol. 22 European Law Journal (July 2016) 539 at 542 ; Ilias Bantekas, 'The Right to Unilateral Denunciation of Odious, Illegal and Illegitimate Sovereign Debt', in I. Bantekas and C. Lumina (eds.), *Sovereign Debt and Human Rights* (Oxford UP, 2018) 536-554; Pierre Pénét, "Rethinking Odious Debt" - Books & ideas 19 March 2018. ISSN : 2105-3030. URL : <http://www.booksandideas.net/Rethinking-Odious-Debt.html> Jeff King, *The Doctrine of Odious Debt in International Law. A Restatement*, University College London, 2016; Stephania Bonilla, *Odious Debt: Law-and-Economics Perspectives*, Gabler publishers, Wiesbaden, 2011; Michael Waibel, *Sovereign Defaults before International Courts and Tribunals*, University of Cambridge, 2013; Michael Waibel, *Sovereign Defaults before International Courts and Tribunals*, University of Cambridge, 2013; Odette Lienau, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*, Harvard, 2014; Juan Pablo Bohoslavsky, Sabine Michalowski, "Ius Cogens, Transitional Justice and Other Trends of the Debate on Odious Debts: A Response to the World Bank Discussion Paper on Odious Debts" (2009-2010), *Columbia Journal of Transnational Law*, Vol. 48.

In conclusion, the doctrine of odious debt is a robust one that has evolved and continues to evolve over time, and governments need to find the courage to organise, with the active participation of their citizens, an audit of debt in order to set in motion the process of repudiating debts identified as being odious.

LVSL - If we look at the case of Greece in 2015, we see that there was a change of regime when Syriza and Alexis Tsipras came to power, with strong popular support. And yet in the end, Tsipras downplayed and ignored the work of the Truth Committee on Greece's Public Debt, which you worked for. What are the political factors that interfered with this movement towards a possible repudiation of a portion of Greece's debt?

Eric Toussaint (E.T.): Yes, it's obviously extremely important to analyse the case of Greece. In fact it was simply a matter of Alexis Tsipras being unable to adopt a strategy that was appropriate to the actual context in which Greece found itself. If you look at the Thessaloniki Programme presented in September 2014, which is the platform on which he was elected in January 2015 (see the excerpts from the programme in my article: <http://www.cadtm.org/The-Varoufakis-Tsipras-Line-was>), there was a whole series of very important commitments in it that included a radical reduction of the debt. There were measures that would have brought about radical changes concerning the brutal austerity measures that were being taken, the privatisations, and the way in which the Greek banks had been bailed out. As Prime Minister, Tsipras took an approach that was not at all consistent with his programme and with the commitments he had made.

But what is extraordinary, and absolutely needs to be underlined in Tsipras's case, is that a few days after he was elected in January 2015 and formed his government, before he had taken any measures whatsoever, on 4 February the ECB cut off the normal flow of cash to Greece's banks (<http://www.cadtm.org/The-Varoufakis-Tsipras-Line-was> and <http://www.cadtm.org/Varoufakis-Tsipras-move-towards>). That was nothing short of a declaration of war. And Tsipras did not have the courage to use the weapons of self-defence that were available to him: he did not suspend repayment of the debt, and that led to failure; he did not take control of the banks, nor did he take measures to control capital movement, and that allowed capitalists to organise the flight of capital (some thirty billion euros left the country between January and July 2015).

His strategy was to make very rapid concessions to the Troika, made up of the ECB, the IMF and the European Commission represented by the Eurogroup. The latter is in fact an entity that has no legal structure and does not exist in the treaties. And yet the Tsipras government agreed to be imprisoned in it. Yanis Varoufakis would negotiate and sign agreements with the Eurogroup, which at the time was chaired by Jeroen Dijsselbloem. In my opinion that strategy led to an initial capitulation on 20 February 2015, almost immediately. Agreeing to extend the memorandum of understanding for four months, to stick to the calendar of repayments and to commit to submitting proposed extensions of the reforms to the Eurogroup amounted to remaining in servitude (see <http://www.cadtm.org/The-first-capitulation-of-Tsipras>). Many people have interpreted that as adopting an intelligent attitude, as a tactical manoeuvre on Tsipras's part. In reality the terms of the agreement of 20 February 2015 amounted to surrender. It imprisoned him for good. He would have had to back-pedal by admitting to his people and to international opinion that he had been naïf in agreeing to the terms of that 20 February agreement. In reaction to the Troika's refusal to respect the expressed will of the Greek people, he should have announced that in making concessions, he had wrongly believed that the Eurogroup would also make concessions. In the face of the Eurogroup's refusal, he could have concluded that he needed to change his approach. But he didn't, despite the fact that he had the legitimacy to do it, which was evident later when he won the referendum in July 2015. But even after that vote, he did not comply with the people's will, even

