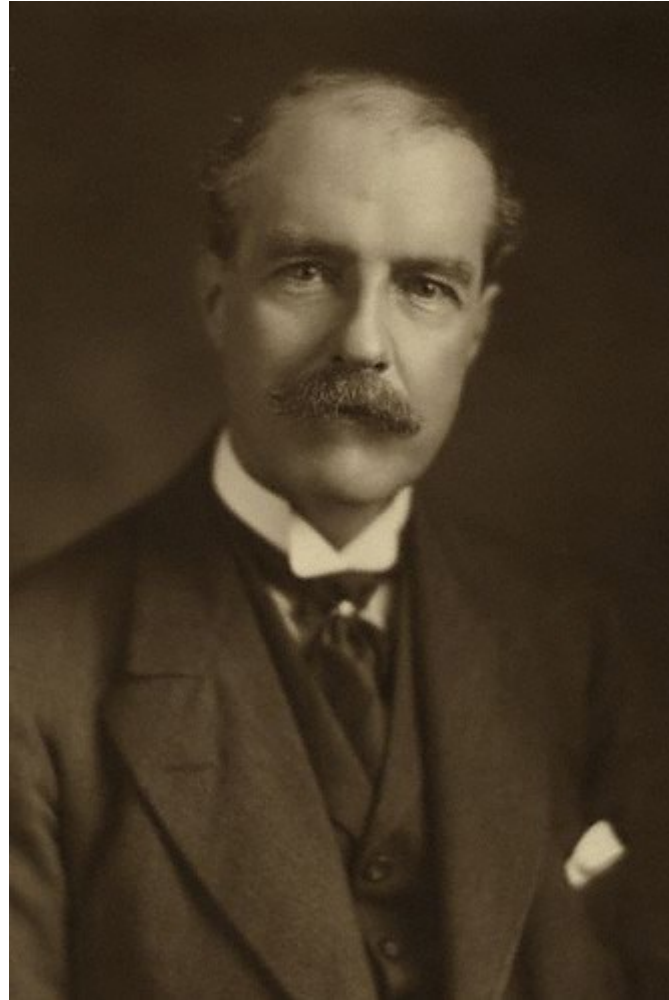


Sovereign debt restructuring: legal dimensions

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Introduction

- **Sovereign Debt Restructuring: legal dimensions**
 - Restructuring sovereign debt: statute or contract?
 - The fundamental puzzle of sovereign debt
 - IMF and private sector consensus
 - Amending the *pari passu* clause
 - Introducing Collective Action Clauses - CACs
 - Information and creditor engagement clauses
 - Legacy debt
 - Are they relevant for the Eurozone?
- **Questions & discussion.**

Restructuring sovereign debt: statute or contract?

- State insolvency: a legal vacuum without bankruptcy law
- Sovereign is the source of law and above the law
- Two ways to proceed for restructuring of sovereign debt subject to external law:
 - Introduce a law binding sovereigns and their creditors
 - IMF's SDRM (sovereign debt restructuring mechanism – 2003)
 - Initiatives in United Nation fora
 - Introduce an enhanced contractual mechanism to assist agreement and consensus
- Matter was mostly academic until recently

Fundamental puzzle of sovereign debt

- Creditors will always obtain a judgment against the sovereign in respect of overdue payments (or other breaches)
- Creditors will never be able to enforce against the assets of a sovereign
- Argentina litigation in NY challenged this
- NY court order was enforced not against Argentina, but against other Argentina creditors and the “payment system”
- This resulted in an alliance between creditors willing to accept restructuring, sovereigns in need of restructuring and entities like the IMF and the IIF

IMF and private sector consensus

- Amending the Pari Passu clause
 - Clause to be clearer that it does not mean “rateable payment”
- Introducing Collective Action Clauses
 - Creditor democracy
 - Minority is bound
 - Avoids the “holdout” problem which plagued the Argentinean restructuring
- Information covenants
 - Proper information allows for better informed consent and acceptance of the restructuring
- Creditor Committees
 - Endorsed principally by private sector as a means for ensuring a fair discussion of the restructuring offer

The new collective action clause mechanism

- At the option of the sovereign issuer
 - Votes per series of bonds
 - Votes across series all aggregated together (single limb)
 - Votes across series all aggregated together but with each series also voting (double limb)
 - Only foreign law bonds
- Disenfranchising provisions
- Abuse of minority – “uniform applicability” condition
- Eurozone double limb CACs
 - ESM treaty provision
 - All law bonds

Is this all relevant?

- Legacy debt may not contain these provisions
- Relevant for Eurozone countries like Portugal?
 - High level of official sector debt
 - Different characteristics (loan, not traded, held by fellow EZ members, stable)
 - Less susceptible to restructuring
 - Monetary financing
 - No bail out clause

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