

**Against Globalization: Sovereignty, Courts,
and the Failure to Coordinate International Bankruptcies (1870–1940)**

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Abstract

Coordination of cross-border bankruptcies between 1870 and World War II offers a puzzling image. On the one hand, diplomats, academic lawyers, and private lobbies repeatedly tried to bring regulations closer to the ideal of unity and universality of proceedings: all parties and assets should be assembled in a single forum, governed by a single law. On the other hand, these demands were matched by repeated failures, so that territoriality, fragmentation, and thus relative economic inefficiency dominated. For example, many states adopted bankruptcy laws that were universal in design yet opposed any symmetric endeavor of their neighbors. This institutional stalemate cannot be easily traced to the resistance of shielded interest groups, such as senior creditors. I argue that the problem actually resulted from the interaction of two dimensions of sovereignty: the *domestic* dimension, whereby (under a liberal constitution) courts protect property rights and possibly reallocate them, as in a bankruptcy procedure; and the *international* dimension (i.e., the interstate political order), which determines the extent to which states will compromise their domestic prerogatives in order to commit themselves to stronger rules of cross-border cooperation. Between 1870 and 1840 it then seems that the constraints proper to the operation of coherent and trusted legal orders, at the national level, far outweigh the potential benefits more mutual opening. In contrast, the international regime that emerged after 1990 shows how greater international enfranchisement of economic agents was matched by much more fluid coordination and recognition between national jurisdictions.