though he had made commitments to do the opposite of what he in fact did! So it was Tsipras himself who prevented a movement towards repudiation of the debt, among other things.

LVSL - Can a similar situation come about today with Italy?

E.T.: Well with Italy, we're at a stage where you get the impression that the Salvini government – for which I obviously have no sympathy – is being a little tougher than the Tsipras government was in the face of the diktats of Brussels executive. But that needs to be put into perspective, since whereas during the campaign Salvini was asking the Italian people for a mandate to leave the euro system, as soon as he was able to take part in setting up the government with Di Maio, he accepted the framework and the constraints of the euro. After that, until December 2018, the Italian government did appear to be standing firm when it came to refusing strict budgetary discipline. Nevertheless at the end of December 2018, we witnessed the capitulation of the Salvini-Di Maio government, which accepted a strict budgetary discipline with a deficit limited to 2,04 % of GDP as demanded by the Eurogroup.

What we are seeing now in the case of several right-wing governments is that they disobey the European Commission not on the question of refusing austerity but on other issues: they refuse to respect the European agreement regarding refugees, applying a more rightist, more inhumane policy than the one put in place by the European institutions.

In this respect, clearly, so far no government has really disobeyed the EU directives regarding the continuation of budgetary austerity.

Indeed it's interesting to point out that the Macron government is the only European government that will slacken budgetary discipline, very slightly, announcing a deficit equivalent to 3% of GDP for 2019. That is being done, as everyone knows, because they are under pressure from a broad social movement that has profoundly destabilised and weakened the government. Macron is prepared to back down on austerity only as a means of recovering a degree of legitimacy. It's also interesting to underline the fact that this deficit overrun is being tolerated by the European Commission because it realises that it too would lose more credibility and legitimacy if it were to directly oppose the French government's concessions to the Yellow Vest movement. That is because the movement and its demands, involving resistance to unpopular taxes, an increase in purchasing power, and a reduction in fiscal injustice and inequality have met with a sympathetic response among the populations of other European countries. And lastly, it is hazardous for the European Commission to enter into conflict with the president of Europe's second-ranking power and champion of the European neoliberal, undemocratic order.

LVSL - Don't the European institutions have a policy of being much stricter with governments of the Left, progressive governments, than with others?

E.T.: In any case yes, it's absolutely certain that the European institutions are making a policy of being stricter with governments of the democratic and progressive Left than with others.

At the same time those governments, Greece being one example, have avoided disobedience. The government of Spain, under the Socialist Pedro Sánchez, is adhering to budgetary discipline. The same is true of the government of the Socialist Party in Portugal. You'll recall that during the legislative election of 4 October 2015, the political Left won an absolute majority of seats in the Assembly of the Republic: the Socialist Party (PS) came in second, with 32.4 %; the Bloco de Esquerda (Left Bloc) was third with 10.3% and 19 deputies, doubling its number of seats (it had

eight in 2011); the PCP gained a seat and had a total of 15; the Green party, PEV, was unchanged with two seats. A coalition government agreement was reached in November 2015: the PS would govern alone and the other two, more radical parties (Left Bloc and PCP), while refusing to take part in the cabinet, supported the government's decisions in the parliament when they agreed with them. The minority government of the Socialist Party took certain measures which improved living conditions for a part of the popular sectors by increasing the legal minimum wage to 600 euros gross and restoring the legal work holidays that had been taken away by the previous government, which gained it a certain popularity. But it nevertheless maintained a policy of compressing public spending in order to comply with the budgetary discipline of austerity imposed by the European Commission, and conducted bank bailouts that were favourable to big capital. Portugal's debt stood at 125% of GDP. The regular repayments prevented the government from increasing public spending as it should have, and despite the improvement in living conditions for some popular segments of the population, unmet social needs were still considerable. That is why it is of fundamental importance to call repayment of the debt into question (Interview with Eric Toussaint [in French with Portuguese subtitles]:

<http://www.cadtm.org/La-dette-reclamee-au-Portugal-est-insoutenable-largement-illegitime-et-en>).

