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Negotiating Globalization: Global Scripts and Intermediation in the Construction of Asian Insolvency Regimes

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This article draws from a larger research project on the globalization of bankruptcy law that includes (1) a time-series analysis of all bankruptcy reforms worldwide from 1973 to 1998; (2) participation observation, several hundred interviews and documentary analysis of international financial institutions (IMF, World Bank, Asian Development Bank, European Bank for Reconstruction and Development), international professional associations (International Bar Association, International Federation of Insolvency Practitioners), and world governance organizations (OECD, U.N. Commission on International Trade Law); and (3) case studies of Indonesia, Korea, and China.

The globalization of law is a negotiated process. Our research on international organizations and case studies of China, Indonesia, and South Korea indicates that negotiation of the global/local relationship varies by the vulnerability of a country to global forces. Nation-states vary (1) in their balance of power vis-à-vis global actors; and (2) in their social and cultural distance from the global. Yet even where the global/local gap is wide and the asymmetry of power is pronounced, local responses to global pressures are negotiated as much as imposed. Negotiating globalization relies on direct and mediated interactions by several types of intermediaries who translate global scripts into four kinds of outcomes. The impact of intermediaries in this process varies by the phase of the reform in which they participate. Finally, globalizing law proceeds through recursive cycles of lawmaking and law implementation.

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The interaction between the local and the global is a key relationship for contemporary social science scholarship (Campbell 2004; Fligstein 2001; Gilpin 2000; Waters 1995; Weiss 1998; Merry 2005; Santos 2002). Streams of scholarship on globalization and law diverge substantially in their approaches to this interaction. In the sociolegal field, a notable body of work is accumulating on the emergence of global norms in business, environmental, and trade regulation (Braithwaite and Drahos 2000; Canan and Reichman 2001; Shaffer 2003), yet it does not usually examine the actual encounters in which those global norms are negotiated with local gatekeepers. In law and finance, numerous cross-sectional quantitative studies seek to explain why transplants of laws are successfully adopted and implemented by nation-states (Berkowitz et al. 2003; Pistor et al. 2002) or the effects of protection of property rights on capital investment in developing and transitional economies (La Porta el al. 1997). Rarely do these studies delve into the transplant process or the dynamics that yield variations in conformity.

The most important sociological scholarship on law and globalization, the neo-institutional or world society/world polity school, seeks to demonstrate through cross-sectional and time-series research that law is homogenizing as nation-states seek to conform to global universals in areas as diverse as voting rights, immigration, women's rights, environmental policies, and citizenship (Berkovitch 1999; Meyer et al. 1997). Only very recently have neo-institutionalists begun to examine closely the point of interaction between the global and local to see how and why such conformity is negotiated. If the approach to globalization by the sociological neo-institutionalists is primarily from the global perspective, an alternative orientation by interdisciplinary anthropologists approaches the interaction from the vantage-point of the local. Founded upon a long tradition of theory and research on the translation of metropolitan laws into colonial settings, this work traces continuities and discontinuities in postcolonial settings (Darian-Smith 2004; Merry 2003). It offers the richest interdisciplinary reflection on the moment of global/local interaction and the negotiations that take place between them.

A number of scholars are, however, beginning to elaborate the global/local encounter. Pistor and Xu (2002) observe how the inherent incompleteness of global norms transplanted into local law lead to ambiguities that demand local institutional solutions. Merry's (2005) anthropological research on the U.N. Convention on Elimination of Discrimination Against Women shows how local actors participate actively in the replication and hybridization of the norms they are adopting from global institutions.

This article seeks to advance this interdisciplinary engagement by examining the structure and dynamics of the global/local encounter. Building upon theory and concepts from several of these scholarly streams allows us to focus on the negotiation of globalization at a particular nexus—the intersection of international organizations and national lawmaking in the field of commercial law. It is at this point of interaction in which generalizations about

globalization become specified, contingent and dynamic, a moment in which the engagement of the global and local involves cooperation and contestation, acceptance and resistance, adoption and adaptation. It is also an interaction that is underresearched, particularly for commercial lawmaking in the context of international institutions. From this research site we seek to observe how the emergence of global normative scripts constrains and empowers local actors, analyze the structure and process of intermediation and translation, and propose that variations in these processes relates to the situation of nation-states in a matrix of global power and cultural and social distance.

