Are Promises to Repay International Debt Binding?

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A theorem of John R. Searle seems to have far-reaching implications for international debt, implications that will be discussed in this paper. This theorem will here be called ‘Searle’s Claim’, a claim that needs to be taken seriously even by those who reject his argument about its derivation.

I

Although not everyone accepts that Searle has shown “How to Derive ‘Ought’ from ‘Is,’” his argument is certainly a cogent one for the conclusion (for convenience, let us call it ‘Searle’s Claim,’ despite some amount of rephrasing) that those who in certain circumstances utter or sign certain promissory words concerning repayment take on obligations to repay money that is simultaneously loaned to them, or in some cases loaned to them on condition of making such a commitment. Even those who reject Searle’s argument usually endorse its conclusion, whether as an assertoric truth or as a universal prescription. Further, there is no reason to restrict Searle’s Claim to individual promises as opposed to promises made by or on behalf of corporate entities such as states; indeed the implications could reasonably he held to last longer for deathless bodies such as states than for human individuals, whose debts are sometimes held to die with them.

In conjunction with the undoubted fact that numerous Third World governments have historically signed up to such promises to service and repay loans, Searle’s Claim seems to imply that these governments now have an obligation to repay the capital of these loans, and up to the point of doing that to service the loans by paying interest at market rates. Even those who regard Searle’s Claim as a universal prescription and as lacking in truth-value are liable to recognize that particular oughts are validly implied by such universal prescriptions, lacking in truth-value as such particular oughts would have to be supposed to be. But for present purposes a cognitivist interpretation of Searle’s Claim will here be assumed; this can be assumed without endorsing either naturalism in particular or non-naturalism in particular, since cognitivism can be harnessed to either of these positions. On this basis, there are apparently numerous true particular ought-propositions concerning particular Third World countries’ obligations. Are those who adopt Searle’s Claim committed to accepting these obligations as conclusive and binding? My project in this paper is to attempt to answer this question and thereby to appraise some of the tensions between ethical theory and its apparent normative implications on the one hand and the real world on the other and to draw related conclusions.
Three kinds of grounds will be considered for qualifying or rejecting the supposed obligations of Third World countries to repay or service international debts. The first kind relates to various conditions on the valid derivation of oughts from facts envisaged by Searle or implicit in his argument. An example of this kind of conditionality (albeit one with no current relevance) would be the fact that no obligations are generated by apparent promises made in jest, if recognized to be so made by all parties. A second kind of ground concerns the existence of stronger countervailing obligations, strong enough to override any obligations genuinely generated; thus a promise to keep a business appointment might be overridden by duties arising from a close bereavement, despite an authentic obligation arising from the promise. My third kind of ground is relevant both to the genuineness of obligations and to the issue of overridingness and concerns the claim that those for whom supposed obligations are impossible to discharge either have no obligations at all or have obligations of a prima facie kind that are overridden by other obligations relating to what it is possible for them to do. Thus the apparent obligation of a sick employee to report for work must either lapse or be replaced by the (incompatible) obligation to send a truthful message concerning her inability to report.

II

Grounds of the first kind either defeat or modify the derivation of obligations from promises, and conditions of this kind are to be regarded as implicit in Searle’s Claim. Thus one condition of a valid and voluntarily incurred obligation is the absence of coercion when the original promise was made. Since coercion is neither identical nor coextensive with the inability to do otherwise (which will be considered separately), it may seem that not many international loans can have been accepted under its shadow, as it were, at gunpoint. However, it is beyond doubt that some countries, unable to repay earlier debts, have been coerced into accepting yet more disadvantageous new debts; and this kind of compulsory rescheduling must at least qualify the apparent obligation to repay the new debt. How easily contracts of an apparently noncoercive kind can become coercive has been well argued by Onora O’Neill, and there can be little doubt that many international loan agreements have had this character.

A second kind of condition, distinct from absence of coercion, concerns awareness of the conditions of the loan. Promises made in the absence of an accurate understanding of the various implications are often regarded as other than binding, and in many countries there is legislation requiring moneylenders to ensure that implications are clearly supplied and likely to be understood. In the case of loans to Third World countries, there is a serious possibility that the facts that the relevant interest rates would be subject to considerable fluctuation and the serious and far-reaching implications of these facts were not in all cases recognized when commitments were entered into, sometimes by relatively inexperienced negotiators. In cases where this was not understood, it would not follow that debtors have no obligations, but it might follow that their commitments are reduced to obligations either
to repay or to service the loans at times and to extents corresponding to what was originally understood by them. Another of O’Neill’s arguments concerns the ease with which apparently nondeceptive contracts can assume a deceptive character; but even if there was no deception or nondisclosure, many international loan agreements have almost certainly involved a defective understanding of the implications for the country of the signatory, with the implication that the obligations arising have a significantly qualified character.

