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# The Trojan Horse of sovereign debt

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## ABSTRACT

This article analytically attends to the question: ‘what gets activated through’ the regime of sovereign debt today. Beyond the headlines of loans, debt, debt relief, restructuring, default and other terms of the trade, what is it that gets activated through creditor–debtor relations in the Global South? Four answers are set out: extortion and subordination in the guise of official credit; legal construction of an apolitical economy; austerity as a technique of social and political control; and lastly, as part of a quartet of forevering reign by debt, reversing social rights expectations and permanently embedding poverty. The explanation for the mystery of an unfathomable economic logic is that there must be a different scheme at work.

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**KEYWORDS** Sovereign debt; radical asymmetry; capital accumulation; political repression; structural austerity

We breached the wall, and opened up the defences of the city.  
All prepare themselves for the work and they set up wheels  
allowing movement under its feet, and stretch hemp ropes  
round its neck. That engine of fate mounts our walls  
pregnant with armed men. Around it boys, and virgin girls,  
sing sacred songs, and delight in touching their hands to the ropes:  
Up it glides and rolls threateningly into the midst of the city.  
O my country, O Ilium house of the gods, and you,  
Trojan walls famous in war! Four times it sticks at the threshold  
of the gates, and four times the weapons clash in its belly:  
yet we press on regardless, blind with frenzy,  
and site the accursed creature on top of our sacred citadel.  
(Virgil, *The Aenid* Book II: 234–245. Translated by A. S. Kline)

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## 1. Introduction

In her incisive 1992 assessment of the Debt Crisis and Africa, Silvia Federici inverted conventional lines of exploration when she held that '[W]hat is at stake in the debt crisis is not the repayment of debt, but the process that can be activated through it'.<sup>1</sup> She went on to narrate how the debt crisis and Structural Adjustment Policies (the infamous SAPs) have made it:

possible to destroy or neutralize the labor unions, to freeze wages, to pass laws making labor and other social struggles acts of economic sabotage; to end free health care and free education . . . . It has also resulted in the demise of local industry (not connected to foreign capital...); and most important it has given the green light to the privatization of land.<sup>2</sup>

Contrary to the shared view of both the Right and the Left, she demonstrates how the debt crisis, far from being an obstacle to capitalist development in the 1990s, was 'a productive crisis for the capitalist classes of both the debtor and creditor nations'.<sup>3</sup> Written over 30 years ago, Federici's account is remarkable not least for the accuracy of its description of Global South sovereign debt and the regime of permanent crises ever since.<sup>4</sup>

Federici's account of the Trojan Horse of debt crises describes the perpetual consolidation of transnational capital accumulation and human disarticulation that defines the racialised regime of sovereign debt: 'What is certain', Federici asserts,

is that the debt crisis has provided national and transnational capital with a golden opportunity to attempt a wide-ranging reorganization of class relationship, aimed at cheapening the cost of labour, raising social productivity, reversing social expectations, and opening [debtor countries] to a fuller penetration of capitalist relations.<sup>5</sup>

A tacit element of Federici's strident depiction is that debt crises are not crises for everyone, and not even crises if one considers more fully the particular functions they serve under capitalism.

This article builds on Federici's enduring insight by theorising the functions that international and transnational debt serve under cover of law. The aim is analytically to attend to 'what gets activated' through the regime of sovereign debt today, or, to draw more closely on the Trojan Horse metaphor, what treachery gets wheeled through the city walls,

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<sup>1</sup> Silvia Federici, 'The Debt Crisis, Africa and New Enclosures' in Midnight Notes Collective, *Midnight Oil: Work, Energy, War 1973–1992* (Autonomedia, 1992) 303, at 312.

<sup>2</sup> *Ibid*, 312.

<sup>3</sup> *Ibid*, 303.

<sup>4</sup> Pointing to the 80's onwards as an 'age of sovereign debt', harsh austerity and structural reform with only 'occasional interruptions', Juan Pablo Bohoslavsky and Kunibert Raffer, 'Introduction: We Need to Learn from Experience' in Juan Pablo Bohoslavsky and Kunibert Raffer (eds), *Sovereign Debt Crises: What Have We Learned* (CUP, 2017) 1, at 1.

<sup>5</sup> Federici (n 1) 307.

hidden inside a purported gift. Beyond the headlines of loans, debt, debt relief, restructuring, default and other terms of the trade, what is it that gets activated through creditor–debtor relations in the Global South? This article offers four responses: one, extortion and subordination in the guise of official credit; second, the legal construction of an apolitical economy; next, austerity as a technique of social and political control; and lastly, as part of a quartet of forevering reign by debt, reversing social rights expectations and permanently embedding poverty.

In terms of official business, this is the current state of affairs: High on the agenda at the 2023 Spring meeting of the International Monetary Fund (IMF) and World Bank was what to do about debt-distressed countries or those on the brink, of which there are currently 50. The narrative highlighted how recent events have driven countries into distress and that there are many complications to resolving the sovereign debt problems of low- and middle-income countries: the COVID-19 pandemic followed by the shocks to low- and middle-income countries from rising food and fuel costs due to the war in Ukraine, the sharp increase in interests rates by central banks in large western economies,<sup>6</sup> the growth and extent of private sector lending over the past years that has seen them holdout and complicate restructuring or writing off sovereign debt<sup>7</sup> and the emergence of China as a significant bilateral creditor through its project-related loan contracts. Attention is also given to China's reluctance to offer debt relief unless the World Bank and IMF are prepared to take a financial hit themselves<sup>8</sup> and how it questions out loud the logic of

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<sup>6</sup> Larry Elliot, 'Wealthy West has Little Excuse After Finally Waking up to Global Debt Crisis' *The Guardian (UK)*, 13 April 2023, [www.theguardian.com/business/2023/apr/13/wealthy-west-has-little-excuse-global-debt-crisis](http://www.theguardian.com/business/2023/apr/13/wealthy-west-has-little-excuse-global-debt-crisis).

<sup>7</sup> In developing countries, private creditors hold 62 per cent of external public debt, up from 47 per cent decade ago. UN Global Crisis Response Group, *World of Debt: A Growing Burden to Global Prosperity*, Press Release (12 July 2023) [Press Release | UN Warns of Soaring Global Public Debt: a record \\$92 Trillion in 2022, 3.3 billion people now live in countries where debt interest payments are greater than expenditure on health or education—United Nations Sustainable Development](#) The largest single source of Africa's sovereign debt is owed to private bondholders and creditors, see, Tricontinental: Institute for Social Research, *Life or Debt: The Stranglehold of Neocolonialism and Africa's Search for Alternatives*, Dossier No 63 (April 2023). Which, among other problems, makes credit more expensive and restructuring more complex. See, UN Global Crisis Response Group, *A World Of Debt: A Growing Burden to Global Prosperity* (July 2023) 9. The general overview in 'emerging markets and developing economies' is as follows:

Relative to 2008, there has been a significant increase in the share of private capital market debt, financing from the IMF and loans from China, whereas the share of financing from multi-lateral development banks, the Paris Club and other bilateral public and private creditors has fallen.

Luma Ramos, Rebecca Ray, Rishikesh R Bhandary, Kevin P Gallagher and William N Kring, *Debt Relief for a Green and Inclusive Recovery: Guaranteeing Sustainable Development* (DRGR Project, 2023) [Debt Relief for a Green and Inclusive Recovery: Guaranteeing Sustainable Development Global Development Policy Center \(bu.edu\)](#).

<sup>8</sup> Elliot (n 6). Overall, Chinese loan commitments to Africa have been lower compared to loans from international capital markets and 80 per cent of the loans go into infrastructure, mainly transport,

providing debt relief if the money saved goes to pay off private creditors (although not because China is concerned with lack of funds for socio-economic rights<sup>9</sup>)—a contemptuous practice exposed recently in the cases of Greece.<sup>10</sup> The director of the IMF’s African department took the opportunity to demand a scaling up of financial support for some of the world’s poorest countries along with debt relief ‘otherwise they will have no chance of meeting the 2030 UN goals for poverty reduction’<sup>11</sup> (the Sustainable Development Goals (SDGs) themselves suffer from a chronic commitment to extraction, production and consumption and increasing levels of growth, always through greater liberalisation).<sup>12</sup> Based on the IMF’s figures, the UN Global Crisis Response Group is highlighting how 3.3 billion people are subject to underfunded health services and education to pay off interest on huge debt burdens.<sup>13</sup>

At the Spring meeting there was also still talk of a need for a permanent mechanism to address sovereign debt distress, an effort long having been blocked by western creditor countries.<sup>14</sup> Soon after, at a Summit for a New

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communication, energy and mining. Ian Muriithi ‘The Challenge of Collateralization of Public Assets in Loan Contracts and Indentures: What is the Way Forward?’ in James Thuo Gathii (ed), *How to Reform the Global Debt and Financial Architecture* (Sheria Publishing House, 2023) 217, at 228, <https://www.afronomicslaw.org/category/repository/new-book-how-reform-global-debt-and-financial-architecture-edited-james-t>.

<sup>9</sup> More than 90 of the 100 contracts between Chinese state-owned enterprises and borrowing countries in the Global South, recently examined,

have clauses that allow the creditor to terminate the contract and demand immediate repayment in case of significant law or policy changes in the debtor or creditor country. 30 percent of Chinese contracts also contain stabilization clauses, common to non-recourse project finance, whereby the sovereign debtor assumes all the costs of change in its environmental and labor policies.

Anna Gelpert, Sebastian Horn, Scott Morris, Brad Parks and Christoph Trebesch, *How China Lends: A Rare Look into 100 Debt Contracts with Foreign Governments*, Peterson Institute for International Economics, Kiel Institute for the World Economy, Center for Global Development, and AidData at William & Mary (2021) 7, [www.aiddata.org/publications/how-china-lends](http://www.aiddata.org/publications/how-china-lends).

<sup>10</sup> Committee on the Audit of the Greek Debt (Debt Truth Committee), ‘Preliminary Report’ (2015), [www.cadtm.org/IMG/pdf/Report.pdf](http://www.cadtm.org/IMG/pdf/Report.pdf).

<sup>11</sup> Elliot (n 6).

<sup>12</sup> See the Sustainable Development Goals Report 2022, [www.un.org/development/desa/dspd/2022/07/sdgs-report/](http://www.un.org/development/desa/dspd/2022/07/sdgs-report/); Margot E Salomon, ‘Culture as an Alternative to “Sustainable Development”’ *Third World Approaches to International Law Review, Reflections* 44 (July 2022), *Culture as an Alternative to “Sustainable Development”—TWAILR*.

<sup>13</sup>

In Africa, the amount spent on interest payments is higher than spending on either education or health. Developing countries in Asia and Oceania (excluding China) are allocating more funds to interest payments than to health. Similarly, in Latin America and the Caribbean, developing countries are devoting more money to interest payments than to investment. Across the world, rising debt burdens are keeping countries from investing in sustainable development. ... [I]n total, 48 countries are home to 3.3 billion people, whose lives are directly affected by underinvestment in education or health due to large interest payment burdens.

Calculations are based on IMF World Economic Outlook April 2023. UN Global Crisis Response Group, *A World of Debt* (n 7) 13–14.

<sup>14</sup> On the range of proposals past and present, see Gathii (n 8).

Global Financial Pact in Paris, the outspoken UN Secretary General, Antonio Guterres, called the current global financial architecture ‘outdated, dysfunctional and unjust’ and like others, commented on how political and economic power is still essentially reflective of a time when ‘three quarters of today’s nations weren’t around the table at Bretton Woods’.<sup>15</sup> Guterres called for a debt relief mechanism that supports payment suspensions, longer lending terms and lower rates to make borrowing more affordable for poorer nations, increased access to liquidity for developing countries via the IMF’s Special Drawing Rights, and urgently ending fossil fuel subsidies along with increasing climate adaptation funding for vulnerable countries.<sup>16</sup>

From this review of the World Bank Group and IMF Spring meeting opening event with World Bank President David Malpass (replaced in June 2023 by former Mastercard CEO Ajay Banga<sup>17</sup>) and the IMF Managing Director Kristalina Georgieva, we can see concern for the downtrodden and disenfranchised debtor (whether state or nameless person in the debtor states) articulated in terms of debt relief, concern over meeting the SDGs and the need for debt workout mechanisms. What is not accounted for in official circles, however, is a transnational debt regime structured around forms of oppression, control and extortion: debt to pay off debt; austerity and structural adjustment;<sup>18</sup> and an array of entry points for policy influence, together serving multiple social and political functions. This paper deconstructs deceptions that hide legal relations of oppression and reveals how the whole regime of sovereign debt is about debt only in a shallow sense.