We investigate the structure of intermediation by considering reforms in one area of law (bankruptcy law) in one region of the world (East Asia), resulting from one precipitating event (the 1997 Asian Financial Crisis). Yet our three national cases—China, Korea, and Indonesia—vary systematically from each other by their situation in fields of power and proximity to global institutions. Hence, we show how the locus of a country in a global matrix of power affects the structure of interactions between the global and national, which in turn influences variations in the terms of globalization that are negotiated between global institutions and nation-states.

In order to make manageable our comparative analysis of three countries, we restrict ourselves here primarily to lawmaking or enactment of law rather than law practice or its implementation. This choice is quite pragmatic, since our wider project argues that legal change must be understood as a recursive process, a dynamic of cycles between the enactment of law on the books and the implementation of law in action (Halliday and Carruthers 2006). Direct interaction between the global and local, intermediation and translation, are issues on both sides of law-reform cycles and the processes of intermediation may differ from one part of the cycle to the other. However, apart from concluding theoretical reflections on enactment and implementation, we concentrate on the politics of putting law-on-the-books.

We approach the global/local encounter principally from the vantage point of the global. This research is based on several years of intensive research within the major international organizations that shape the global field of insolvency law. This gave us close access to officials, documents, and situations as they unfolded. At the same time, our case studies of national lawmaking and implementation enable us to place the vantage point of the global actors and their agents in the context of the local. We have followed reform cycles in China, Indonesia, and Korea for five years through interviews, primary and secondary documentary sources, and participant observation.

We employ a particular type of commercial law (corporate bankruptcy or insolvency law) as a lens through which to explicate global/local interactions. We believe this specific tableau to be especially illuminating for several reasons. First, laws are firmly rooted in national legal systems with distinctive traditions and histories, and with clear jurisdictional limits. As a social institution, law embodies the nation-state and, in practice, is emphatically

local. Second, although globalization (however defined) has advanced unevenly, it is surely furthest developed in the economy. There are, for example, world markets and world market prices for gold, oil, computer chips, capital, computer software, steel, and so on. Markets and economic institutions are therefore most likely to have fully felt the effects of globalization. Commercial law thus represents a key interface between the local orientation of national legal systems (based within the geographical boundaries of specific countries), on the one hand, and the global orientation of commerce, on the other (tending to cross or transgress national boundaries in search of profitable opportunities).[1] Finally, commercial law regulates the markets upon which economic growth and national well-being depend, and so the political stakes could not be higher.

Commercial law is also important because of its salience to the rule of law. "Rule of law" as a modern ideology has frequently been conjoined to the neo-liberal economic policies (privatization, deregulation, liberalization, balanced budgets, etc.) of the so-called "Washington Consensus," although it need not be (Campbell 2004, 163; Stiglitz 2002, 84, 138). The general idea is that market economies require a set of transparent, binding rules that govern not only the actions of private individuals, but also those of sovereign government. Under the rule of law, the state is beholden to the law, and law stipulates the property rights and contractual relations needed so that owners know who owns what, and can negotiate enforceable transactions to transfer property rights between buyers and sellers. Triumphalist interpretations of the fall of communism point to capitalism as the only real way to organize an economy. The sweep of markets around the world economy has been followed by a second wave spreading the rule of law. Investors, whose highly mobile capital can be moved around the globe with relative ease, are sensitive to legal differences and favor countries whose laws are good for them (Eichengreen 1996, 188–91; Longstreth 1995, 335). Capital mobility can therefore selectively pressure countries to enact investor-friendly laws (Campbell 2004, 125). In addition, the rule of law has been actively promoted by key institutions like the IMF and World Bank (see, e.g., World Bank 2002; IMF 1999), with the backing of the U.S. government.

Bankruptcy law is one distinguishing feature of a market economy. Unlike command economies, characterized by "soft budget constraints" (Kornai 1992), competitive market economies have a legal mechanism through which inefficient firms exit the market: bankruptcy. A corporate bankruptcy law includes provisions for determining which firms are insolvent and when, and then provides a set of rules to determine whether the firm should be liquidated or reorganized. If the former, then an additional set of rules govern how corporate assets are to be pooled and allocated among the firm's

1. For an historical example of the same global/local interaction, consider the *lex mercatoria* from the early modern period of European history.

competing creditors. If the latter, then the rules govern who is put in charge of the reorganization process, and how the firm's assets, liabilities, and operations are to be reconfigured so that the firm can become profitable again. Corporate bankruptcy law, in other words, plays a key role in creating the efficiency of markets by allowing for orderly corporate restructuring (Haggard 2000, 146).