LVSL - Let's imagine a situation like the one posited by the recent article by Renaud Lambert and Sylvain Leder in *Le Monde Diplomatique* titled "*Face aux marchés, le scénario d'un bras de fer*" ("The Scenario of a Showdown with the Markets"). Let's posit the case of a country like France where a government of the progressive Left determined to break with neoliberalism would be elected. The government would quickly announce a moratorium on debt repayment in order to consider repudiating the portion of the public debt that is illegitimate. In a case like that, how to avoid the financial panic and the collateral economic and social damage that would ensue?

E.T.: In this case indeed, we need to know how to respond to the intent of the banks to destabilize or blackmail the government. Such actions of the banks would happen no matter what, and we would have to be ready. In order to hedge the risks the government should socialize the banks and the insurance companies while enforcing control on capital flows. This would make banks and insurance companies actually serve the people (see Patrick Saurin and Eric Toussaint, "How to Socialize the Banking Sector," <http://www.cadtm.org/How-to-Socialize-the-Banking-Sector>).

So as to better withstand the kind of blackmail or reprisals the European Central Bank used against Greece's left-wing government, I propose an instrument that is not mentioned in the article in *Le Monde Diplomatique*. The European Central Bank (ECB), in the context of Quantitative Easing (QE) – **see Box** – purchased French securities from private banks for 420 billion euros. That is an extremely large amount, nearly a fifth of France's total public debt.

The operation is on the ECB's balance sheet (official site of the ECB, *Breakdown of Debt Securities Under the PSPP*, <https://www.ecb.europa.eu/mopo/implement/omt/html/index.en.html>, consulted on 4 January 2019). These securities were purchased from private banks, but the French treasury will pay the interest to the ECB, and also the capital when the securities mature. If the ECB were to attempt to take a measure like the one it took with the Tsipras government against a government of the Left elected in France, then, faced with the ECB's attempt to prevent it from carrying out its democratic mandate, the French government could decide not to repay that debt. It's an argument that has considerable force and reverses the balance of power, which the ECB thinks it dominates. I'm astonished that none of the economists consulted by *Le Monde diplomatique* thought of it. Quantitative Easing has not been analysed sufficiently by economists in general, including alternative economists on the Left, who don't seem to see what a powerful weapon it is in the hands

of States once they decide to disobey. The Troika would be in a terrible situation.

The policy of Quantitative Easing (QE) has been implemented by the ECB since 2015 in the wake of what the Fed had done in the US from 2008 to 2014. It consists of massively purchasing private and public debt securities from banks in the Eurozone and from corporations. It thus pours liquidities into banks and corporations, which then use the money to speculate, thus making further crises more likely. Economic recovery is awaited in vain. The ECB put an end to this purchasing programme at the end of 2018 but decided to maintain the level of the stock of about € 2,200 billion of sovereign securities it purchased from private banks between 2015 and the end of 2018. This means that when sovereign securities come to maturity the ECB can buy more for an equivalent amount and thus pour further liquidities into private banks, who then buy more sovereign securities from France and other countries. Moreover the ECB uses this device to blackmail governments that do not comply with austerity measures and neoliberal reforms. Indeed if a government should decide to break away from austerity, the ECB could decide not to buy its debt securities when the old ones have matured. It could harm the said government if it decides to buy debt securities from a hard-line neoliberal government instead. This would result in increasing the cost at which the country finances its debt. It is one of the reasons for which a legitimate government that wants to break away from neoliberal policies must immediately suspend repayment of securities held by the ECB and simultaneously launch a policy of legitimate public bond issues combined with an audit of former debts inherited by the previous regime, an audit with citizens' participation, so as to repudiate the part of the debt that is illegitimate, odious, illegal and/or unsustainable.

I also share with the authors of that very interesting article in the Diplo the idea of adopting a strategy that divides the creditors. For example, to return to the case of Greece, Tsipras could have initially concentrated on the IMF. In fact the six billion that had to be repaid before 30 June 2015 only concerned the IMF. The Greek government should have targeted the IMF head-on.