A third type of condition concerns the existence of choice and of opportunity to do otherwise. (For present purposes I mean to set aside debates concerning determinism, as it would be unfair to hold that issues about the ability to do otherwise do not apply to Third World countries on the strength of a metaphysical thesis, when no such denial is normally applied to other agents and circumstances.) Now options can be narrowed not only by coercion or ignorance, but also, as O’Neill shows, by desperate or near-desperate circumstances; and those bargaining in such circumstances have little or no choice about what they agree to, since it is apparently rational to agree to temporary relief even at the risk of exacerbated long-term outcomes. Part of the point of the castigation by Old Testament prophets of oppression of widows and orphans concerned the ease with which unfair advantage could be taken of those bargaining in unfair bargaining conditions. More recently Pope Paul VI recognized that where “the positions of contracting parties are too unequal, the consent of the parties does not suffice to guarantee the justice of their contract” and that this is relevant to international contracts as well as contracts between individuals.

But many Third World countries that accepted loans to facilitate the development of their economies were either in desperate or near-desperate circumstances; indeed wherever this was the motive for accepting a loan, the very need for the loan attests awareness of underdevelopment and thus of several evils from the sorry catalogue of low life expectancy, high rates of morbidity and endemic illness, high rates of illiteracy, limited medical provision, inadequate sanitation, inadequate availability of clean water, and malnutrition. Circumstances such as these must sometimes have made acceptance of loans unavoidable, where nothing more favorable was on offer, and in other cases avoidable only at the cost of postponing investment to remedy some of these evils; and such lack of choice, or of sufficient choice, might reasonably be held severely to limit obligations to service and/or repay loans, despite the countries concerned enjoying the benefits of this funding, and possibly to imply that no such obligations existed in the first place.

A further condition of valid obligations, implicit in Searle’s text, requires either identity or inheritance of commitments between the person(s) accepting the loan and the person(s) obligated to service or repay it. When commitments are undertaken by governments, identity of the individuals signing and the persons expected to repay is clearly not required, as long as there is continuity, as representatives of governments of the same country, between those making the commitment and their successors. In recent history, however, commitments were often undertaken on behalf of
their countries by corrupt dictators, who proceeded to misappropriate the mon-
ey loaned (sometimes on themselves or their own glorification) and to
bequeath to their peoples little or nothing but the burden of “debt.” In such
cases there must be doubt about whether succeeding governments are obli-
gated to honor such so-called odious debts, particularly where the behavior
of previous regimes was foreseeable to those making the loans, together
with the projected robbery of their own people implicit in foisting on them
such theoretical debts. Doubt also attaches to a country’s commitment to
repay powerful overseas creditors of a discredited government after it has
been overthrown; thus the revolutionary government of Vietnam could
hardly be expected to repay the United States debts incurred by the various
prerevolutionary regimes, to whose every policy the new government stood
opposed.

III

So far, historical facts and tendencies seem likely significantly to qualify
a large proportion of Third World obligations in matters of debt, because
one or more of the conditions of such obligations are not satisfied. But
before we turn to the second kind of grounds tending to negate the binding-
ness of obligations, a key point of philosophical theory needs to be brought
to attention. For in 1969 Searle significantly qualified the conclusions of his
1964 essay. The conclusion of his example in the initial essay was that Jones
(a debtor who had promised a certain Smith to repay five dollars) ought to
pay Smith five dollars. But in 1969 the conclusion was modified so as to
read: “As regards his obligation to pay Smith five dollars, Jones ought to
pay Smith five dollars.” In other words, debtors are obligated to repay their
debts, other things being equal. Where there are no other ethical consider-
ations or no other ethical considerations override the commitment implicit
in the debt, they are obligated to pay even after all things have been consid-
ered. But there could be competing obligations serious or urgent enough to
qualify or even override the obligation to pay. Short of reasons being given
to the contrary (contriving somehow to establish the overriding sanctity of
debt), Searle’s second thoughts would seem to be justified.

The second kind of grounds thus consist in reasons for holding that
other things are not equal where debt-related Third World obligations are
concerned. The first such ground is that these countries almost invariably
have obligations to relieve malnutrition, disease, illiteracy, or poverty
among their own populations, obligations that conflict with both debt serv-
ing and repayment. Even in cases where a debt was incurred so as to
fund projects to promote development precisely to relieve these evils, hon-
oring the debt cannot be assumed to take priority in these circumstances;
and when countries consider growing cash crops for export in the cause of
honoring debts even when this would raise the price of food crops for local
people in a time of famine, or when anything comparable is at stake, they
should surely give a lower priority to their obligations as debtors than to
ensuring that their own people have food that they can afford and to com-
parably basic domestic responsibilities. Otherwise, debt becomes a kind of
slavery, binding and obliging debtors to set aside vital obligations and the ability to fulfill them.