From 1998 to 2005 there has been an intensive international effort to develop global scripts for insolvency regimes[2] and to institutionalize them in developing countries, especially those in financial crisis. As we shall develop below in more detail, this began with a call by the G-22 Finance Ministers, in the wake of the Asian Financial Crisis, for international financial institutions to develop models of effective insolvency systems that might forestall future crises. The World Bank, International Monetary Fund, and regional development banks responded to this and other pressures by creating a variety of models for insolvency law and insolvency regimes. Since these all suffered from limitations of one sort or another, they sought to integrate their efforts into a single global standard to be drafted by the U.N. Commission on International Trade Law (UNCITRAL). A Legislative Guide on Insolvency Law, both substantive and procedural corporate insolvency law, was adopted by the Commission and U.N. General Assembly in 2004. In the intervening years the international financial institutions (IFIs), and other international governance organizations (e.g., Organization for Economic Cooperation and Development (OECD)), have been pressuring and persuading transitional and developing nations to conform their national legal systems to the not always identical models offered by the global institutions. While these pressures have been most acute in countries in financial crisis, such as Indonesia and Korea, they have also been substantial for growing economies, such as China's.

Of course, bankruptcy law is but one of many sites to witness global/local or global/nation-state interactions (albeit an especially good one). Our intention here is to develop a framework and concepts that explicate the point of intersection between the global and local in this area of law. It will be for other research to appraise how well they extend to other national sites and other areas of globalization in law.

FIELDS OF POWER, INTERMEDIATION AND TRANSLATION

We propose to understand global/local interactions and mediations by locating them within a two-dimensional context (see Figure 1). Such interactions will vary depending on where in this two-dimensional space they occur.

2. International organizations in the insolvency field were not simply concerned with the development of substantive and procedural law, but the creation of global scripts for solvency *regimes*, which include substantive and procedural law, courts, administrative agencies concerned with corporate liquidation and reorganization, out-of-court restructuring agencies, and professions.

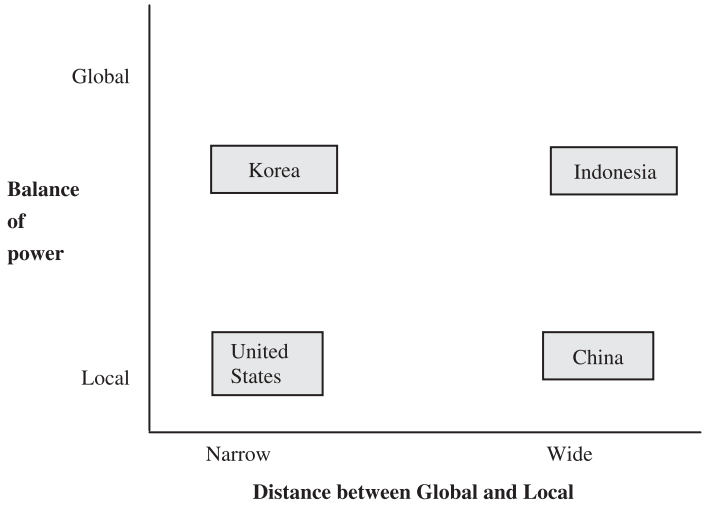

Figure 1. Situational Vulnerability of Nation-States to Global Pressure.

One dimension concerns the balance of power between the national and global. This balance shapes the kind of interactions that occur, and it varies over time, across contexts, and between countries. For example, in some issue areas national autonomy tends to predominate: national norms and institutions may be in a stronger position within one issue area (e.g., security) than another (finance and investment). The balance varies over time, and so with respect to global institutions like the IMF, for example, a country like Thailand was in a stronger bargaining position in 1995 than in 1997 (at the height of the Asian Financial Crisis). If the IMF insisted on legal reform in Thailand, it was more likely to get cooperation in 1997 than in 1995. And, of course, the balance varies between different countries. Economic and military superpowers like the United States or China cannot be treated like small countries (e.g., Luxembourg or Madagascar). In general, we expect that nations in a strong bargaining position will be less accommodating of or receptive to global scripts and other forms of influence than countries in a weak bargaining position. But the balance can sometimes shift dramatically and quickly reset the terms of the interaction.