The government should require the largest companies to purchase a given amount of French debt securities at an interest rate fixed by the public authorities, and not by the "markets"

In this way, when there's talk of panic on the markets and threats of deterioration of France's rating, if France asserts that the country will finance itself otherwise than on the markets, the rating assigned to France by the agencies makes no difference. An alternative financing policy needs to be set up through a legitimate bond issue. The government should require the largest companies to purchase a given amount of French debt securities at an interest rate fixed by the public authorities, and not by the "markets". That recalls what was called the Treasury Circuit (*Circuit du Trésor*), which operated in France between the Second World War and the 1970s. On that subject, you really need to read a thesis by Benjamin Lemoine, published [in French] as a book under the title *L'ordre de la dette*

https://www.editionsladecouverte.fr/catalogue/index-L_ordre_de_la_dette-9782707185501.html. The book tells you all about the Treasury Circuit, which has otherwise been forgotten. The *Circuit du Trésor* or Treasury Circuit refers to the way the French government financed itself after Second World War. We have to keep in mind that the Banque de France and four major deposit banks had been nationalised under pressure of the social movements in 1945-1946. The Treasury Circuit allowed the French government to borrow from the banks without depending on the financial markets. Banks had to buy a certain amount of French sovereign securities at a price and interest rate that had been set by the public authorities. Benjamin Lemoine explains that this worked perfectly for over thirty years and that the public debt amounted to much less than what would later be the case. Only in the 1980s was this 'Circuit' abandoned in the context of the neoliberal offensive. From then on France borrowed on the financial markets from private banks and other private

financial institutions. So in fact what needs to be done is to restore an efficient and legitimate circuit for public financing.

Public debt could be used to finance ambitious programmes of ecological transition instead of enforcing anti-social, extractivist, productivist policies that foster competition between nations. Public indebtedness is not in itself a bad thing. Public authorities can use bond issues to:

- finance the complete closure of thermal and nuclear power plants;
- replace fossil energies with renewable sources of energy that respect the environment;
- finance a conversion from current farming methods, which contribute to climate change and use a lot of chemical inputs which are responsible for the decrease in biodiversity, favouring local production of organic food to make farming compatible with the fight against climate change;
- radically reduce air and road transport and develop public transport and the use of railways;
- finance an ambitious programme of low-energy social housing.

Public borrowing is quite legitimate if it serves legitimate projects and if those who contribute to the financing do so legitimately.

A popular government will not hesitate to force corporations (whether national, foreign or multinational) as well as richer households to contribute to financing without drawing any profit from it, i.e. with zero interest and without compensation for inflation.

At the same time, a large portion of households in the popular classes will easily be persuaded to entrust their savings to the public authorities to fund the kinds of legitimate projects mentioned above. This voluntary funding by the popular classes would be remunerated at a positive actual rate, for instance 4%. This means that if annual inflation reached 3%, the public authorities would pay a nominal interest rate of 7%, to guarantee an actual rate of 4%.

Such a mechanism would be perfectly legitimate since it would finance projects that are really useful to society and because it would help reduce the wealth of the rich while increasing the income of the popular classes.

Of course, for a popular government of the Left to be elected, there will need to be a series of victorious achievements through social and progressive political struggles. For this government to be truly democratic, it would need to endorse a constituent process which could be based on a number of progressive struggles challenging social inequalities, the destruction of the environment, the capitalist system as a whole as well as the undemocratic institutions of this system. Many of these struggles are yet to be invented, but we can already draw on existing ones, which we will need to strengthen – such as the different forms of strikes and the opening of private companies' account books to delegitimize capitalist criteria of “efficiency” and exploitation; the currently strong and diverse feminist movements; the ecologist territory-based struggles (such as the “ZADs” in France, and more generally the protests against the implementation of mega projects which are destructive of the environment) and inventions of new forms of management of “commons”; the different spectacular forms of struggles against tax evasion like requisitioning of furniture from banking agencies of financial institutions involved in such tax evasion (as happened in France); the movements of occupation of public spaces, either with specific goals or as broader protest movements which challenge social inequalities and the lack of democratic institutions such as the current movement of the “Yellow Vests” in France, the 2014 “Citizen Forums” movement in Bosnia, the 15M movement which started in 2011 in Spain and so on; the audit of public institutions at municipal, national or European levels and their debts; the movements welcoming the migrants and helping them cross the borders; as well as many other existing struggles.