In her incisive work on ‘Debtfare’ and the increasing dependence of the poor on consumer credit worldwide, the Marxian political economist, Susanne Soederberg, centres how capital accumulation involves complex social processes that are based on inequality and exploitation.<sup>19</sup> Her aim is to denounce the focus on *exchange* that defines the debt-poverty industry for the way it serves to disguise real (unequal) social relations evident only at the level of social relations of production.<sup>20</sup> Maurizio Lazzarato, the

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<sup>15</sup> Antonio Guterres ‘Financial System Must Evolve in “Giant Leap Towards Global Justice”’, Summit for a New Global Financial Pact, Paris, 22 June 2023, <https://news.un.org/en/story/2023/06/1138007>. See further, James Thuo Gathii, ‘Introduction’ in Gathii (n 8) xi.

<sup>16</sup> Guterres (n 15).

<sup>17</sup> For reasons of procedure and suitability, civil society has been critical about the appointment, see the Secretary General of Action Aid International Arthur Larok, ‘Biden’s pick for World Bank President Can’t Fix its Crisis’ *Al Jazeera*, 6 March 2023, [www.aljazeera.com/opinions/2023/3/16/bidens-pick-for-world-bank-president-cant-fix-its-crisis](http://www.aljazeera.com/opinions/2023/3/16/bidens-pick-for-world-bank-president-cant-fix-its-crisis).

<sup>18</sup> Austerity here can also be understood as a catch phrase that goes beyond fiscal contraction (said to balance the budget) to include structural adjustment (summed up as stabilisation, privatisation, deregulation and liberalisation), see Alexandros Kentikelenis and Thomas Stubbs, *A Thousand Cuts: Social Protection in the Age of Austerity* (OUP, 2023) 8.

<sup>19</sup> Susanne Soederberg, *Debtfare States and the Poverty Industry: Money, Discipline and the Surplus Population* (Routledge, 2014) 20.

<sup>20</sup> *Ibid*, 10.

Marxian theorist, warns in this regard how the economy and society are conceived through the lens of commercial exchange that implies and presupposes equality and voluntarism and serves to render the class-based power and exploitation less visible and less politicised,<sup>21</sup> but he unpacks the social relations further. In Lazzarato's elaboration, it is credit that defines the social paradigm<sup>22</sup> and, unlike exchange, is premised on the assumption of inequality, on a logic of power differential.<sup>23</sup> Drawing on this insight, we need not seek to expose how a veneer of commercial exchange in the debt regime *masks* gross asymmetries. Instead, the regime of sovereign debt today can be excavated based on social relations rooted, *axiomatically*, in the inequality that relations of credit structure.

Whether these social relations are framed as exchange, that implies equality but masks inequality, or as undergirded by asymmetry that inheres in credit-debt relations, there lies a commercial-legal relationship with all its conceptual and practical implications, foremost rendering a public governance project a private arrangement. Through this and other legal machinations, the 'contract' (I use the term loosely here to include any binding agreement or contract with external creditors)<sup>24</sup> embeds as well as justifies an array of usurious acts in a downward spiral of oppression. Alongside the sanctification of the commercial-legal frame, the sovereign debt regime also tacitly *accepts*—and necessarily so—conceiving economy and society on the basis of a radical asymmetry of power. It is *this* regime of sovereign debt that is examined below through an exploration of its legal design of extortion and subordination in the guise of credit (part 2); its legal framing of an apolitical economy (part 3); the real uses for austerity (part

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<sup>21</sup> See, Maurizio Lazzarato, *The Making of the Indebted Man*, tr. Joshua David Jordan (Semiotext(e), 2011) 33; Soederberg (n 19) 4.

<sup>22</sup> *Ibid*, 11.

<sup>23</sup> Drawing on Deleuze and Guattari's application of Nietzsche's arguments in the Second Essay, Lazzarato remarks here:

We should emphasize once and for all that the disappearance or nonexistence of exchange does not follow from this assertion, but rather that exchange functions according to a logic not of equality but rather of power imbalance, a power differential. Lazzarato (n 21) 33.

In bringing together exchange and credit, Lapavistas outlines Marx's theoretical analysis of interest-bearing capital whereby tradability is at the heart of the credit relationship: 'the act of credit is an act of exchange ...'. The traded commodity is the interest-bearing capital. Costas Lapavistas, *Profiting without Producing: How Finance Exploits Us All* (Verso, 2013) 112–113.

<sup>24</sup> These have taken many legal forms. In the case of Greece alone, the legal vehicles included: the pooling of bilateral loans from Eurozone state in the form of an international contract with the borrowing state; a special purpose vehicle created by an inter-state agreement between the Member States of the euro currency area; as a joint-stock company incorporated in Luxembourg; and MoUs between the IMF and the borrowing state. See, De Schutter and Salomon. There are 100 contracts between Chinese state-owned enterprises—for most the lender is the Export-Import Bank of China (China Eximbank) or the China Development Bank—and government borrowers in 24 developing countries in Africa, Asia, Eastern Europe, Latin America and Oceania, see Gelpert et al (n 9). On sovereign bond contracts see, Daniel Munevar, *Sleep now in the Fire: Sovereign Bonds and the Covid-19 Debt Crisis*, Eurodad (2021) [www.eurodad.org/sovereign\\_bonds\\_covid19](http://www.eurodad.org/sovereign_bonds_covid19).

4); and its effect of reversing the social expectations of international human rights law (part 5).

## 2. 'What gets activated through it': extortion and subordination in the guise of credit

### 2.1. Extortion

Following the 2008 financial crisis, the IMF business of lending turned to Europe, most prominently the 'South in the North', but never taking its eyes off the Global South. Today, 125 low-income and middle-income countries borrow from the IMF, 59 of which will be subject to austerity by 2024,<sup>25</sup> with an average 2022 spending of US\$138 per person on external debt service compared with US\$141 on health in 2020, the peak year for public health spending and compared to an average high-income country spending US\$2361 per capita on health in the same year.<sup>26</sup> The IMF—with its 'half a century of undisputed dominance as the core actor in global economic governance'<sup>27</sup> and lender of last resort status—has as its five largest borrowers Argentina, Ecuador, Egypt, Pakistan and Ukraine. Together they account for around 70 per cent of outstanding credit at the IMF.

While all five of these countries are experiencing serious economic difficulties and liquidity shortages (one is at war), they also collectively paid US\$2.7 billion to the IMF in 2022 in surcharges alone.<sup>28</sup> Surcharges are additional payments, on top of regular interest payments and other fees, and are generally paid by countries facing balance of payments difficulties.<sup>29</sup> Economists reject the imposition of surcharges, emphasising that they are without justification beyond that of rent extraction<sup>30</sup> and to conceal high-interest rates on IMF loans,<sup>31</sup> as well as to push low- and middle-income countries further into debt.<sup>32</sup> Invariably, these countries are left to use large quantities of already scarce liquid resources to pay the surcharges, diverting the resources from

<sup>25</sup> Thomas Stubbs, Alexandros Kentikelenis, Daniela Gabor, Jayati Ghosh and Martin McKee, 'The Return of Austerity Imperils Global Health' (2023) 8 *British Medical Journal: Global Health* 1.

<sup>26</sup> Stubbs et al. find that the IMF has supported increased expenditure on health care and cash transfer programmes, often on a temporary basis, even when it meant higher fiscal deficit and public debt. However, it also finds that the IMF has supported fiscal consolidation and reduction of public debt even more frequently, in 129 of the 148 reports examined. *Ibid.*, 3.

<sup>27</sup> Kentikelenis and Stubbs (n 18) 19.

<sup>28</sup> 'Surcharges at the IMF: Regressive, Counterproductive, and Bad for the World Economy' Center for Economic and Policy Research (CEPR) (2021) 1 [CEPR-Surcharges-Fact-Sheet.pdf](#).

<sup>29</sup> Countries are required to pay surcharges to the Fund if they have high levels of IMF debt (exceeding 187.5 per cent of their quota share at the IMF) or if they have three or more years of outstanding debt to the IMF. 'Surcharges increase countries' borrowing costs to the IMF significantly'. *Ibid.*, 1.

<sup>30</sup> Joseph Stiglitz, Panel, 'Surcharges: A Necessary Tool or Counter-productive Obstacles to a Just and Green Recovery' World Bank Group and IMF Annual Meeting 2021, [www.imf.org/en/Videos/view?vid=6275694152001](#).

<sup>31</sup> CEPR (n 28) 2.

<sup>32</sup> UN Special Rapporteurs Letter to the IMF on Surcharges and Human Rights (August 2022) 4, [https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27523](#). Of



critical domestic expenditures and in the midst of the intersecting crises of pandemic, food, climate and conflict.<sup>33</sup> Between 2010 and 2015 the bankrupt and socially decimated state of Greece paid over €3.5 billion in interest and fees to the IMF, averaging 37% of the IMF's total net income and covering 79% of the Fund's total internal expenses.<sup>34</sup> As a stock case,<sup>35</sup> lender conditionality caused poverty and social exclusion to explode,<sup>36</sup> devastating the human condition of many in Greece and triggering an exodus that has been referred to as the 'world's biggest brain drain'.<sup>37</sup>

More recently, relying on its definition of 'debt sustainability', the IMF terms related to COVID-19 lending have given rise to stark warnings of crippling austerity and slashed public services, along with greater privatisation and worker precarity in debtor countries of the Global South.<sup>38</sup> While the mercy of 'no-conditionality' facilities were prevalent during the initial phase of the IMF's pandemic programme, 2023 findings show that these are being replaced by lending arrangements that return to steep austerity measures and structural reforms such as privatisation.<sup>39</sup> A total of 86 countries—2.3 billion people in low- and middle-income countries—were projected to face fiscal contractions by 2023—spending less than their 2010s average.<sup>40</sup>

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course, the Special Rapporteurs frame the IMF surcharge policy as presenting a risk of further indebtedness, not as an objective, as (provocatively) tabled here.

<sup>33</sup> See, Open Letter to the IMF by the Independent Expert on Foreign Debt and Human Rights, Juan Pablo Bohoslavsky (June 2021), [www.brettonwoodsproject.org/wp-content/uploads/2021/06/Surcharges-Open-Letter-Former-UN-IE-on-debt-and-Human-Rights-June-2021.pdf](http://www.brettonwoodsproject.org/wp-content/uploads/2021/06/Surcharges-Open-Letter-Former-UN-IE-on-debt-and-Human-Rights-June-2021.pdf); UN Special Rapporteurs Letter to the IMF (n 32) 4.

<sup>34</sup> Yanis Varoufakis, *Adults in the Room: My Battle with Europe's Deep Establishment* (The Bodley Head, 2017) Appendix 2, The IMF's Motivational Error, 491.

<sup>35</sup> See the stunning study by Kentikelenis and Stubbs in which they identified all policy conditionality in IMF loan agreements between 1980 and 2019 and deployed a methodology that enabled them to isolate where an effect is derived from among several types of IMF conditions, as well as allowed them to make causal—rather than correlational—arguments. Among their findings is that 'across a range of empirical analyses, we show that IMF programs have led to the introduction of regressive public policies, which, in turn, have adverse impacts on social outcomes'. Kentikelenis and Stubbs (n 18) 10.

<sup>36</sup> See among the reams of desolate statistics: CESCR, Concluding Observations: Greece UN Doc E/ C.12/ GRC/ CO/ 2, 9 Oct 2015; Report of 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, particularly economic, social and cultural rights: Mission to Greece, UN Doc A/ HRC/ 31/ 60/ Add2 (29 February 2016); David Stuckler and Sanjay Basu, *The Body Economic: Eight Experiments in Economic Recovery from Iceland to Greece* (Penguin, 2013); Paul Blustein, 'The Greek Crisis: Human Errors-And Divine Forgiveness?' Centre for International Governance Innovation (CIGI) (February 2015), [www.cigionline.org/articles/greek-crisis-human-errors-and-divine-forgiveness/](http://www.cigionline.org/articles/greek-crisis-human-errors-and-divine-forgiveness/).

<sup>37</sup> Helena Smith, 'Young, Gifted and Greek: Generation G – the World's Biggest Brain Drain', *The Guardian* (UK), 19 January 2015 Young, gifted and Greek: Generation G—the world's biggest brain drain | Greece | *The Guardian*.

<sup>38</sup> Daniel Munevar, 'Arrested Development: International Monetary Fund Lending and Austerity Post Covid-19' Eurodad (October 2020), [www.eurodad.org/arrested\\_development](http://www.eurodad.org/arrested_development). See also, Chiara Martiotti, 'Mind the Gap: It's Time for the IMF to Close the Gap Between Rhetoric and Practice' Eurodad (16 February 2021), [www.eurodad.org/mind\\_the\\_gap](http://www.eurodad.org/mind_the_gap).