The second dimension concerns the "distance" that exists between the local and global as they come into contact. There is significant variation in how congruent or consistent extant local institutions and practices are with their global counterparts. Greater congruence means a shorter distance between local and global, and therefore less of a tension or incompatibility between them. It makes for a less conflictual global/local interaction. To begin with, global institutions can already be more or less "localized." For example, both the World Bank and the IMF are recognized as quintessentially global institutions. And yet, as an organization, the IMF remains highly centralized

in terms of both personnel and organizational capacity. By contrast, the World Bank is more decentralized and maintains long-term personnel and offices in various recipient countries. The World Bank has more local knowledge, expertise, and capacity than the IMF: it is a more localized global institution. Or it may be that a global institution represents a regional or selective perspective (e.g., the EU, the OECD, or the Asian Development Bank (ADB)).

Localization of the global works in other ways, as well. Sometimes, particular countries are able to make global institutions conform to their own local institutions (Braithwaite and Drahos 2000). For example, international airline safety standards and protocols have essentially adopted U.S. airline safety standards and protocols, and so a country that conforms to those standards has in effect (and often without knowing it) imported U.S. standards. In this situation, the distance between U.S. and global standards is zero. Furthermore, global institutions can be co-opted to serve local interests or used to pursue a local agenda. An example of such a "two-level game" would be when a government obtains an IMF loan because the conditions attached to the loan give the government leverage with respect to the domestic political opposition (Vreeland 2003, 52–53). In this way, the IMF is used by a national government to "force" it to do what it otherwise wants to do, but cannot. Finally, global institutions can be "localized" informally, through selective or creative implementation. In such cases, it may appear that the global rules were more or less directly imposed on a nation and incorporated into its laws, but the adoption may be only formal. Through idiosyncratic application, a formal global institution can be implemented in a very local fashion. Rules may be creatively implemented in light of local understandings, interests, and situations.

On the other side of the dichotomy, the local can be more or less globalized. Some countries already possess "world class" capacities, expertise, and institutions, and so for them to deal with global institutions is not such a challenge. For example, when the Mexican central bank deals with global financial institutions like the IMF or the BIS (Bank for International Settlements), it possesses staff economists who were trained at the same U.S. graduate schools (e.g., Harvard, Chicago, MIT) as their foreign counterparts (Babb 2001). Consequently, Mexican central bank economists speak the same language, possess the same professional credentials, and may even be part of the same informal university networks, as the individuals from global institutions they deal with. Or one country may be part of a larger legal family (common law or civil law), and so its legal institutions and lawyers are conversant with global legal institutions. Put together, the *ex ante* "distance" between the local and global affects how the interaction between them unfolds. And this distance can be greater, or lesser, depending on how "localized" is the global and how "globalized" is the local.

Taken together, these two dimensions help to explain how particular global/local interactions unfold. Distance indicates how far apart the two

sides of the interaction are at the outset. The greater this distance, the greater the potential tension between the two, the greater the need for mediation, and the more formidable the challenge for mediators to satisfy the demands coming from their global or local constituencies respectively. The balance of power helps to determine which side is more likely to be moving toward the other. To take one extreme, an interaction between equally powerful local and global institutions that have little distance between them is likely to be uneventful and will not lead to dramatic change on either side or pose substantial translation or framing difficulties.

The global/local interaction often depends on the presence of mediating factors, and, in particular, on who, or what, occupies mediating positions. Mediating bodies, institutions, and organizations add another layer of complexity, since their own interests, capabilities, and biases bear on the interaction. For example, the interaction of national legal systems with global legal norms is often mediated by the legal profession, which has its own distinct jurisdictional interests and biases (Carruthers and Halliday 1998). In other arenas, the mediation may be performed by nongovernmental organizations (NGOs), academic networks, or by particular government agencies. To the extent that such mediating bodies span "structural holes" (Burt 1992), they may be in a position to pursue their own interests by performing a brokerage function.

However they pursue their own interests, intermediaries do so on terms set by where a global/local interaction is placed within the two dimensions. Mediation of a lop-sided interaction (with a highly uneven balance of power) will work differently than that of a relatively balanced interaction. Balanced interactions offer more opportunities to intermediaries than unbalanced ones, which are primarily dictated by the dominant party. A rough balance creates more openness and opportunity for intermediaries to shape the interaction and insert their own concerns. The other dimension matters, as well. Distance determines the magnitude of the intermediation necessary to bring local and global into alignment. If intermediation is a kind of work or activity, then distance measures the opportunity to perform such work. Where local and global operate in close proximity, i.e., where the distance is small, then less needs to be done to reconcile the two sides. But intermediaries will not necessarily possess the capacity to span large distances. Indeed, the finite capacity of intermediaries sets a limit on the kinds of distances they can cover and creates opportunities for chains of intermediation. Insufficient capacity will undermine their ability to perform or to monopolize the work of mediation. In such cases, mediation is either shared, or performed incompletely, so that either the local cannot be fully brought up to global standards, or the global is not completely localized (and hence a global/local gap remains).