Next, the bearing of the unequal, and often unfair, trading positions of most Third World debtor countries needs to be considered in the context of their current obligations. Thus in some cases there is no possibility of the capital of the loan being repaid, and interest payments are likely to become a perennial subsidy from poor countries to much richer ones, where this has not become the case already. (It is widely recognized that there is currently a net flow of resources from the developing to the developed countries.) As Paul VI recognized as early as 1967, there is a danger of developing countries' being overwhelmed by debts. Beyond some point, obligations must arise for creditors not to accept such payments, let alone to insist on their payment, and to convert the loans to grants; plausibly this would sometimes be in the interests of all parties. And if so, there may well be corresponding rights (arising at the same stage) for the relevant debtor countries not to make such payments. The question of whether an obligation can be overridden by a right is difficult to answer in the abstract; but this state of affairs is at least a possibility, as is attested by legal systems in which the right to silence is held to supersede obligations to respond to cross-examination in court.

Might there even be an obligation not to honor some of these debts? In some cases the consequences of nonpayment (whether of interest or of capital) would not be serious for creditors, whereas the consequences of payment would be severe for debtor countries. Of itself, this would not automatically require the infringement of a moral rule, although it might be held to excuse or even justify such an infringement. Yet could there not be cases in which the benefits of the rule being observed are so slight, and the injustice of existing obligations so considerable, that an obligation actually arises not to pay? To the extent that justice is based on needs and their satisfaction and not just on the observance of contracts, it would seem to require considerable redistribution of resources, involving the release of many debtor countries from contractual obligations. If so, we would encounter here a further instance of the obligation to pay conflicting with a clashing obligation, in this case with a contrary obligation not to pay. International justice plausibly calls for much more redistribution than this, but the release of poor debtor countries from the chains of debt would be a good start.

IV

The third kind of grounds concerns impossibility: those for whom supposed obligations are impossible to discharge plausibly either have no obligations at all or have obligations of a prima facie kind that are overridden by other obligations relating to what it is possible for them to do. Whether impossibility exonerates seems to depend on its source. Thus my obligation to drive a friend home lapses if I cannot do so because a third party steals my car; but if (instead) I cannot do so because I get drunk, I might be held still to have the obligation, modified in the circumstances to an obligation to pay her homeward taxi fare. Similarly debtors who waste
what they owe are not held to be exonerated from repayment and expected to repay as soon as this becomes feasible. But matters could be different for debtors engulfed in calamities of hopeless proportions.

Since precisely this is the situation of some Third World countries, it would in some cases follow that there is no obligation to repay at all; and this should be regarded as another kind of circumstance that defeats the valid derivation of obligations, alongside coercion at the signing stage. In some other cases, by contrast, the impossibility of repaying arises from wastefulness by the regime concerned; in such cases impossibility does not of itself exonerate, although the poverty of the countries’ citizens may still override the obligation.

More prevalent is the situation of countries that could repay some or even all of what they owe, but only at huge cost to their own population, among whom (say) infant mortality or water-borne diseases that could be remedied through investment will continue or worsen. For such countries, their debt obligations might be held to remain, but, granted that they cannot be met without becoming at least causally responsible for avoidable death and disease among their own population, and thus without defaulting on obligations that they plausibly have to prevent this happening, the debt obligations would sometimes be overridden by these clashing obligations. Here we are back with a conflict of clashing obligations; the link with impossibility is that repayments are nearly impossible, impossible without continuing humanitarian disaster, or, to reexpress matters in a way that appraises this conflict, morally impossible.

V

Nothing said here in any way suggests that Searle’s argument is flawed or that what we have called Searle’s Claim is incorrect. This reflects, as he points out, the moral institutions of promising and of loans. But moral institutions are not everything (as was recognized by Old Testament provisions for debt forgiveness—see Deuteronomy 15—and as the Jubilee 2000 Campaign in Britain pointed out), and the obligations that these institutions generate can also conflict with clashing obligations, by which they can sometimes be overridden. The clashing obligations are sometimes (perhaps always) based on outcomes, for example, through differences at the margin, and sometimes on distributive justice and the moral priority of the satisfaction of basic needs.

Just because debt obligations are real, the countervailing obligations have to be substantial; and so they evidently are, if they ever override obligations of debt. Those countervailing obligations that require action to satisfy unsatisfied basic needs have far-reaching implications, potentially challenging all our moral institutions. For these obligations cannot be confined to debtors and plausibly extend to all competent moral agents, including creditors, both individual and institutional, national and international. And in the case of creditors, these obligations would often take the form of a positive duty to cancel Third World countries’ debts, in some cases conditionally, and in other cases unconditionally.
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Notes

3 Ibid., 148.
4 Ibid., 147.
6 Searle, “‘Ought’ from ‘Is.’”
8 For this observation I am indebted to Rowan Williams, Bishop of Monmouth.
9 Pope Paul VI, *Populorum Progressio*, para. 54.