<sup>39</sup> Kentikelenis and Stubbs (n 18) 15, and further, Chapter 8.

<sup>40</sup> *Ibid*, 15. The wave of austerity will be particularly pronounced in South-East Asia, and Northern and Central Africa, *Ibid*, 187.

‘Debt sustainability’—still defined on narrow economic terms—is the justification provided so that there can be some semblance of timely repayment to creditors (typically based in high-income countries and countries that also hold the voting power in the IMF). Within its terms, debt can still be considered ‘sustainable’ where there is, for example, chronic underfunding of essential services<sup>41</sup> and conditionality that drives inequality by concentrating income on the richest 10 per cent of the population.<sup>42</sup> Moreover, the debt sustainability analysis that the IMF conducts in order to assess whether a country suffers from a temporary liquidity problem is heavily weighted in favour of continued borrowing.<sup>43</sup> Calls for a comprehensive debt relief scheme bringing together all creditors—‘traditional, new, public, and private’—is the perennial pledge.<sup>44</sup> In the meantime, the IMF keeps lending to debt-saddled countries, with the ever-familiar conditionality that benefits northern industry<sup>45</sup> and imposes a ‘growth imperative’ on the Global South in a time of pressing calls for degrowth,<sup>46</sup> in part so that countries can repay commercial lenders. This transfer of commercial debt to multilateral and bilateral creditors was one of the scandals exposed during the Greek and Spanish debt and austerity crises<sup>47</sup> and is being

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Debt sustainability assessments performed by multilateral creditors – IMF and the World Bank – allow for the label of “sustainable” to be applied unduly, in contexts where debt servicing may be depriving a State of resources needed to guarantee human rights. A country’s debts should not be labelled as sustainable in the context of human rights violations and chronic underfunding of key essential services, while resources are diverted to creditors, . . . . Despite gradual reviews of the World Bank and IMF debt sustainability analyses, these assessment templates are not fit for purpose: they are self-serving and indicate a conflict of interest, as those calculating the financing envelope and needed relief are themselves important creditors.

Report of the UN Independent Expert on Foreign Debt and Human Right: International Debt Architecture Reform and Human Rights, UN Doc A/76/167 (4 August 2021) para 46. See also, Christina Laskaridis, ‘When Push Came to Shove: COVID-19 and Debt Crises in Low-Income Countries’ (2021) 42(1-2) *Canadian Journal of Development Studies* 200.

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Using an auxiliary dataset measuring the intensity of fiscal adjustment required by countries participating in IMF programs, we also show that IMF fiscal consolidation— conditions calling for cuts to government spending and increases in revenues— fostered inequality by concentrating income to the richest 10 percent of the population, with middle-class and low- income earners accruing the biggest losses. This occurred via wage, employment, and pension cuts for civil servants, as well as through rises in value- added taxes over income and corporate taxes. Kentikelenis and Stubbs (n 18) 14.

<sup>43</sup> Gathii (n 8) xi–xii.

<sup>44</sup> Kristalina Georgieva, ‘Building Resilience and Reshaping Development: The Way Forward’ World Bank/ IMF Spring Meeting 2023, <https://live.worldbank.org/events/spring-meetings-2023-building-resilience-reshaping-development>.

<sup>45</sup> ‘The IMF also opens up business opportunities for firms from the Global North by calling for trade and financial liberalization, deregulation, and the privatization of state-owned enterprises or natural resources’. Kentikelenis and Stubbs (n 18) 200.

<sup>46</sup> Matthias Schmelzer, Andrea Vetter and Aaron Vansintjan *The Future is Degrowth: A Guide to a World beyond Capitalism* (Verso, 2022) 244.

<sup>47</sup> See, Debt Truth Committee (n 10) Chapter 2; Bohoslavsky and Raffer (4) 11:

underscored by civil society today<sup>48</sup> as well as by China. To add, on the heels of a widespread pandemic developing countries will also be paying US\$330 billion over the next 5 years on debt servicing bonds at a time when social need is unprecedented.<sup>49</sup> The Tricontinental Institute for Social Research provides a chilling account of how aid was withdrawn and substituted by the financialisation of capital flows to Africa through the issuance of ‘Euro-bonds’ (in US dollars and Euros) that grew at an ‘incredible pace’ in the second decade of the twenty-first century and ‘whose meteoric rise would engulf the continent in a new debt crisis by 2020’.<sup>50</sup>

## 2.2. Subordination

Sovereign debt takes the form of extortion just as it acts as a remarkable tool of subordination. It provides external creditors—not least the IMF as lender of last resort—with the leverage to reconstruct economies—an exercise undertaken at a cost to health, life, livelihood and culture as well as reversing gross inequality.<sup>51</sup> As has long been evident, it renders governments beholden to their creditors instead of their citizens; the rise of creditors marking their place as the ‘first constituency’ of the modern state.<sup>52</sup> As a consequence, the erosion of democracy is sweeping in scale and scope, including limiting possibilities for current and future governments to change policy priorities.<sup>53</sup> Entire societies become indebted with all the trappings that entails, exacerbating global inequalities, radically constraining the political freedom of governments and the alternative arrangements of communities that might yet usher in sound, transformative models of economic governance.<sup>54</sup> Policy influence takes many forms, can be direct or indirect, and is dispersed among the various types of external creditors.<sup>55</sup> It is also infinite and

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To save Spanish speculators and even more so speculating banks from other euro-countries, Spain financed a massive public bailout programme, transforming private debts into public debts. The bailout of foreign speculators is one main characteristic of the present generation of debt crises, especially pronounced in the EU.

<sup>48</sup> Debt Justice, ‘Reaction to the G20 Statement on Debt’ Debt Justice (16 November 2022) [Reaction to G20 statement on debt—Debt Justice](#).

<sup>49</sup> See, Munevar (n 24) 3. These are public listed securities issued by national governments of middle- and low-income countries under foreign currency and governing laws.

<sup>50</sup> Tricontinental (n 7) 19.

<sup>51</sup> On this latter point, Kentikelenis and Stubbs (n 18) 13–14 and Chapter 5.

<sup>52</sup> I take liberties with Wolfgang Streeck’s insightful reflections on creditors as the ‘second constituency’. Wolfgang Streeck, *Buying Time: The Delayed Crisis of Democratic Capitalism*, tr. Patrick Camiller (Verso, 2013) 79.

<sup>53</sup> Margot E Salomon and Robert Howse, ‘Odious Debt, Adverse Creditors, and the Democratic Ideal’ in Ilias Bantekas and Cephas Lumina (eds), *Sovereign Debt and Human Rights* (OUP, 2018) 425.

<sup>54</sup> See, Salomon (n 12); see also, Ugo Mattei and Margot E Salomon, ‘From Poverty and Development to People’s International Law’ in Ruth Buchanan, Luis Eslava, Caitlin Murphy and Sundhya Pahuja (eds), *Oxford Handbook of International Law and Development* (OUP, 2023) 773; also, Schmelzer et al (n 46) 247–9.

<sup>55</sup> The inaction of commercial creditor participation in debt relief is one such example of indirect influence, having a knock-on effect on the ability of debtor countries to fulfil even basic social policies.

unpayable, which may well be the objective. The elephant in the room is that with excessively high amounts of debt alongside the existence of a model of infinite debt under finance capitalism, debt cannot be paid off.<sup>56</sup> The theory that has the export of capital as integral to imperialism has been realised.<sup>57</sup>

Lazzarato refers to financialisation and its recurrent crises and debt cycle as nothing short of extortion—‘extortion of enormous amounts of money from the population’.<sup>58</sup> And all of this takes place in a climate of *fear*: the potent weapon of the *threat* of sovereign debt default gives external creditors enormous leverage which has long been exercised to reduce wages, cut social services, liberalise and privatise, in the case of the IMF loans, with China’s infrastructure lending exerting undue influence, for example, by including a clause in loan contracts that provides for the severing of diplomatic relations in the event of default.<sup>59</sup> China also deploys controversial clauses on ‘cross-default’ and ‘cross-cancellation’ that can be triggered by adverse actions that any government entity in the debtor country might take against any Chinese investment there. Cancellation clauses, as well as acceleration and stabilisation clauses, pave the way for lender influence over debtors’ domestic and foreign policies.<sup>60</sup> All the while, bankruptcy, the mechanism within capitalist societies that aims to provide debtors with a fresh start when they are unable to satisfy obligations, does not exist in the realm of sovereign debt.<sup>61</sup>

Viewing debt in terms of social relations, which Soederberg and Lazzarato invite us to do, assists in conceiving the economy and society on the basis of an asymmetry of power and not through the mirage of an exchange between equals. What we call the ‘economy’ would not be possible without these

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See, for example, Munevar (n 24). On vulture fund litigation and how it has been ‘weaponised against the sovereignty of indebted states’ that are in financial distress, see Marie-Louise F Arena, ‘Designing an African Common Position and Strategy on Vulture Fund Litigation’ in Gathii (n 8) 49, at 49.

<sup>56</sup> Maurizio Lazzarato, *Governing by Debt*, tr. Joshua David Jordan (Semiotext(e), 2013) 90.

<sup>57</sup> See Lapavistas (n 23) 66 on the classical Marxist theory of imperialism and its relevance to several of the key features of financialisation.

<sup>58</sup> Lazzarato (n 21) 10.

<sup>59</sup> Gelpert et al (n 9) 37.

<sup>60</sup> See, Gelpert et al (n 9).

[C]ross-default and cross-cancellation clauses in some of the Chinese contracts trigger if the debtor takes action adverse to “any PRC entity” in the borrowing country. Such terms position Chinese state-owned institutions to act in concert, amplifying their collective bargaining power vis-à-vis the developing country, *Ibid*, 37.

The cross-default clause ‘entitles the lender to terminate and demand immediate full repayment (acceleration) when the borrower defaults on its *other* lenders. ... A commercial cross-default clause helps protect creditors from falling behind in the payment queue’, *Ibid*, 7 (emphasis in the original). See also, Muthucumaraswamy Sornarajah, ‘Theorising Extraterritorial Jurisdiction: The Travails of TWAIL’ *National Law School of India Review* (Forthcoming, 2024) on how ‘China has, by using the so-called debt trap, been successful in ensuring the capture of whole areas that are strategic or are lucrative assets that have economic and financial consequences for the host state’.

<sup>61</sup> See, William Davies, ‘Recovering the Future: The Reinvention of “Social Law”’ (2013) 20(3) *Juncture* 216, at 218.

social relations of production and all the official debt talk that takes place as if exchange (ie, the act of credit as an act of exchange<sup>62</sup>) is all that there is—more loans, less loans, debt restructuring, debt relief—disguises the real social relations. What gets masked with debt talk, including its most seemingly benevolent interventions such as creditor calls for restructuring, relief, and sporadic moratoria, is the social relations between oppressor and oppressed that ‘give rise to the power of things over people’.<sup>63</sup>

Law shapes these social relations of production (just as it is constituted by them), ‘defining “the nature and extent” of exploitation’ through their entitlements and coercive powers,<sup>64</sup> rigid enough to justify pain (it’s the Articles of Agreement! It’s the MoU! It’s the letter of intent! It’s in the contract!) and flexible enough to be pushed aside when deemed so by creditors. The loan is remunerated because of the lender’s property rights over the capital lent<sup>65</sup> and underpinned by some form of legal contract understood to be entered into consensually, ‘consent’ being imbued with liberal notions of individual autonomy, equal rights, and freedom.<sup>66</sup> Of course, this liberal promise is a fiction with a long history of ‘co-emergence and imbrication of ideas of freedom of contract with forcible appropriation of human lives, labour, land, and nature’, as Sahar Shah compellingly points out.<sup>67</sup>

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<sup>62</sup> Lapavitsas (n 23) 112–113.

<sup>63</sup> Soederberg (n 19) 17. Drawing on Marx, Soederberg begins her book by situating money in terms of social relations of power contextualised within the wider dynamics of capital accumulation. *Ibid.* 15.

<sup>64</sup> Kampourakis, drawing on Meiksins Wood, Ioannis Kampourakis, ‘Legal Theory in Search of Social Transformation’ (2022) 1(4) *European Law Open* 808, at 813, <https://www.cambridge.org/core/journals/european-law-open/all-issues>.

<sup>65</sup> Lapavitsas (n 23) 114 ‘Mainstream economics also defines interest as a share of the returns generated by the project of the borrower. For Marx, however, the owner of capital for loan is remunerated purely because of property rights over the capital lent’.