In the following section we analyze categories of direct and mediated interaction between the global and nation-states and refine our definitions of global and local. We then turn to the emergence of global scripts that

frame the global/local interaction and indicate how the local is "globalized" in the insolvency field. The following section details how the intricate variations of directed and mediated interaction between the global and local vary by the vulnerability and proximity of nation-states to the global.

INTERMEDIARIES

The gap between the global and local—the area in which they intersect—is an arena of power. Into that arena move actors that mediate the relationship between the global and the local. In globally induced bankruptcy reforms, we discover two principal types of interaction between the global and local—the direct and mediated.

Direct interaction occurs when the relationship between a global institution and a national government proceeds without an intermediary. When an official from the IMF negotiates with the Minister of Finance in Indonesia or Korea, it may be done face to face. When the Government of Indonesia signs a Letter of Intent to codify the agreement between Indonesia and the IMF for financing, the relationship is also direct. Yet, practicality makes it impossible for direct relationships to be the primary mode of interaction between the global and national in enactment of law.

Most often, the relationship between the global center and nation-state is aided by *first-order intermediaries*. These simultaneously have a direct relationship with the global center and with the local nation-state. Literally, they stand between the two negotiating parties and engage in translation for one or the other, or both. For instance, in Indonesia the IMF hired an on-site manager who advised the IMF on reforms and monitored implementation but often was the agent used by the IMF to convey its views to Indonesian officials. A *second-order intermediation* occurs when intermediaries have direct contact with one side or the other, but not both. They act as advisors or consultants to global or local officials or as negotiators with similar advisors on the opposite side. When a drafting team was created in Indonesia to draft amendments to the 1905 bankruptcy law, it comprised two nominees from the IMF and two from the Government of Indonesia. Each set of nominees acted as second-order intermediaries, engaging both in direct relations with its respective principal and in indirect relations with the other intermediaries' principal. Thus, the IMF nominees simultaneously acted to advise the Fund and to influence the Government of Indonesia indirectly through negotiations with its intermediaries. On occasion, second-order intermediaries who advise one or the other actor become sufficiently integral and trusted that they move into a first-order position of mediating between both actors. *Third-order intermediation* occurs when intermediaries have direct contact with neither of the principals in the global/local encounter but affect the process of translation, enactment, and implementation indirectly. When international professional

associations advocate their own norms or practices to local professional groups, or local professionals influence the thinking of first- and second-order intermediaries, or corporations engaged in restructuring affect the courts or local politics, they all exert an attenuated influence on the negotiation between the global and local, especially in the implementation phase.

Both individuals and organizations act as intermediaries. International financial institutions frequently employ individual consultants to appraise the adequacy or effectiveness of a country's legal system and to advise on remedies. The Asian Development Bank has regularly retained lawyer, Ronald Harmer, the principal drafter of Australia's current bankruptcy law, to undertake technical assistance programs. The European Bank on Reconstruction and Development has likewise retained Harmer as a consultant, together with Neil Cooper, an English accountant and insolvency specialist who was former president of the international insolvency federation, INSOL. Organizations may also be retained or created. We shall later observe how nation-states hire foreign law firms to advise them on negotiations with IFIs. IFIs, in turn, may either form alliances with local NGOs, who operate as advisors or monitors, or they may create organizations if a vacuum exists in civil society or the market.

Every intermediary varies in three qualities: competencies, power, and loyalty. First, international institutions and nation-states seek intermediaries with multiple *competencies*. The most important is legal or economic expertise in either the local situation or on global norms that are being applied to that situation. IFIs search for professionals with diagnostic capacities to analyze the current practice in an area of law, whether on its own terms or in relation to other criteria, such as global standards or scripts. Further, such professionals, usually lawyers, contribute even more value when they have prescriptive capacities; that is, they can translate the construction of problems in an area of legal regulation into substantive, procedural and institutional reforms and demonstrate how they may be inserted into existing law or fit within current institutional constraints.

