

BOOK REVIEW/COMPTE RENDU

Terence C. Halliday and Bruce G. Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis*. Stanford: Stanford University Press, 2009, 536 pp. \$29.95 paper (978-0-8047-6075-1), \$90.00 hardcover (978-0-8047-6074-4)

The topicality of this book is fortuitous. Although the “systemic financial crisis” of the sub-title is that of Asia in 1997 rather than 2008, it has much to say about current efforts to reform financial architecture. Its manifest topic is the development and implementation of global norms for bankruptcy. Yet it has a much broader appeal for scholars of globalization processes in many different fields and with many different substantive interests. Halliday and Carruthers leave the reader in no doubt that insolvency norms are a critical feature of orderly markets, and a test case for scholars of globalization. The authors also deliver an ambitious and rare methodological agenda by engaging the global/local encounter from both sides. Over a sustained period of time, they have collated interview data from policy makers and key actors in three countries and at the international organization level. The result is a rich empirical and theoretical exploration of the institutional complexities of norm production, enactment and implementation.

At the centre of the analysis — its organizing concept — is the notion of *recursivity*, namely the idea that norm development involves cycles of experimentation and contingent feedback at different levels of the global system. The reader is reminded that there is no single story to be told, no grand rationalization thesis, and no simple account of colonization of the weak by the strong. Rather, there is variety of process, expertise and institutional path dependency which all shape the development and reception of transnational bankruptcy norms in different ways. While it is central to the socio-legal imagination that law on the books and law “in action” are different, Halliday and Carruthers identify the structure of a dynamic, relating them in repeated cycles and phases of mutual influence across the global/local divide. The country-specific cases show that, given that formal law is to varying degrees always indeterminate, conflict with sovereign institutions and struggles over interpretation and diagnosis are the norm. In this process, global institutions and rules are also reconfigured by domestic legal changes and by flows of people and ideas in both directions. The picture is one of considerable fluidity, con-

tingency and experimentation in which some states and actors can find themselves operating as intermediaries in the production and consumption of normative scripts.

The book is organized around three overlapping but complementary streams. The first stream covers three chapters and concerns the improbable achievement of a workable consensus after two decades of reform effort. Beginning with the development of practitioner-led bilateral protocols for cross-border insolvencies, Halliday and Carruthers analyse the evolution of multilateralism involving a variety of international organizational actors seeking to develop insolvency law designs. The eventual convergence on a single “legislative guide” by the United Nations Commission on International Trade Law (UNCITRAL) shows how it was uniquely able to build political and technical legitimacy, thereby securing genuine possibilities of enactment by states. Crucially, other world actors, even the World Bank, eventually came to recognize their own limitations in building consensus for a technology sufficiently diagnostic to aid critical evaluation of existing systems, and directive enough in its prescriptions. The reach of the narrative is grand, but usefully composed of small important episodes, such as the role and style of the UNCITRAL chair in finding consensus.

The second stream, also three chapters, switches to the nation state level and deals with three countries’ responses to the 1997 crisis and their subsequent and varied forms of entanglement with reformist international organizations. Indonesia, perhaps most badly affected and with a shallow pool of legal expertise, experienced repeated cycles of bankruptcy law reform which ran up against corruption, ethnic tensions and a cultural preference for distressed debtors to negotiate in private. The change programme inevitably became much broader than bankruptcy as such, extending to the entire judiciary and supreme court in an unfinished and highly conflictual process of institution building. In contrast, Korea (which also suffered badly) was able to expand the legal foundations of its market economy and consolidate its fragmented regulatory structures. This involved far reaching efforts to restructure the state and related administrative habits, a drama in which bankruptcy law “was both an object and subject.”

China, which might be expected to be a limiting case of reform, was less affected by the crisis and more able to pick and choose from various reform scripts at the world level. Yet bankruptcy law, and the creation of orderly mechanisms to deal with corporate failure, pose significant political risks, not least the likelihood of social conflict for a culture accustomed to state support and where local legal forums may be perceived as unfair. So while China has managed to increase the formalization of

bankruptcy laws, state reconstruction has remained more problematic than in the case of Korea. Without specialised courts the older administrative culture still prevails.

The book's third stream provides a more analytical evaluation of the processes by which states and global actors mutually influence each other. At the heart of this dynamic are intermediaries or brokers who operate across both levels, who negotiate key relationships and who vary in competence, influence and organizational loyalty. These "bridging experts" are able to carry global scripts into national arenas in a variety of ways. Western training of key office holders creates a sympathetic point of entry for external ideas, but efforts at intermediation backed by local supporters of reform are often fraught with difficulties, and patterns of resistance and foiling are evident in all the cases. In particular, Halliday and Carruthers show how the weak can seem strong via strategies such as symbolic conformity and resistance at the implementation level. Conversely, powerful actors are likely to find their efforts diluted and fragmented due to delay and over-formalization. As the authors put it, transplanting law requires much more than law.

This extended empirical elaboration of recursivity in global law-making shows clearly how enactment, formal translation, and implementation are all importantly different and have their own politics. The adoption of formal laws is far less costly than the creation and reform of institutions, and global organizations may win at enactment but lose in implementation. The authors also suggest that implementation gaps are the norm and they point to the limits to globalization and the barriers to behavioural change which are part of the recursive dynamic. The analysis also suggests that imbalances of power are more complex than scholars of imperialism suggest; globalization must be negotiated and local institutions persist. And in contrast to world theories of rationalization, Halliday and Carruthers suggest a variety of paths of reform which have no guarantee of success.

This is a very important and well written book which makes a contribution far beyond the supposedly "arcane margins" of insolvency law. It is relevant to all attempts to understand the contingent trajectory of global norms in any policy field, not least that of climate change where the stakes are even higher than for financial stability. The book is quite long and there is some element of repetition, which may arise from the construction of the narrative from existing papers in journals. But the repetition also works very helpfully to consolidate an analysis which takes three different but related cuts into the phenomenon of global law-making. For the reader not steeped in the world of insolvency practice, a glossary might be helpful and should be considered for future editions.

Yet this book also sets a very high methodological bar for future research into norm development; the concept of recursivity challenges future studies to combine both access to global institutions and to states and localities. Overall, Halliday and Carruthers have achieved unusual and difficult access to global and national policy actors and have produced a work with unrivalled reach, relevance and appeal for scholars in sociology, law, management and political science, as well as for the practical communities with which they have engaged. Analysts of the more recent financial crisis would do well to read this book and heed its methodological, empirical and theoretical lessons.

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