P.S.

- <http://www.cadtm.org/Break-the-Taboo-on-Odious-Debts-and-their-Repudiation>
- Translated by Snake Arbusto.
- <http://www.cadtm.org/The-Challenges-for-the-European-Left-regarding-Debt-and-the-Banks>
- English translation by the CADTM translation team.

Footnotes

[1] The original French version [is available here](#).

[2] *Les effets des transformations des Etats sur leurs dettes publiques et autres obligations financières : traité juridique et financier*, (The Effects of the Transformation of States on their Public Debt and other Financial Obligations: a Legal and Financial Treatise), Paris, Sirey 1927. All translations by the CADTM. The almost complete document (in French) [can be downloaded free](#) from the CADTM Web site. Also see, in English, "[The Doctrine of Odious Debt : from Alexander Sack to the CADTM](#)"

[3] Source: Sarah Ludington, G. Mitu Gulati, Alfred L. Brophy, "[Applied Legal History: Demystifying the Doctrine of Odious Debts](#)", 2009

[4] Eric Toussaint, "[The Soviets and Tsarist Debt](#)". See also : Odette Lienau, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*, Harvard, 2014

[5] Another quote from Sack clearly confirms that he was opposed to the despotic nature of a regime being a condition sine qua non to identify an odious debt: "Applying other conditions than those we have established (p. 6-7) would, through arbitrary, differing and contradictory judgements, bring about the paralysis of the whole international public credit system and so (if such judgements were to have real weight on questions of recognising or of not recognising debts as State debts) would deprive the World of the advantages of public credits." (p. 11).

[6] Source: *Treaty Series*, no. 4, 1919, p. 26. quoted by Sack, p. 162.

[7] See the conference [Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance](#) by Odette Lienau

[8] *Yearbook of the International Law Commission 1977 Volume II Part One* - ILC 1977, v2, p1.pdf, http://legal.un.org/ilc/publications/yearbooks/english/ilc_1977_v2_p1.pdf; see also the report for 1979 http://legal.un.org/ilc/publications/yearbooks/english/ilc_1979_v2_p2.pdf

[9] IMF, Michael Kremer and Seema Jayachandran, "Odious Debt", *Finance & Development*, June

2002, Vol. 39 no. 2. <http://www.imf.org/external/pubs/ft/fandd/2002/06/kremer.htm> See also Michael Kremer and Seema Jayachandran, "Odious Debt", Presented at the Conference on Macroeconomic Policies and Poverty Reduction, April 2002, <https://www.imf.org/external/np/res/seminars/2002/poverty/mksj.pdf> IMF, Raghuram Rajan, "Straight talk: odious or just malodorous?", Finance & Development, December 2004 <https://www.imf.org/external/pubs/ft/fandd/2004/12/pdf/straight.pdf>

[10] Vikram Nehru and Mark Thomas, 2008, "Odious Debt: Some Considerations" at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1184253591417/OdiousDebtPaper.pdf>, World Bank, Odious Debt Roundtable, Washington D.C., 14 April 2008, http://siteresources.worldbank.org/CSO/Resources/Odious_Debt_Roundtable_Report_FINAL_July_17_08.pdf

See the CADTM's reaction to the round table organised by the World Bank: "CADTM Belgium's position on the doctrine of odious debt and its legal strategy for debt cancellation", <http://www.cadtm.org/Topicality-of-the-odious-debt.3515>, published 4 July 2008.

[11] Robert Howse, *The Concept of Odious Debt in Public International Law*, UNCTAD, 2007 http://unctad.org/en/Docs/osgdp20074_en.pdf

[12] UN, Cephias Lumina, *Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*, 2009 http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.10_en.pdf

[13] See the final report on the findings of the commission, in which I took part representing the CADTM. The report, in English and Spanish, [can be downloaded here](#)

[14] See "CADTM - [Topicality of the odious debt doctrine](#)", Position of the CADTM, published 8 August 2008

[15] Greek Debt Truth Commission, [Preliminary Report of the Greek Debt Truth Commission](#), especially chapters 8 and 9, published 18 June 2015.
See also Greek Debt Truth Commission, ["Illegitimacy, Illegality, Odiousness and Unsustainability of the August 2015 MoU and Loan Agreements"](#) published 25 September 2015