<sup>66</sup> Cf, and written *without* intended irony, the Memorandum of Understanding between the European Stability Mechanism and Greece in 2015:

Success *requires* ownership of the reform agenda programme by the Greek authorities. The Government therefore stands ready to *take any measures that may become appropriate* for this purpose as circumstances change. The Government *commits to consult and agree* with the European Commission, the European Central Bank and the International Monetary Fund on *all actions* relevant for the achievement of the objectives of the Memorandum of Understanding before these are finalized and legally adopted.

Memorandum of Understanding for a three-year ESM programme: Greece (2015) 1. Emphasis added.

<sup>67</sup> Sahar Shah, ‘Unreasonable Expectations (Contract Law)’ in Illan rua Wall, Freya Middleton, Sahar Shah and CLAW (eds), *The Critical Legal Pocketbook* (Counterpress, 2021) 102, at 105. <https://counterpress.org.uk/publications/the-critical-legal-pocketbook/> See also, Anna Chadwick, ‘Rethinking the EU’S “Monetary Constitution”: Legal Theories of Money, the Euro, and Transnational Law’ (2022) 1(3) *European Law Open* 468, at 504:

In order to make their economies and sovereign bonds attractive to financial investors, the government must make credible commitments to honoring financial contracts even in conditions of crisis by tying its own hands, issuing debt under foreign legal systems, and subjecting itself to the rulings of independent adjudicators: investment arbitration tribunals, and the independent credit determination committees of ISDA. <https://www.cambridge.org/core/journals/european-law-open>.

By now, those who look will have seen that the realm of sovereign debt cannot hide the social relationships of domination and exploitation that embody it and the choices that shape it. So what are some of the ways law operates here?: favouring the sanctity of contract over wiping out (odious) debt, and over the right of self-determination of peoples, is one ubiquitous example,<sup>68</sup> along with privileging the property rights of creditors over the welfare rights of debtors.<sup>69</sup> In the case of the IMF—an international institution set up to serve the public interest—law underlies the production of its coercive loan agreements across at least four decades and throughout the world. Among other comparable findings, these agreements have been *causally* linked to increased neonatal mortality due to privatisation and degraded labour conditionalities *regardless* of how much a government is allowed to spend on health.<sup>70</sup> All the while, the IMF Board continues to deny that its Articles of Agreement allow for human rights accountability as part of its lending agreements even if significant changes nowhere reflected in the Articles of Agreement have been undertaken. These include providing loans to indebted member states (ie, not just balance-payment loans) and with deep conditionality—conditionality itself being introduced in exchange for balance-of-payment loans—aimed, moreover, at permanent, structural reform devoted to privatisation, deregulation and trade liberalisation.<sup>71</sup>

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<sup>68</sup> Ilias Bantekas ‘Sovereign Debt and Self-Determination’ in Bantekas and Lumina (n 53): ‘That is exactly why peoples may undertake extreme austerity measures which they have almost universally rejected ...’

Equally, a state may be forced to sell off its public goods, or mortgage (but electively surrender) its natural resources in order to guarantee debt relief for otherwise odious debt or in order to repay (solely) interest on its existing debt. These actions are cloaked in legal terminology and hidden in lengthy agreements that do not readily help the inexperienced reader to ascertain that fundamental aspects of the right to self-determination have been eliminated by means of contract.

In a similar vein, Gururagavendran refers to political liberation as the part of decolonisation movement as ‘incomplete’. Bharath Gururagavendran, ‘Coloniality of Sovereign Debt’ in Gathii (n 8) 301, at 327–8.

<sup>69</sup> Martti Koskeniemi, ‘Prologue’ in Juan Pablo Bohoslavsky and Francisco Cantamutto (eds), *The IMF and Human Rights: Interviews*, SPEAK OUT at the Laboratory for Advanced Research on the Global Economy, LSE Human Rights (2021) 3, at 5 [IMF-HRs-LSE-final.pdf](#).

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... This effect is derived from state-owned enterprise privatization and labor conditions, which affect health systems indirectly by weakening state capacity to deliver a range of effective public health services and interventions, as well as depriving public sector workers of high-quality healthcare access where such employment benefits are withdrawn. These conditions have a cascading impact on key social determinants of health, as changing work patterns and unemployment lead to stress and social exclusion, affecting access to food and fueling self-destructive behaviors such as alcoholism. We also find a detrimental effect linked to health sector restructuring, as well as price increases for basic goods like food, water, public transport, and shelter, access to which influences key social determinants of health like stress and early life experiences. Kentikelenis and Stubbs (n 18) 14.

<sup>71</sup> Kentikelenis and Babb highlight that, unlike subsequent deep ‘micro’ conditionality, these earlier ‘stabilization measures left the underlying economic architecture of borrowing countries intact. For example, borrowers remained free to pursue their preferred trade policies or to maintain large state-owned industrial sectors. Alexandros Kentikelenis and Sarah Babb, ‘The Making of Neoliberal

A commitment to economic growth alongside a hard turn to market liberalisation (market-led growth) was also effectively read into the Articles of Agreement.<sup>72</sup> Despite the gloss of experience and professionalism that pervades here, drawing on empirical evidence as to what improves economies and public well-being, and without the medicine of immiseration, has not been shown to inform loan ‘agreements’.<sup>73</sup> Instead, it is still the case that ‘lives, lands, and labour of subaltern peoples [can] be violently appropriated without ever contravening the principles of free contracting’ or the contract itself.<sup>74</sup> In global creditors’ law, there is no need to fall back on law’s ‘apparent abstract fairness’.<sup>75</sup>

At the same time, an explicit purpose of the IMF—that *is* actually provided for in the Articles of Agreement at Article 1—is to ensure that IMF support is given ‘without resorting to measures destructive of national or international prosperity’<sup>76</sup> when making resources available to address balance-of-payment deficits (when a country’s import of goods, services or capital surpasses its exports and risks leading to pressure to devalue its currency). What we find here, then, is that the latter purpose has been expanded to include debt lending, with radical structural conditionality, while the former commitment to ensuring prosperity fell by the wayside, along with the constitutional requirement of IMF neutrality, except when it suits the dominant agenda, as revisited below in our consideration of the ‘political prohibition’ provision. In so far as ‘norm substitution’ absent formal renegotiation is considered a form of *de facto* and not *de jure* institutional change,<sup>77</sup> the IMF Articles of Agreement remain in the background to cast a veneer of legality over some interpretations or to provide reasons against adopting others.<sup>78</sup> On matters of life and death, the IMF Articles of ‘Agreement’ have served the economic interests and political machinations of influential

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Globalization: Norm Substitution and the Politics of Clandestine Institutional Change’ (2019) 124(6) *American Journal of Sociology* 1720, at 1730–1.

<sup>72</sup> See the exceptionally insightful chronology of a stealth takeover at the IMF to embed neoliberalism through deep structural adjustment in Kentikelenis and Babb, *Ibid*; See further, Kentikelenis and Stubbs (n 18) 196 ‘As then general counsel Joseph Gold explained to the Board in 1979, ‘Growth was not a purpose of the Fund in Article I, ...’.

<sup>73</sup> For one remarkable account see Stuckler and Basu (n 36).

<sup>74</sup> Shah (n 67) 106. See also the compelling contribution of Mairéad Enright, ‘Contract Law and Empire’ (n 67) 90.

<sup>75</sup> See, Illan rua Wall, ‘On What Passes for Legal Theory’ in Rua Wall et al. (n 67) 29 for an incisive essay on what critical legal thinking offers.

<sup>76</sup> IMF Articles of Agreement (1944 latest amendments adopted 2010) art 1v, [www.imf.org/external/pubs/ft/aa/](http://www.imf.org/external/pubs/ft/aa/).

<sup>77</sup> Kentikelenis and Babb (n 71) 1722.

<sup>78</sup> In an analogous context, Van Den Meerssche argues, in the case of the World Bank, against the existence of institutional bias (cf. Kentikelenis and Babb on the deliberate and ‘clandestine’ free market repurposing of the IMF). Instead, he sets out to make the case that “‘preferences” are permanently negotiated, generated and discarded’, referring to how the ‘formal tone and legal tenor’ of provisions in the Articles of Agreement of the World Bank ‘justifies a substantive institutional position ... and thereby, channels political conflict through constitutional exegesis’. Dimitri Van Den Meerssche, *The World Bank’s Lawyers* (OUP, 2022) 147 and 151.



member states and their managerial collaborators,<sup>79</sup> instead of operating as an agreement for a global monetary institution that would constrain self-interest and ideology so as to serve the common good.

In addition to the ideologically indeterminate use of the Articles of Agreement, so far we can identify several familiar strategies bound up in the making and taking of international and transnational law. One is the strategy that looks to improve things a little for the underdog in order to leave unchanged the overall structure that keeps the benefits accruing to the top. James Gathii argues that ‘[t]he IMF and private creditors want minimalist reforms to the global financial system that are just enough to contain the pressure for more radical reform while they reap massive profits’.<sup>80</sup> We have seen this approach before. In the trade context, Nicolas Lamp convincingly shows how ‘Special and Differential Treatment’ was a developed country strategy to accommodate developing countries *within* the emerging trading system while leaving the design of the trading system—as preferred by developed countries—fundamentally intact.<sup>81</sup>

Then there is the familiar strategy of blaming the debtor, what one scholar calls ‘the erasure of exogenous explanations’ that disregards how Global South debt crises are often directly a product of Global North crises,<sup>82</sup> how state capacity and autonomy, for example in Africa, have been eroded as a result of the tax dodging practices of transnational corporations (rarely confronted as part of IMF conditionality),<sup>83</sup> and how the whole scheme can be understood as a continuation of colonialism.<sup>84</sup>

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<sup>79</sup> The initiators might be states and also might be staff, see here on the key turn at the IMF:

In the late 1970s and early 1980s, IMF management was interested in expanding the organization’s mandate to include market-liberalizing reforms but failed due to lack of resources, allies, and favorable opportunity structures. In contrast, in the mid-1980s the second Reagan administration took advantage of a favorable environment to successfully engineer a major shift in the IMF’s operational norms—one that put the IMF into the business of reforming the architecture of national economies. Kentikelenis and Babb (n 71)1732.

<sup>80</sup> Gathii (n 8) xii.

<sup>81</sup> Nicolas Lamp, ‘How Some Countries Became “Special”: Developing Countries and the Construction of Difference in Multilateral Trade Lawmaking’ (2015) 18 *Journal of International Economic Law* 743.

<sup>82</sup> Gururagavendran (n 68) 301, at 318–19. On this point, see notably Susan Marks from over a decade ago where she foregrounds the failure of (Paul Collier’s) analysis that situates global poverty as a problem rooted largely in domestic factors, what Jason Beckett subsequently refers to, drawing on Marks, as ‘the localization of pathology’. Susan Marks, ‘Human Rights and the Bottom Billion’ (2009) 1 *European Human Rights Law Review* 37, at 42; Jason Beckett, ‘Creating Poverty’ in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (OUP, 2016) 985, at 1001.

<sup>83</sup> Tricontinental (n 7) 30.

<sup>84</sup> ‘[T]he permanent debt crisis besieging the poorer nations has not resulted from short-term market failures or from business cycles that will rebound, and [that] it is not fully a consequence of governments’ mismanagement of finances or deep-rooted corruption. ... “Those who lend us money are those who colonised us”, Sankara explained [at a speech to the Organization of African Unity in 1987]. Debt is neocolonialism” ...’. Tricontinental (n 7) 7. See also Gathii (n 8) xi, ‘The global debt and financial architecture is a colonial legacy established when the most debt vulnerable countries in Asia and Africa were not at the table’.



We also see in the regime of sovereign debt the well-known ‘bilateral’ or contractual mindset, an approach underscored by the prominence given to the conception of contractual arrangements. Loans to borrowing states are largely treated as private cross-border matters when, in fact, these are world-shifting arrangements, deeply embedded in the organisation and management of national and global governance, including myriad matters of wider public interest.<sup>85</sup> Many of these interests are expressed, of course, in a range of international legal obligations in the area of human rights.

International investment law scholarship has long highlighted a similar practice of framing that intrusive regime as one of private ordering to protect capital<sup>86</sup> just as both regimes (and where they meet) sanctify the contractual arrangement essentially in the interest of one of the parties—the investor in the case of international investment law and the creditor in the case of the regime of sovereign debt.<sup>87</sup> While investment treaties are international treaties between and among states, they are instruments that generously favour protecting the (foreign) private investor, giving rise to widespread governance concerns. For their part, foreign commercial loan contracts between sovereigns, ie, public entities—consider contracts between China’s state-owned entities and states across the Global South—also entail deep alterations to the core features of domestic governing and global governance.<sup>88</sup> Divergences are telling too. While in many instances investment tribunals have moved beyond determining non-discriminatory bonafide regulation in the public interest as expropriation and thus subject

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<sup>85</sup> Examples have been provided throughout, but consider here findings that demonstrate how the ‘IMF has emerged as a key player in shaping the design and implementation of health policies and systems throughout the world’ and how IMF conditionality drives increases in income inequality. Kentikelenis and Stubbs (n 18) 13 and Chapters 4 and 5. For findings on the intransparent and variously domineering terms of state-to-state foreign loan contracts between Chinese state-owned entities and Global South countries, see Gelpern et al (n 9).

