

# Insolvency Law in the Global South: Lessons for the Global North

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# 1. Introduction

- Influence of the Global North in the academic and policy debate in insolvency
- Legal transplants from the Global North to the Global South
  - Nigeria, Ghana and Kenya have adopted insolvency laws and practices from the United Kingdom
  - Malaysia has virtually replicated the insolvency regime existing in Singapore
  - China and Thailand have adopted aspects from the US Chapter 11
  - Brazil has an insolvency regime that includes many features from the US Chapter 11 and from various European countries (mainly France)
  - The insolvency regime existing in Uruguay has been partially inspired by the Spanish Insolvency Act and particularly an Insolvency Bill that was debated in Spain in the 90s.

## 2. Global convergence in the design of insolvency law

- Many trends and reforms seem to be leading to a greater level of convergence in the design of insolvency law around the world
  - Rise of hybrid procedures and influence of Chapter 11
- Driving forces behind the process of convergence
  - Legal origins, role of international organizations and “international best practices”, regional challenges/harmonization efforts, regulatory competition...
- Influence of the Global North in this process of convergence. Why?
  - Consequences of colonialism and legal origins?
  - Less active academic and policy debates in the Global South?
  - Global South seeks to replicate the economic success of the Global North?
  - Global South seeks to replicate insolvency laws and practices that may have worked in the Global North?

### 3. The Global South in Comparative Insolvency Law (1/2)

- In her pioneering and inspiring work on corporate governance in the Global South, Professor Mariana Pargendler convincingly argues that:
  - The Global South has often been omitted in many studies on comparative corporate governance
  - The Global South has innovated in many aspects of corporate law, such as the existence of stakeholder-oriented provisions
  - Including the Global South in the study of comparative corporate law “has the potential not only of enlarging our institutional imagination but also of enriching our understanding of the driving forces behind the evolution of corporate law around the world”
- Does Professor Pargendler’s hypothesis apply in the context of corporate insolvency law?
- If it is shown that the Global South indeed innovates in corporate insolvency law, what can the Global North learn (if so) from the Global South?

### 3. The Global South in Comparative Insolvency Law (2/2)

- The jurisdictions traditionally covered in comparative studies in insolvency have generally included:
  - The United States
  - The United Kingdom
  - Europe (mainly France and Germany)
  - The jurisdiction of the author (if different)
- In recent years, more academic studies on insolvency law have included comparisons with some jurisdictions in the Global South. However:
  - Those studies are still limited
  - Those studies mainly focus on a few jurisdictions from the Global South (particularly India and China)

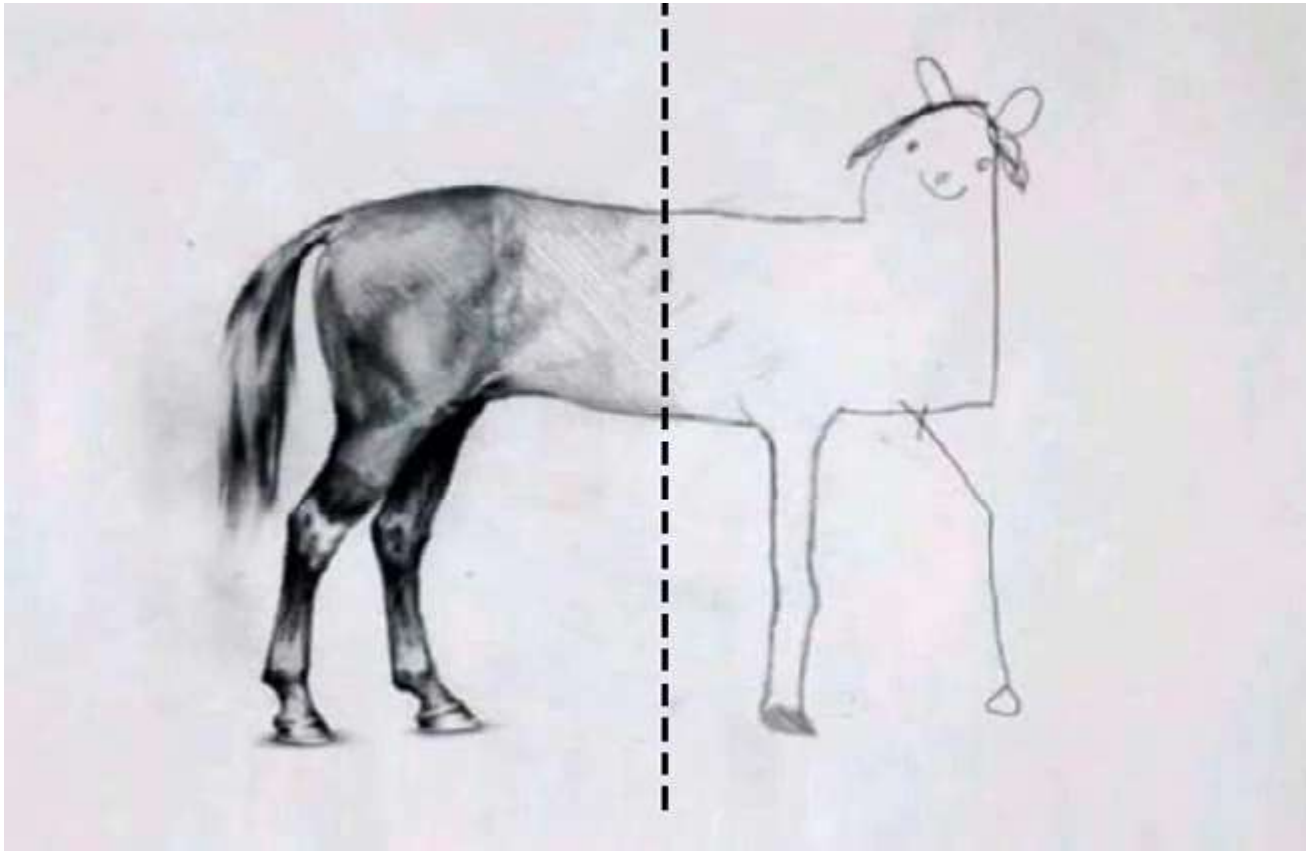
## 4. Is Insolvency Law in the Global North the Paradise Envisioned by the Global South? (1/2)

