Foreword

Saddam Hussein was overthrown and executed, but his successors to power are still liable for the debts that he contracted for the nation. Odious regimes can create debts without consent or benefit of their citizens, who must subsequently repay them. This fact puzzles both international law specialists and intellectuals who read magazines like The Economist. The result seems wrong, but the right solution is elusive. Yvonne Wong’s important and timely book solves some of the puzzles by using methods and theories from international law, economics, and political science. It explains the law and politics inherent in sovereign debt arrangements, and proposes a new legal framework for odious debt.

In sovereign loan offerings, someone needs to check whether the borrowing government will use the funds to benefit its people. The party best situated to do so, according to Yvonne, is the financier, who knows a lot about how the funds will be used. In economic jargon, the financier is ‘the cheapest cost avoider’. In private loans, the lender must collect information about a borrower before making a loan (‘due diligence’) or risk liability to the lender’s stockholders. Similarly, Yvonne proposes that lead financiers in loans to sovereigns should be subject to a duty of care to learn how the borrower will use the funds. To reduce the risk of breaching this duty, the lender may need to disclose what it knows about the sovereign debtor’s use of funds. Yvonne proposes that private parties could bring suits on behalf of a nation burdened by odious debt, with the private party receiving a fraction of any recovery. (This proposal follows the practice of qui tam suits that have proved successful in combatting corruption in government contracting in the United States.)

The international community should move toward more responsible lending and borrowing. Everyone who considers odious debt agrees that it is a serious problem of international economics and politics. The problem will become ever more significant if the number of countries facing unsustainable sovereign debt continues to increase. Students, journalists, practitioners, and commentators in law, economics, and politics should become acquainted with the issues. Yvonne’s highly readable book provides fundamental information for this broad audience, and her proposed solution deserves wide consideration and discussion.

Yvonne’s sources are as diverse as her background. She made her
way from Sydney, Australia, via Samoa, Cambodia, and the UK to the Berkeley Law School as a Rotary World Peace Fellow. Along the way she worked as a legal practitioner and consultant in law firms, investment banks, government institutions, and non-profit organizations. I was Yvonne’s academic supervisor at Berkeley. What started as a thesis for the Masters in Law became a Doctoral dissertation and, now, a book. This is the perfect intellectual journey for a Berkeley law student and I am delighted to have participated in it.

Robert Cooter
Co-Director, Law and Economics Program
Herman F. Selvin Professor of Law
Berkeley Law School