<sup>86</sup> See, Frank J Garcia, Lindita Ciko, Apurv Gaurav and Kirrin Hough, ‘Reforming the International Investment Regime: Lessons from International Trade Law’ (2015) 18(4) *Journal of International Economic Law* 861; John Linarelli, Margot E Salomon and Muthucumaraswamy Sornarajah, *The Misery of International Law: Confrontations with Injustice in the Global Economy* (OUP, 2018) 19. The issue is potently captured in Sornarajah’s intervention in ‘Gold Before Water? Reflections on the Eco Oro Minerals Corp v Colombia Award’ Essex Business and Human Rights Project, School of Law, University of Essex, GLOBE Centre, School of Law, University of Warwick, International Economic Law Collective (8 October 2021): [Gold Before Water Reflections on the Eco Oro v Colombia Award—YouTube](#). And generally, do not miss, Ntina Tzouvala, ‘Full Protection and Security (for Racial Capitalism)’ (2022) 25(2) *Journal of International Economic Law* 224.

<sup>87</sup> They meet where ‘Assurances provided to investors in investment treaties enhance the potential for state indebtedness; where ‘Actual awards, and the threat of an award of damages, serves to ensure that states do less ...’; ‘investment arbitration turns out to be not only a mechanism for swelling indebtedness but also a device for domination’, and along the lines of the regime of sovereign debt and its deep conditionalities: ‘Damages stifle the possibility for political action, and inhibit present possibilities, while projecting political constraints far “into the future”’. David Schneiderman, *Investment Law’s Alibis: Colonialism, Imperialism, Debt and Development* (CUP, 2022) 90.

<sup>88</sup> Gelpern et al (n 9). See also, Sornarajah (n 60): ‘China’s Belt and Road Initiative is designed to drive its power into Asia, Africa and beyond. It already is a heavy practitioner of investment treaties and uses contracts that exploit the internationalization thesis’.

to compensation, ‘economic equilibrium [stabilization] clauses’ in loan contracts ‘do not rule out the application of regulatory changes to the investment project, but require the borrower to compensate the creditor for all increased costs’.<sup>89</sup> Economic equilibrium clauses were found, for example, in 99 out of 100 contracts reviewed between Chinese state-owned enterprises and Global South sovereign borrowers.<sup>90</sup>

There are situations in which the publicness of a sovereign’s debt is expressed through official policy—the professed focus on ‘national ownership’ by the World Bank and IMF as part of a ‘radical rethink’ at the turn of the millennium based on a broad consensus that unsustainable external debt was acting as a major impediment to growth and poverty reduction and that more than debt relief would be needed, is one such example.<sup>91</sup> But, at the end of the day, two comparable scenarios emerge here: in most instances, the law invents and sanctifies what counts as private and alienates the public and human interest, as in the account above. In instances where publicness is foregrounded, private interests and advantages are merely masked, playing out just behind the scenes. In both scenarios lies the leverage exercised by financial capitalism and its bearing on the democratic mandate.

### 3. ‘What gets activated through it’: the ‘economy’ (or the economic as apolitical)

As introduced earlier, the conceptualisation of sovereign debt as a form of credit—overtly unequal—and not merely exchange (covertly unequal), grounded in a commercial ethic, easily obscures the very political and normative nature of the sovereign debt regime with a consequence of concealing the human being at its centre. A key implication is that the legal regimes through which those harms would register as violations and as unsustainable and thus as *central* to and *defining* of the creditor–debtor arrangement are left outside of the core legal relationship that regulates sovereign debt. After four decades and countless lives destroyed, the problems have only intensified while the beneficiaries (‘parasites’<sup>92</sup>) have diversified.

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<sup>89</sup> Gelpern et al (n 9) 40. Stabilisation clauses of one kind or another are (still) ‘standard in project finance’. *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> See UNCTAD, *The Least Developed Countries Report: Escaping the Poverty Trap* (2002) 167.

<sup>92</sup>

Lenin admired Hobson and borrowed several of his arguments. Hobson, in Chapter 4 of his *Imperialism*, had stressed underconsumption and capital export, believing that imperialism entailed the emergence of “parasitical” capitalism that exported loanable capital and lived off bond coupons.

Lapavistas (n 23) 65. Despite the ‘dominant imperial power’, the US, having become a huge borrower, even from developing countries to finance domestic consumption. ‘If this fits badly with the notion of “parasitical” imperialists living off coupon clippings from lending abroad ... command over world

To separate the economic from the political keeps distinct something called the economy (ie: the capitalist economy) from the *dynamics* of capital accumulation, that is, its social relations of power.<sup>93</sup> It artificially separates an economistic (and now financialised) account from the real social relations that would problematise ‘the economy’ and foreground the social power over human beings in (a financialised) capitalist society.<sup>94</sup> This bifurcation can be seen in many of sovereign debt’s legal constructions and brings with it extreme consequences. Below we explore how this split plays out, and its implications, beginning with the ‘political prohibition’ provision in the IMF’s Articles of Agreement, then turning in part 4 to political repression in defence of the ‘economy’. In a reversal of the intuitive ordering of ends and means, what follows from there is a study of how austerity actually operates: not essentially as an economic policy framework but to quash social unrest and bottom-up change in the interest of (transnational) capital.

The inclusion of the ‘political prohibition’ provisions in the Articles of Agreement of the IMF, as well as the World Bank, are long considered justified as necessary ‘to preserve the specificity and integrity of the bank’s functions and to insulate the bank from international politicisation or vagaries of domestic politics, and to foster its political neutrality’ seen as key initially in the divisive post-WW2 political climate.<sup>95</sup> The official conclusion drawn from the political prohibition has been that the IFIs are mandated to allow only economic considerations and considerations of efficiency to inform their interventions.

Challenges over the years to the political prohibition at the World Bank so that it might better account for the negative impact of its economic leverage on the exercise of human rights in debtor countries culminated in the civil society-celebrated although always partial (and ultimately aborted) project of the former General Counsel Roberto Dañino. Dañino made the case, in a famed 1998 Legal Opinion, that in line with the Bank’s Articles of Agreement, there are instances in which the Bank may take human rights into account and other instances in which it should.<sup>96</sup> His opinion foregrounded

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money has allowed the US to extract benefits directly from even the poorest countries ...’. *Ibid*, 66–67.

<sup>93</sup> Soederberg (n 19) 8–10.

<sup>94</sup> *Ibid*, 10–11 on Marx.

<sup>95</sup> This former World Bank lawyer remarks that: ‘These purposes have evolved but have not disappeared’. Siobhán McInerney-Lankford, ‘Human Rights and Development: Some Institutional Perspectives’ (2007) 25(3) *Netherlands Quarterly of Human Rights* 459, at 492.

<sup>96</sup> Roberto Dañino, *Legal Opinion on Human Rights and the Work of the World Bank*, World Bank Senior Vice President and General Counsel, 27 January 2006, paras 18 and 25. I refer to the ‘partial’ project because Dañino’s ‘deep support’ for the realisation of human rights nonetheless excludes any articulation of human rights responsibility of the Bank for its own negative impact on the exercise of socio-economic rights in recipient countries. Margot E Salomon, ‘International Economic Governance and Human Rights Accountability’ in Margot E Salomon, Arne Tostensen and Wouter Vandenhoele (eds), *Casting the Net Wider: Human Rights, Development and New Duty-Bearers* (Intersentia, 2007) 153. Van Den Meerssche makes a similar point at (n 78) 164.

the seemingly significant position that ‘It is consistent with the Articles of Agreement that decision-making processes of the Bank incorporate human rights and any other relevant input which may have an impact on its economic decisions’.<sup>97</sup> Comparably, the IMF has started to speak of the notion of ‘macro-criticality’ alongside its usual fiscal-focused decision-making—recognition that a political or social issue that has the potential to affect domestic or external macroeconomic stability can be considered by the IMF (eg: corruption, social protection, inequality, gender and climate-related issues). Yet, the dominant interpretation of the political prohibition is still used to justify the IMF’s opposition to taking account of the human rights implications of its work, including in its lending policies, and the ‘macro-criticality’ proviso has hardly dented that position.<sup>98</sup>

Institutional law applicable to sovereign debt may show evidence of ‘precariousness’; a fluid product determined by the institutional logics and politically charged environment of international organisations.<sup>99</sup> And that something is codified as ‘law’ is not all that matters and at times may not matter at all (Van Den Meerssche quotes a senior legal official at the Bank calling the political prohibition ‘garbage’ that ‘nobody believes in’<sup>100</sup>). But Dañino’s successor at the Bank, Ana Palacio, used the political prohibition to reverse Dañino’s efforts to find a way to get human rights on the Bank’s agenda,<sup>101</sup> while the preamble to the Bank’s 2016 Environmental and Social Framework outlining ‘A Vision for Sustainable Development’ delimits the Bank’s carefully crafted support for human rights—to support to its member countries in their efforts ‘to progressively achieve their human rights commitments’ realised ‘through the projects [the Bank] finances,

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<sup>97</sup> Dañino (n 96) para 12. As Joe Ingram, former World Bank Special representative to the UN and WTO points out, Dañino’s *Legal Opinion* reflected a shift in mandate from a restrictive stance on human rights in the World Bank to one that is permissive, but not obligatory. Joseph K Ingram, ‘Democracy, Development and Human Rights: A Critical Nexus’, Speech delivered at the University of Siena, 18 November 2009, on file with the author. Citing a conference paper by Dañino, Van Den Meerssche makes the case that safeguarding ‘the economic rate of return or even the viability of the investment project’ is what animated Dañino’s normative position. Van Den Meerssche (n 78) 174–5.

<sup>98</sup> See, Report of the Independent Evaluation Office (IMF), *The IMF and Social Protection* (2017).

<sup>99</sup> Van Den Meerssche (n 78).

On human rights, a legal counsel noted that nobody at this moment has sufficient “social capital” to push this issue. In a similar vein, Leroy [legal counsel] noted that she would never submit an opinion before she had safeguarded political support. *Ibid.*, 24 at fn 96.

See also, Galit A Sarfaty, ‘Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank’ (2009) 103(4) *American Journal of International Law* 647.

<sup>100</sup> *Ibid.*, 151.

<sup>101</sup> Palacio argues that it is necessary to take a careful approach with respect to human rights because human rights are political and the World Bank has restrictions on strictly political activity. Ana Palacio, ‘The Way Forward: Human Rights and the World Bank’ in David Freestone and Joseph K Ingram (Guest eds), *Human Rights and Development*, *Development Outreach* (The World Bank Institute, October 2006) 35. See further, Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (OUP, 2017) 232.

and in manner consistent with its Articles of Agreement'.<sup>102</sup> As for the IMF, it relied on the political prohibition in its Articles of Agreement quite recently to justify its inability directly to consider human rights when invited by the UN Independent Expert on Foreign Debt and Human Rights—in the wake of a the social decimation resulting from to its conditionality in borrowing countries during the 2008 financial crisis—to 'furnish relevant information concerning social and other impacts of fiscal consolidation policies, including evaluations and lessons learnt from the experience of the International Monetary Fund'.<sup>103</sup>

In calling for the abolition of the IMF's surcharge addressed above in part 2, commentators suggest that it violates Article 1(v) of the IMF Articles of Agreement by unnecessarily funnelling scarce resources away from countries in crisis in contravention of the requirement that the fund 'make temporary funding available to members countries "without resorting to measures destructive of national or international prosperity"'.<sup>104</sup> But if it is a breach no one at the IMF seems to have noticed. Institutional ethnographic observation helps to situate the contingent potency of law (and IFI lawyers) at any one time and seemingly to render law optional,<sup>105</sup> but the creditor's law is

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<sup>102</sup> World Bank, Environmental and Social Framework (ESF Vision Statement) (2017) para. 3.

<sup>103</sup>

[T]he mandate of the IMF is defined by the Articles of Agreement and its powers and responsibilities are limited to those entrusted to it by the membership. *This mandate focuses on macroeconomic and financial stability and does not, unlike the constituent documents of some other international organizations, encompass the promotion of human rights per se.* As an institution that is concerned with economic issues, the IMF is precluded from using its powers to support particular political systems or directly engage in the promotion of human rights. (Italics in the original and the provision was bolded in the original).