- The US Chapter 11 is one of the most popular and influential insolvency regimes in the world
- Interestingly, while the US Chapter 11 is admired by many countries in the Global South (and the Global North), it has been heavily criticized in the United States. In fact, due the significant costs of Chapter 11, many authors in the US have argued that Chapter 11 should be abolished (Bradley and Rosenzweig, 1991) or at least revisited (Baird, 1986; Rasmussen, 1992; Schwartz, 1998).
- What about the insolvency system in other jurisdictions from the Global North?
  - United Kingdom?
  - Germany?
  - Spain?
  - France?
  - Australia?
  - New Zealand?

## 4. Is Insolvency Law in the Global North the Paradise Envisioned by the Global South? (2/2)

Perception

Reality



## 5. Innovations in Insolvency Law in the Global South (and what the Global North can learn from the Global South) (1/2)

- Many of the problems existing in the Global North exist in the Global South
  - Costly and lengthy insolvency proceedings
  - Stigma of insolvency
  - Unattractive insolvency proceedings for debtors, creditors or both
- In fact, as some of the problems existing in the Global North are exacerbated in the Global South, the Global South may have thought even more about how to tackle those problems...

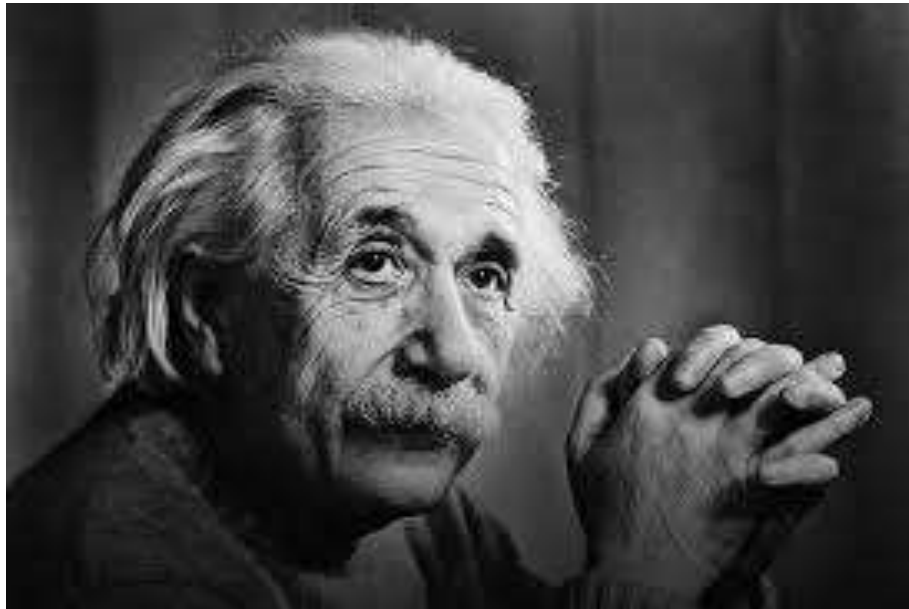
Why not learning from each other?



## 5. Innovations in Insolvency Law in the Global South (and what the Global North can learn from the Global South) (2/2)

- **Promoting workouts:** Lessons from Malaysia, the Philippines and Thailand
- **Facilitating the initiation of insolvency proceedings:** Lessons from Uruguay
- **Improving the governance of insolvency proceedings:** Lessons from Colombia and beyond
- **Facilitating new financing in insolvency proceedings:** Lessons from Brazil, Colombia, Malaysia and beyond
- **Embracing technology in insolvency proceedings:** Lessons from Colombia, India and China
- **Empowering creditors in insolvency proceedings:** Lessons from India and Latin America
- **Favoring cooperation in cross-border insolvency:** Lessons from India and China
- **Improving the insolvency framework for micro and small enterprises:** Lessons from Myanmar, Colombia and beyond
- **Reducing the stigma of insolvency proceedings:** Lessons from Chile
- **Improving the quality and availability of insolvency data:** Lessons from Chile and India

## 6. Explaining innovations in the Global South (and the Global North): Necessity Foster Creativity?



## 7. Conclusion

- **The Global South** (particularly the Global South beyond India and China) **has been mainly ignored in the study of comparative insolvency law.**
- Consistently with Professor Pargendler's pioneering work on corporate governance and legal heterodoxy in the Global South, it has been shown how **the Global South has adopted many innovative solutions in their insolvency laws.** In some cases, those innovations have been inspired by solutions existing in the Global North. In other cases, they consist of really "autochthonous innovations" from the Global South.
- Given that insolvency systems often face similar challenges in the Global North and the Global South and some of those challenges are generally exacerbated in the Global South (therefore, the Global South may have thought even more about how to tackle those problems), why not integrating the Global South in the study of comparative insolvency law? Otherwise, **we will be missing the opportunity to learn from many ideas and innovative solutions that can contribute to the improvement and understanding of insolvency laws around the world.**

Many thanks!