Christopher Lane, Special Representative of the IMF to the United Nations, Reply to the UN Independent Expert on Human Rights and Foreign Debt, Juan Pablo Bohoslavsky (27 July 2017) [IMF.pdf \(ohchr.org\)](#).

<sup>104</sup> CEPR (n 28) 2.

<sup>105</sup>

Embedded in diverging assemblages of norm-use, the same legal provision—think, for example, of the infamous 'political prohibitions clause' in the Articles of the Bank can operate, I will show, both as a source of operational constraint and as a rationalization or neutralization of institutional expansion, both as an endorsement of universalist ideals and as technique of institutional insulation vis-à-vis the outside world.

Van Den Meerssche (n 78) Chapter 1. In his account of the risk management 'paradigm shift' pursued by Anne-Marie Leroy during her tenure as World Bank General Counsel from 2009 to 2016, Van Den Meerssche rightly highlights how the agility and legal 'deformalization' that defined her new agenda way way to (selective) legal hardlines when convenient:

During the contentious negotiations of the World Bank's 2016 Environmental and Social Framework – which sets out the internal substantive safeguards and standards for operational staff – Leroy was drawn into this "familiar and predictable jousting routine" with human rights activists and scholars. As she recollected in our interview, "some wanted us to refer [to human rights] in the ESF ... to state that we would comply with international law. I insisted very strongly with the Board, saying we are not a party [to these conventions] ... so we are not bound". In this quote, one can observe, ... how the moveable boundaries of risk can crystalize in fixed formal frontiers.

always there for the taking. Law is ever-present—in the role the political prohibition tacitly or explicitly plays in facilitating the ‘aggressive steer of domestic policy space to favour private markets’ while disregarding the high political and social costs, and too often failing to deliver even on its own economic promise.<sup>106</sup> Law extends to the distributional implications of IMF policy advice that explicitly or implicitly promotes the interests of some social groups at the expense of others, yet with no human rights accountability for the fallout that could prompt reform and no acknowledgment that ‘how budget cuts are distributed is, after all, a core political question’.<sup>107</sup> Indeed the entire regime and management of sovereign debt reflects a series of values and choices in the shaping of states and the lives of people: favouring a model of trans-usury over freedom to create just alternatives;<sup>108</sup> favouring the property rights of creditors over the democratic rights and welfare rights of debtors; and, effectively, favouring the risk of civil conflict, if not war, over peace.<sup>109</sup> And all of this is framed as a legally-sanctioned, apolitical, and purely economic calculus.

The IMF has rejected human rights on the basis that they are ‘political’ as if the economy is not itself a normative project, rooted, in the first instance, in particular social relations and processes of value production and valuation.<sup>110</sup> All other arguments aside (ie: it’s all political and normative), the pushback among human rights advocates that human rights are not political

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Dimitri Van Den Meerssche, ‘Deformalizing International Organizations Law: The Risk Appetite of Anne-Marie Leroy’ (2023) 34(1) *European Journal of International Law* 141, at 161 (References removed).

<sup>106</sup> Schneiderman (n 87) 92 is drawing analogies with colonial relationships of the past. On the failure of this aggressive steer to deliver on its own terms, see also, Margot E Salomon, ‘Of Austerity, Human Rights and International Institutions’ (2015) 21(4) *European Law Journal* 521.

<sup>107</sup> Kentikelenis and Stubbs (n 18) 2.

<sup>108</sup> There are an abundance of proposals on alternatives to financialisation and the transnational debt economy produced over decades. In her work dating back to 1992, George advised that the guiding precepts should always be ‘popular participation in decision making at every level, social equity, and ecological prudence’. Susan George, *The Debt Boomerang* (Pluto Press/Transnational Institute, 1992) 171 (italics in original). Of late, Schmelzer, Vetter and Vansintjan similarly propose that:

The global North must live simply so that the global South may simply live, or put another way: degrowth in richest countries to enable sustainable prosperity in poorest nations. To do that, one must cancel odious debts, support Indigenous peoples in their struggle for rights, reform land ownership as to protect peasant livelihoods, transition away from industrial agriculture, remove unfair trade rules that disadvantage the global South, organise financial and technological transfers to offset climate debts and compensate for the consequences of colonialism, restrict international movements of capital, create a democratic international monetary system, put a stop to land grabbing practices, and abolish international organisations like the World Bank and the IMF.

Timothée Parrique, Book Review of Schmelzer et al (n 46), *Brave New Europe* (July 2022) *The Future is Degrowth: A Guide to a World beyond Capitalism* by Matthias Schmelzer, Andrea Vetter, and Aaron Vansintjan—*Brave New Europe*.

<sup>109</sup> See George (n 108) 136 on the economic conditions which grow from indebtedness as important factors in conflict. 136. See also, as below, Isabel Ortiz, Sara Burke, Mohamed Berrada and Hernán Saenz Cortés, *World Protests: A Study of Key Protest Issues in the 21st Century* (2022), <https://library.fes.de/pdf-files/bueros/usa/19020.pdf>.

but *universal* overlooks that the *political* embeddedness of human rights *should be endorsed* precisely to highlight how the political has been strategically dissociated from the economic—intellectually and institutionally—and how this has facilitated the rise of something untouchable—and lacking democratic control—called the ‘economy’. Ha Joon Chang calls for abolishing the notional distinction between the economic and the social. ‘Economics is political’, he explains,

[t]he boundary of the economy itself is defined by the economic, social and political values of any specific time and place, and the easiest way to defend the status quo is to say that there is a sacred area called the economy, and then to place within this area everything you want, especially those things you do not want to be changed.<sup>111</sup>

The occlusion of politics in economic relations and the role of law in keeping politics hidden is conveniently activated in the management of sovereign debt. From there, the IMF’s deployment of the political prohibition argument serves to disregard that people—real human beings—are the *first* and last unit of assessment in economics.

#### 4. ‘What gets activated through it’: austerity as a technique of social and political control

Dividing and insulating the economy from the political realm has long been recognised as a strategy of capitalist control—buffering the capitalist economy from political action with law deployed as an ally at multiple levels.<sup>112</sup> Political suppression is one such key tool, deployed when the inevitable protest and industrial action against capitalism’s inequalities take hold or alternative forms of economic organisation risk being realised. Reynolds, drawing on Scheuerman, highlights patterns in the use of emergency powers in Britain, the US, Germany and France during the two World Wars, first in order ‘to stifle one of the most visible products of a crisis-ridden capitalist economy, the workers’ movement’, before being

<sup>110</sup> For a lucid exploration of value, including on the role of law in assigning value, do not miss, Isabel Feichtner and Geoff Gordon, ‘Constitutions of Value: An Introduction’ in Isabel Feichtner and Geoff Gordon (eds), *Constitutions of Value: Law, Governance, and Political Ecology* (Routledge, 2023) 1.

<sup>111</sup> Ha-Joon Chang in Conversation with Joshua Curtis, *History, Law and the Myth of Economic Neutrality*, Series on Economics and Law in Conversation, Laboratory for Advanced Research on the Global Economy, Centre for the Study of Human Rights, LSE (July 2016) 6–7, [www.lse.ac.uk/sociology/assets/documents/human-rights/HR-SO-3.pdf](http://www.lse.ac.uk/sociology/assets/documents/human-rights/HR-SO-3.pdf).

<sup>112</sup> See, Linarelli, Salomon, Sornarajah (n 86) (noting that post-war international institutions were deliberately built upon this bifurcation, and one that decades later any reasonable account of justice is still struggling to see transcended); Anne Orford, ‘Theorizing Free Trade’ in Anne Orford and Florian Hoffmann (n 82) 701 (for an incisive redescription of international trade law that situates it as part of the history of international law proper); and see too Eva Nanopoulos, ‘The Material Constitution and Imperialism’ in Marco Goldoni and Michael A Wilkinson (eds), *The Cambridge Handbook on the Material Constitution* (CUP, 2023) 171, at 185.



invoked to manage the economy itself, and then to keep a return of instability at bay.<sup>113</sup>

In twenty-first-century Europe, the financial crisis of 2008 triggered economic states of emergency in debtor states that served multiple functions far beyond the purported benefit of stabilising economies according to IMF dictate. The state of economic emergency served the direct political functions of subverting democracy and embedding transnational capital. In borrowing countries, democracy has been subverted through the managerial forces of foreign intervention claiming foreign expertise is a legitimate (‘temporary’) substitute for democracy in a crisis:<sup>114</sup> because in a crisis there is ‘no time’ for democracy. It is well known, for example, that the Troika lenders would place hundreds and hundreds of pages of reforms before the Greek Parliament giving it 24 h to pass the bills.<sup>115</sup> An emergency scenario also renders critique treasonous, closing down space for opposition<sup>116</sup> and justifying militarised responses to protest. At the same time, the language of benevolence would seem always to figure. The economic state of emergency can function to render domination and subordination not only legitimate but offered up as acts of benevolence.<sup>117</sup> From here, the deferral of the indebted state’s political sovereignty is naturalised, a ‘natural consequence of any “efficient” system of global governance’, that many a critic since Federici has argued is the means through which the ostensible purpose of reconstructing the economy facilitates accumulation by global multinationals and their compradors. Britain’s authoritarian efforts in our own time to clamp down on the ability to protest, join trade unions, and strike<sup>118</sup>—following a decade of wage repression for nurses, teachers and others and their massive mobilisation as a cost-of-living crisis devastates wage-earners—is *expected* if we take our

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<sup>113</sup> John Reynolds, ‘The Political Economy of States of Emergency’ (2012) 14 *Oregon Review of International Law* 85, at 98.

<sup>114</sup> Christian Joerges, ‘Integration through Law and the Crisis of Law in Europe’s Emergency’ in Damian Chalmers, Markus Jachtenfuchs and Christian Joerges (eds), *The End of the Eurocrats’ Dream: Adjusting to European Diversity* (CUP, 2016) 299.

<sup>115</sup> See, Afroditi Marketou, ‘Greece: Constitutional Deconstruction and the Loss of National Sovereignty’ in Thomas Beukers, Bruno De Witte, and Claire Kilpatrick (eds), *Constitutional Change through Euro-Crisis Law* (CUP, 2017) 179.

<sup>116</sup> Ugo Mattei, ‘Emergency-Based Predatory Capitalism: The Rule of Law, Alternative Dispute Resolution, and Development’ in Didier Fassin and Mariella Pandolfi (eds), *Contemporary States of Emergency: The Politics of Military and Humanitarian Intervention* (Zone Books, 2010) 89.

<sup>117</sup> See, Laurence McFalls, ‘Benevolent Dictatorship: The Formal Logic of Humanitarian Government’ in Fassin and Pandolfi, *Ibid.*

<sup>118</sup> Rowena Mason, Aamna Mohdin and Emine Sinmaz, ‘Police in England and Wales to Get New Powers to Shut Down Protests before Disruption Begins’ *The Guardian (UK)*, 15 January 2023, [www.theguardian.com/world/2023/jan/15/police-to-get-new-powers-to-shut-down-protests-before-disruption-begins](http://www.theguardian.com/world/2023/jan/15/police-to-get-new-powers-to-shut-down-protests-before-disruption-begins); Tom Ambrose, ‘Peers Deliver Several Blows to Government’s Anti-Protest Bill’ *The Guardian (UK)*, 30 January 2023 [Peers deliver several blows to government’s anti-protest bill](https://www.theguardian.com/politics/2023/jan/30/peers-deliver-several-blows-to-government-s-anti-protest-bill) | House of Lords | *The Guardian*; Ben Quinn, ‘Hongkongers in UK Ask Suella Braverman to Ditch “Repressive” Anti-Protest Bill’ *The Guardian UK*, 29 January 2023 [Hongkongers in UK ask Suella Braverman to ditch ‘repressive’ anti-protest bill](https://www.theguardian.com/world/2023/jan/29/hongkongers-in-uk-ask-suella-braverman-to-ditch-repressive-anti-protest-bill) | Hong Kong | *The Guardian*.



lessons from history. Authoritarianism has shown itself to be a part of the neoliberal-austerity state since the reproduction of dominant class relations is fundamental to the social order.<sup>119</sup>

A study published in 2022 that investigated protests in 101 countries, representing 93 per cent of the world population, found that the cluster of issues related to demands for economic justice, including anti-austerity grievances, are the second most common reason why people around the world protest. The findings indicate that 53 per cent of total protests were resisting austerity measures—and over 10 per cent were explicitly targeted at IMF conditionality linked to negative social impacts including the removal of subsidies, pension and labour reforms, wage bill cuts, the rationalisation of safety nets, and privatisations.<sup>120</sup> The largest demand from around the world, present in nearly 28 per cent of all protests, and the single most prevalent protest issue to emerge from the study, is the failure of ‘real democracy’<sup>121</sup> a manifestation that corresponds with the rise of finance capitalism and its ally, authoritarianism.

By now, however, the sovereign debt game has made us all economists in that everyone knows what many economists were stating at the time of the fall of Greece following the 2008 financial crisis: that in addition to producing human suffering austerity doesn’t actually work in times of financial and economic crises.<sup>122</sup> One justification for the cuts and adjustment, and borne out in practice, is in order to reassure various creditors and investors in financial assets as debt increases that their money will be safe and that their claims to public funds will take precedence over the rights of the people.<sup>123</sup> There is also a structural account to heed.

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<sup>119</sup> Despite the contradiction with ideals of individual freedom that are central to the neoliberal ethic. David Harvey, *Spaces of Global Capitalism: A Theory of Uneven Geographical Development* (Verso, 2006) 28. Writing that seeks to complicate claims as to neoliberalism’s anti-democratic character needs fully to account for ‘the possibility that carceral expansion, state violence and expropriation have been central features of neoliberalism’ and how ‘border securitization, hyper-incarceration, the dispossession of Indigenous populations, and the ongoing migrant crisis remain at the forefront of capitalism’s unfolding political crisis’. Dillon Wamsley, Book Review of Damien Cahill and Martijn Konings, *Neoliberalism* (Polity Press, 2017) in 42 *Capital & Class* 2 (2019) 383, at 385 (emphasis in original).

<sup>120</sup> Ortiz (n 109) 27 and 66.

<sup>121</sup> *Ibid.*, 21.

<sup>122</sup> See, among many sources, ‘Jobs and Growth, Not Austerity’, Open Letter, Institute for America’s Future (December 2012), <http://jobsnotausterity.org/> and the coverage in Wolfgang Streeck, ‘The Politics of Public Debt: Neoliberalism, Capitalist Development and the Restructuring of the State’ (2013) 15(1) *German Economic Review* 143. Moreover, in his well-known book, *Austerity: The History of a Dangerous Idea* (OUP, 2013) the political scientist Mark Blyth has shown that austerity has not worked in achieving its stated goals across history (eg: reducing debt or boosting economic growth). ‘But the fact that we are still being told that it does shows us one thing: facts never disconfirm a good ideology ...’ *Ibid.*, 18.

<sup>123</sup> See, Streeck (n 122 ) 155 and 159.

As accumulated debt increases and investors are required to be more careful about where they put their money, creditors will seek guarantees that expropriation will not happen to them – in effect, that their claims will always be given priority over those of citizens ... *Ibid.*, 155.

See also the findings of the Debt Truth Committee (n 10).

A new history of twentieth-century austerity in Europe following World War I, exposes a subversive strategy to which austerity is directed: when capitalism is in crisis—that is, when private property over the means of production and wage relations between owners and workers have been contested—‘austerity has been deployed as a ‘vital bulwark in defence of the capitalist system’.<sup>124</sup> To put the point succinctly, while political repression has been used to lock in austerity, austerity has also been a response to fervent social organising and agitation: a form of slow repression.<sup>125</sup> This ‘counteroffensive’, as Clara Mattei frames it in her recent study, can be seen as an attack on bottom-up demands for economic democracy through unions, agricultural cooperatives and building guilds. Austerity is thus best understood, Mattei highlights, as ‘an anti-democratic reaction to threats of bottom-up social change’.<sup>126</sup> But there is more. What is exposed in Mattei’s study is precisely how the effects of political repression (eg: banning strikes and unions) can be substituted (or complemented) by monetary austerity that causes an economic downturn thus indirectly achieving the same debilitating ends.<sup>127</sup> As she puts it when juxtaposing the emergence of austerity in post-World War I Britain and Italy: ‘the structural violence of macroeconomic policy could do the same as the physical violence of Fascist militias’.<sup>128</sup>

Earlier work on the Greek debt and austerity crisis queried the motivation for deploying (ie: being required to deploy by the Troika lenders) socially debilitating austerity when it had received extensive criticism even from mainstream economists as a policy response evaluated on its own terms—for taking

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<sup>124</sup> Clara E Mattei, *The Capital Order: How Economists Invented Austerity and Paved the Way to Fascism* (University of Chicago Press, 2022) 3.

<sup>125</sup> *Ibid.* In her archival work on fascist Italy and liberal Britain, Clara Mattei show how

The austerity counteroffensive successfully disempowered the majority. Austere governments and their experts implemented policies that either directly (through repressive pay and employment policies) or indirectly (through restrictive monetary and fiscal policies that depressed economic activity and raised unemployment) subjugated the majority to capital—a social relation in which a majority sell their capacity to work in exchange for a wage. Austerity shifted resources from the working majority to the saver/investor minority, and in so doing enforced a public acceptance of repressive conditions in economic production. This acceptance was further entrenched by experts whose economic theories depicted capitalism as the only and best possible world’. *Ibid.*, 6–7.

<sup>126</sup> *Ibid.*, 7.

<sup>127</sup>

[M]eaning monetary revaluation policies (such as an increase in interest rates and reduction in money supply)[that] directly protect[s] creditors and increase[s] the value of their savings. Meanwhile organized labor has its hands tied, since having less money in circulation depresses the economy and diminishes the bargaining power of the working class.

For an overview of the ‘austerity trinity’ of fiscal austerity (eg: regressive taxation, cuts to health and education), monetary austerity and industrial austerity (eg: layoff of public employees, wage reductions, union- and strike- busting) see, *Ibid.*, 9.

<sup>128</sup> That is, in the case of postwar Britain, ‘unprecedented unemployment (up to 17 per cent of the insured laborers in 1921), which weakened workers’ bargaining position and lowered wages, and an ensuing reduction in government revenues that tied the state’s hands and precluded any public response to workers’ needs or demands’. *Ibid.*, 16.

the wrong approach to promoting growth and investment.<sup>129</sup> The core question posed was why the people of Greece were being treated as if there is no history, as if the violence of Structural Adjustment—across the Global South over decades—had been forgotten.<sup>130</sup> Now the answer becomes clear: austerity should be understood not, fundamentally, as economic policy but as a technique of control in suppressing protest and securing (transnational) class-based profit and accumulation. I invoke Federici who observed that a ‘debt crisis is almost a textbook case of the old-time truth that economic liberalism is not only compatible with, but at crucial times requires, social fascism’.<sup>131</sup> Indeed, economic liberalism was never about free exchange between equals in conditions of a free market. It is state-imposed prioritisation of the accumulation of capital into the hands of the few.

As the COVID-19 pandemic got underway in 2020, the G20 issued a moratorium on sovereign debt repayment to multilateral and bilateral creditors for poorer countries covering one year. While there was limited take-up in any case,<sup>132</sup> it had also initiated no structural benefit, leaving the creditor–debtor power disparity fully intact and the overarching systemic frameworks untouched.<sup>133</sup> The likelihood of a return to austerity then came to pass with conditionality imposed as new debt was issued to plug fiscal deficits incurred to respond to the pandemic. Oxfam’s analysis of all loan documents released after IMF Board approval concluded that 87 per cent of the IMF’s COVID-19 loans required developing countries to adopt ‘tough new austerity’ despite, moreover, many of those countries having been denied equal access to vaccines and facing some of the world’s worst humanitarian crises.<sup>134</sup> The standard recipes of widespread austerity also included public sector wage freezes during a pandemic.<sup>135</sup> Austerity is transnational capitalism’s big win: its track record shows an intermixture of estranging debtor countries from their citizens, rationalising the repression of political freedoms, ushering

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<sup>129</sup> Salomon (n 106) 542–3.

<sup>130</sup> *Ibid.*

<sup>131</sup> Federici (n 1) 313.

<sup>132</sup>

The DSSI [Debt Service Suspension Initiative] was hardly successful, as many creditors – with the exception of a few, such as China – refused to suspend interest payments. In addition, many analysts remarked that the DSSI was not fit for purpose, since it only applied to official debt (multilateral and bilateral), while the sovereign debt crisis was largely fuelled by a private bond crisis. Tricontinental (n 7) 23.

<sup>133</sup> See generally, Jerome Roos, *Why not Default?: The Political Economy of Sovereign Debt* (Princeton University Press, 2019) 299; and Margot E Salomon, ‘Reconstituting the Unequal Global System after Pandemic: A Cautionary Tale of International Law’ LSE COVID-19 Blog (11 June 2020), <https://blogs.lse.ac.uk/covid19/2020/06/11/long-read-the-pandemic-is-an-opportunity-to-reconstitute-the-unequal-global-system/>.

<sup>134</sup> Oxfam, ‘IMF must Abandon Demands for Austerity’ (19 April 2022) [IMF must abandon demands for austerity as cost-of-living crisis drives up hunger and poverty worldwide | Oxfam International](https://www.oxfam.org/en/press-releases/20220419-imf-must-abandon-demands-for-austerity).

<sup>135</sup> See Oxfam’s 2022 findings based on IMF datasets, for example, ‘Kenya and the IMF agreed a \$2.3 billion loan program in 2021, which includes a three-year public sector pay freeze and increased taxes on cooking gas and food’. *Ibid.*

in economic downturns that indirectly subordinate labour, and paving the way for the capture of all aspects of public policy.

## 5. 'What gets activated through it': reversing social expectations

The Committee on Economic, Social and Cultural Rights issued a Statement on Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights in 2016, following the height of the 2008 financial crisis and lending fiasco in Southern Europe. The Statement provides the following:

Debt financing can contribute to economic development and to the establishment of conditions for the realization of human rights. Moreover, States cooperating internationally by providing loans may legitimately expect and seek to ensure that the borrowing State repays the loan in good faith and complies with certain conditions that guarantee reimbursement. All States, however, whether parties to the Covenant or not, that coerce other States into violating their own obligations under either the Covenant or under other rules of international law are responsible for that act under international law.<sup>136</sup>

Among the impacts of the 2008 European debt crisis, and in particular the responses to it, was the decimation of socio-economic rights and this reality is captured in the Committee's statement above. Yet, while the Committee's focus is on rights, it is *at the expense* of factoring into its analysis the structural extortion embedded in the regime of sovereign debt. According to the Committee, the global regime of debt financing is not a problem if it is compliant with socio-economic rights, and in their most minimalistic iteration.

Debt fiascos of that period, and the widespread and contested policies of lender austerity that accompanied them—perhaps expectedly—turned the Committee's attention to focus on the protection of the 'minimum core content' of socio-economic rights,<sup>137</sup> an application that continues to date. In its 2016 statement on public debt and austerity, the Committee remarked that states as members of international financial institutions must comply with their obligations under the Covenant, including when casting their votes since 'they would be acting in breach of their obligations if they were to exercise their voting rights within such agencies without taking human rights into account'.<sup>138</sup> Yet, in this strongly worded provision, the Committee still expected no more of states parties than 'a particular effort

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<sup>136</sup> Statement by the Committee on Economic, Social and Cultural Rights, *Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights*, UN Doc E/C.12/2016/1, 24 June 2016, para 10.

<sup>137</sup> *Ibid*, para 3.

<sup>138</sup> *Ibid*, para 9.

to ensure the protection of the *most basic* economic, social and cultural rights, to the maximum extent possible, are built into programmes and policies designed to promote adjustment'.<sup>139</sup> Following this line, in its assessment of Argentina's state report some years later, the Committee noted its 'concern' that 'under the agreement with the International Monetary Fund the Government has set a zero-deficit target for 2019 entailing further cuts in social spending'<sup>140</sup> and reminded Argentina, among other procedural and substantive requirements, that any retrogressive measures 'should not affect the minimum core content of the rights protected under the Covenant'.<sup>141</sup>

The Committee's requirements, then as now, is that austerity measures should remain in place only insofar as they are necessary, and then under strict conditions directed at Covenant compliance and aimed at the protection of the disadvantaged and marginalised, as well as reviewed regularly 'in order to ensure the enjoyment of economic, social and cultural rights'.<sup>142</sup> But the focus of rights compliance on ensuring the minimum core within the seemingly necessary context of debt crises, whatever its benefits, serves ruinous functions: it reverses social expectations and fails transformative possibility. Here the material project is obscured, such as using the loan and adjustments to integrate debtor countries and workers fully into the world market, driving the widespread destruction of local small and medium enterprises, and weakening a range of traditional rights including subsistence. And, markedly, the approach tacitly accepts harsh discipline and coercion as organising principles of society under the asymmetrical power of debt as the standard for social relations. This is the real crisis in a 'debt crisis'. CESCR's interventions remain at the level of tentative fix, not consummate remedy, and at the level of exchange, not production. Socio-economic rights protection on these terms form part of the 'apparent settlement',<sup>143</sup> buying into the pretence that rights should be protected best we can in the *interim*, and that when debt is repaid, it will alter the relations of utter subordination that define creditor–debtor relations. But the interim doesn't exist, the asymmetry of the creditor–debtor relation is a *feature* of the global economy, and debt is its engine.

The Committee would seem to be preoccupied with what is going on at the level of exchange—debt, loans, some conditionality—and seeks to

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<sup>139</sup> *Ibid*, para 9 (emphasis added). See also CESCR General Comment No 2, International Technical Assistance Measures (art 22) (1990) para 9.

<sup>140</sup> CESCR Concluding Observations: Argentina, UN Doc E/C.12/ARG/CO/4 (2018) para 5.

<sup>141</sup> *Ibid*, para 6(e).

<sup>142</sup> CESCR, Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights, 16 May 2012, 1, at 2; CESCR Statement 2016 (n 136) para 4; CESCR Concluding Observations: Spain, UN Doc E/C.12/ESP/CO/6 (2018) para 14; CESCR COB Argentina (n 140) para 6.

<sup>143</sup> See, Lazzarato (n 56) 89.

mitigate harms, while paying too little attention to the ways in which law and practice have configured social relations of production—exploitative, unequal, coercive and openly so. We miss a strong sense of how these factors are socially constructed in the ‘wider context of the dynamics of, and relations of power inherent to, capital accumulation’<sup>144</sup> and how the ‘economy’—that is taken at face value by the Committee—would be impossible without this exploitation that inheres in it. Put differently, the Committee is part of the problem if it helps camouflage how the ‘capitalist market system and money disguise real social relations through the exchange of things’<sup>145</sup> and here through the normalised asymmetries of ‘credit-led accumulation’.<sup>146</sup>

By accepting the seeming need for austerity measures and thus moving directly to focusing on how best to ensure the most vulnerable are protected, structural questions are left out of the equation, for instance, how, in the case of Greece, it came to be and for whose benefit that a bankrupt country was effectively denied the use of a loan but was left to pay it off with interest, compelling the need for ever new loans (and ever more structural adjustment). Or more profoundly, how immense wealth is captured through financialisation and austerity.<sup>147</sup> This wider context is part of the background that drove the need for action to secure minimum rights but is not the subject of inquiry in its own right; we were long ago warned that the notion of a crisis can serve to factor out complex contexts and impoverish the substantive context of law.<sup>148</sup> International human rights law may not ideally be set up to confront these wider structural issues,<sup>149</sup> but nor have the possibilities of socially transformative law in this area been exhausted.<sup>150</sup> Yet, by taking the

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<sup>144</sup> See, Soederberg (n 19) 7.

<sup>145</sup> Soederberg on historical materialism, drawing on Harvey, *Ibid*, 10 (‘Marx’s historical materialist method is driven by a rigorous attempt at deconstructing the view that commodities, including money, are social relations that assume specific forms, roles and powers in capitalist society’). *Ibid*.

<sup>146</sup> *Ibid* (on ‘credit-led accumulation’); David Harvey, ‘Class-Monopoly Rent, Finance Capital and the Urban Revolution’ (1974) 8(3-4) *Regional Studies* 239, at 254 (on ‘value without producing’); see also Lapavistas (n 23).

<sup>147</sup> On this, Lazzarato (n 56) 21 and at 8: ‘Public debt has reached record levels in every country that has enacted austerity measures. This means that the rents of creditors have also reached record levels’. See also, Bohoslavsky and Raffer (n 4) 2 on the multibillion-dollar profits or political benefits that lenders incur.

<sup>148</sup> Hilary Charlesworth, ‘International Law: A Discipline of Crisis’ (2002) 65(3) *Modern Law Review* 377, at 390–1.

<sup>149</sup> See, Robert Knox, ‘Marxism, International Law, and Political Strategy’ (2009) 22(3) *Leiden Journal of International Law* 413, at 430–1 (deals with effects (violations) but not causes); Linarelli, Salomon and Sornarajah (n 86) 21 (‘Structural and causal accounts are increasingly considered in international human rights law, even if there is still too little it can do about it.’).

<sup>150</sup> Margot E Salomon, ‘Emancipating Human Rights: Capitalism and the Common Good’ (2023) 36(4) *Leiden Journal of International Law* 857 (revealing how international human rights law can be liberated from the hold of capitalist logic and transform the human condition); Margot E Salomon, ‘The Radical Ideation of Peasants, the “Pseudo-Radicalism” of International Human Rights Law and the Revolutionary Lawyer’, (2020) 8(3) *London Review of International Law* 425 (on the terms of a transformative human rights legal strategy).

context for granted, protecting human rights contributes both to reinforcing the causes that gave rise to the problem and reversing social expectations. Deploying human rights in this minimalistic manner helps sustain the alienation of so many people from their full socio-economic rights and bolsters capitalism and its financial predation, the very source of the emergency, along with the advantages claimed by its beneficiaries. Importantly, a response that takes seriously the ‘progressive realization’ of rights and what that might entail is further estranged as social expectations are weakened. This is a ‘utility’ that the protection of human rights currently serves under the tyranny of sovereign debt. The Committee that oversees compliance with the main international treaty dedicated to social justice has found internal agreement merely to seek to manage the most immediate consequences of austerity in the debt economy and at a high price.

It is of course the case that ensuring basic needs is essential and urgent and that framing those needs as human rights invites the prospect of remedies that are ascribed to rights when understood as legal entitlements. Moreover, minimum core obligations impose obligations of result on the languid feature of the Covenant’s progressive realisation requirement, merely ‘to undertake to take steps ... with a view to achieving progressively the full realization of the rights recognized in the present Covenant ...’.<sup>151</sup> This ‘minimum core’ interpretation was developed by the Committee in General Comments as part of its early effort at fleshing out the weak provision in the Covenant requiring only a thin obligation of conduct: instead, the Committee required that, in the first instance, steps towards the full realisation of rights in the Covenant should be ‘deliberate, concrete and targeted’.<sup>152</sup> And like much else in life, we come to know the worth of something when we no longer have it, as Marius Pieterse highlights in his paradigmatic consideration of the Treatment Action Campaign decision by the South African Constitutional Court when it dismissed contentions that the right to have access to health services encompassed a minimum core obligation of the state, stating ‘that the only enforceable obligation generated by the right was that the state take reasonable measures aimed at the progressive realization of the right’.<sup>153</sup>

Yet, under the crisis law of CESCR, the progressive realisation dimension of socio-economic rights has been relinquished along with its potential for transformation. The idea, presumably, is that the progressive realisation of rights is put aside *only temporarily*, only as long as the crisis continues

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<sup>151</sup> ICESCR art 2(1). CESCR General Comment No 3, The Nature of States Parties’ Obligations (art 2(1)) UN Doc E/1991/23 (1990) para 10 establishing the minimum core obligation: ‘[T]he Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party’.

<sup>152</sup> *Ibid*, para 2.

<sup>153</sup> Marius Pieterse, ‘Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited’ (2007) 29 *Human Rights Quarterly* 796, at 809.



and there are widespread minimum essential levels of rights not being met. But it is a feature of capitalism and transnational financialisation that crises recur forever in one guise or another. As Bohoslavsky and Raffer set out, the whole period since the 1980s:

can be seen as an age of sovereign debt crises, occasionally interrupted by a few years in which neither a crisis occurred nor countries had to suffer from the orthodox recipe against debt crises i.e. harsh and undue austerity measures and “structural reform” programmes.<sup>154</sup>

The increased intensity and frequency of financial crises have put developing countries, in particular, into ever greater situations of precariousness, while climate-vulnerable countries have some of the most significant debt distress.<sup>155</sup> All the while, the ever-familiar yet contested IMF recipe of austerity, privatisation, and liberalisation remains chronic (an ILO study finds that in the context of COVID-19 lending the IMF undertook fiscal consolidation in 129 of the 148 reports examined in 2020).<sup>156</sup> There are other problems too, such as China’s infrastructure loans that have resulted in unsustainable debt levels for borrowing countries as well as questions over the mandatory use of its own suppliers and labourers,<sup>157</sup> and the detested rise and ‘stranglehold’ of (Western-based) bondholders.<sup>158</sup> Compliance with the Covenant requiring minimum essential levels of rights in response to a transnational debt economy provides for the distinct possibility of reducing the realisation of socio-economic rights merely, and always, to their minimum essential levels. It also occludes the real emergency. In the context of the debt economy, the protection of minimum essential levels of socio-economic rights is not a stopgap application of international human rights law in

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<sup>154</sup> Bohoslavsky and Raffer (n 4) 1.

<sup>155</sup> See, Ramos et al. (n 7). On how IMF climate change adaptation and mitigation engagement will likely become the ‘dominant battleground for social protection issues’ see, Kentikelenis and Stubbs (n 18) 16 and Chapter 8.

<sup>156</sup> Shahra Razavi, Helmut Schwarzer, Fabio Durán-Valverde, Isabel Ortiz and Devika Dutt, *Social Policy Advice to Countries from the International Monetary Fund during the COVID-19 Crisis: Continuity and Change*, ILO Working Paper 42 (ILO 2021). And while the IMF recommended increased expenditure on health care and expansion of social safety nets, ‘the most recurrent policy recommendation was to begin or resume fiscal consolidation as soon as the conditions created by the health and economic crisis of the COVID-19 pandemic alleviate’, which, in most cases, saw IMF staff recommend that governments begin efforts to reduce fiscal deficit in 2021. *Ibid*, 15.

<sup>157</sup> CESCR Concluding Observations: China UN Doc E./C.12.CHN/CO/3 (2023) para 22 on China’s Belt and Road Initiative. As for China’s record and influence, researchers at Tricontinental point out that ‘China’s public and private debt forgiveness during the pandemic has put pressure on IFIs to rethink the harshness of their debt repayment-austerity governance model’. Tricontinental (n 7) 33.

<sup>158</sup> Tricontinental on Africa (n 7) 33. Figures from a new report (that presents a model to align the international financial architecture with the SDGs and the Paris Agreement finance needs) figures, *inter alia*, that ‘For 61 countries identified as in or at high risk of debt distress to achieve debt sustainability, more than \$812 billion in debt needs to be restructured across all creditor classes’. Ramos, et al. (n 7).



times of debt and austerity, it is part of a permanent moratorium on a better future for its victims.

## 6. Conclusion

Like Federici's charge of the utility of debt having opened the African continent 'to a fuller penetration of capitalist relations',<sup>159</sup> 40 years later what do we conclude if we peer inside the Trojan Horse and explore anew the wider strategy of transnational debt predation? Contrary to sporadic high-level exhortations about the need for debt relief and contingent moratoria on debt servicing or conditionality, creditors (ie: the predatory capitalist class) do not seek an end to the perennial crisis of debt. From their vantage point, a transnational economy run on debt does not reflect a crisis at all. All the while, the entire regime is shrouded in a veneer of commercial exchange and free contracting which launders transnational class-based power and ensures the extortion of the Global South. Conceiving of the economy in terms of social relations of credit—rooted in ideas of *pacta sunt servanda* and analogous principles that imply contractual probity but serve, as much as anything else, to sanitise unequal exchange—render power asymmetries and structural inequalities overt and utterly acceptable. In defining debt as an economic and financial matter, obscured is an enterprise shot through at every level with public (international) interests and (global) governance implications. It is telling that the institution within capitalist societies designed precisely to provide a rescue from the weight of past obligations—bankruptcy—is not even a sanctioned option under the regime of sovereign debt, quite the opposite: as Davies' household debt analogy captures, 'financialisation entails keeping existing monetary promises at all costs – *and then adding to them*. ... Society today is awash with indebtedness that is never going to be repaid'.<sup>160</sup>

But at last we have an answer to the mystery of the 'economic logic [that] is hard to fathom':<sup>161</sup> the explanation is that there is a different scheme at work. That which gets 'activated through' Global South debt are multiple, unspoken, constitutive functions for global governance, economy, democracy, and society. However, if the Trojan Horse tactic once saw the abuse of good faith provide military advantage, today the use of a Trojan Horse as a method of warfare would constitute a war crime.<sup>162</sup>

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<sup>159</sup> Federici (n 1) 307.

<sup>160</sup> Davies (n 61) 218.

<sup>161</sup> *Ibid.*

<sup>162</sup> Perfidy: 'The essence of perfidy is thus the invitation to obtain and then breach the adversary's confidence, i.e., an abuse of good faith'. *International Humanitarian Law Database, ICRC Customary IHL - Rule 65. Perfidy (icrc.org)*.

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