Second, international institutions seek intermediaries with *powers* of several sorts. Perhaps the most important capacity of the intermediary is an ability to bridge the ideological or cultural divide between the global and local. This requires a translation of global scripts into frames that are legitimate, recognizable, and appealing to national and local parties to reform and implementation (Merry 2005). To indigenize a global script is no easy discursive task on its own terms, for it demands a creative leap between that which purports to be universal and that which, in practice, is very particular. The task is complicated, for not only is the linguistic equivalent of transliteration impossible, but the process of translation occurs in the midst of power struggles within and between the global and local. So-called "translation" in fact becomes a negotiated settlement that will yield either greater conformity to global norms or greater deference to national norms. The power to craft a legitimate frame will be partly determinative of related powers—to

obtain agreement among actors whose interests are not necessarily consonant, to facilitate enactment of the "translation" into formal law, and, ultimately, to smooth effective implementation of the law.

Third, intermediaries differ in their *loyalties*. International institutions seek loyal experts who are committed to global scripts and the ideologies of global organizations just as nation-states want assurances that their advisors will serve single-mindedly the causes advanced by national policymakers. But a strict dichotomy between loyalty to the source and target greatly simplifies practice. For an intermediary to be effective in application of global scripts to a local situation, he or she must be thoroughly familiar with that situation, with every likelihood that familiarity may carry with it sympathy for the national at the expense of the global. Conversely, for a local expert to be an effective advisor likely means that the expert will be somewhat integrated into international networks of scholars or practitioners or participate in international organizations with the likely result that the local expert will be somewhat globalized. For this reason, the power of intermediaries is ambivalent (Merry 2005). While they exercise the power that accrues to knowledge brokers, they may also be considered double agents (Dezalay and Garth 1998), neither fully trusted by either side and thereby subject to manipulation and subversion by both sides.

The role of intermediaries varies in relation to their location in the cycles of lawmaking. We have argued that law reform frequently takes the form of recursive cycles that are driven from an initial reform of law-on-the-books to law-in-action and then back to corrective reforms of law-on-the-books (Halliday and Carruthers 2006). The recursive cycles are driven by four sets of dynamics that occur between enactment and implementation until there is some settlement or equilibrium.[3] Some actors in law reform are concentrated on one side or another of the recursive loop. Some straddle both sides. Although our focus here is primarily on enactment, it is helpful to set it in the context of implementation for two reasons. In each of our case studies, the reforms in fact comprise several cycles of law-on-the-books to law-in-action and back to further reforms via law-on-the-books. Just as everyday practice cannot be understood without knowledge of its formal framework, the politics of enactment grow directly out of struggles at the local sites of practice implementation.

The *politics of enactment* consist of ways that national authorities and local agents of implementation negotiate how closely a piece of legislation or regulatory package will adhere to global scripts. The politics of enactment are two-faced. One is shown to global institutions in direct negotiations that

3. Cycles of national lawmaking are driven by (1) the indeterminacy of law-on-the-books, (2) diagnostic struggles to determine what actors will get to define the situation that is to be reformed, (3) contradictions built into the formal law that were necessary to satisfy conflicting constituencies, and (4) actor mismatch, as actors involved in practice are excluded from policy making (Halliday and Carruthers 2006).

occur between a developing country and an IFI over financial support in return for law reform. The other turns to local political constituencies, which may resent the terms of externally induced reforms and which are responsive to local politics that may have little or nothing to do with insolvency as such. The difference between the two has been captured by the notions of symbolic compliance or decoupling.

The *politics of implementation* comprise the variety of ways that nations widen or narrow the gap between formal enacted laws and regulations and their application in everyday practice. Nation-states have adopted a variety of methods for foiling global actors (Halliday and Carruthers forthcoming). Frequently, resistance is more strategic during implementation because nation-states can fight more effectively on the local terrain where international institutions have less sway. These can take the form of deliberate resistance, or decoupling, where a nation agrees to pass a law that will satisfy its external constituencies (e.g., it is said that Indonesia would adopt any law to get money flowing back into the country in 1998) but then deliberately subverted it through nonenforcement or by failing to erect institutional mechanisms for its effective implementation (such are the weapons of the weak, cf. Scott 1985).

Some intermediaries, such as foreign law firms or even indigenous academics, will have a much stronger impact on the enactment side of the reform cycles, whereas others, such as industry, trade creditors, or professionals, may have more influence on implementation. The more completely an intermediary can stand astride both sides of the reform process, the greater his influence on the translation of the global to the local.

Intermediaries mediate four alternative outcomes to the global/local encounter. (1) *Acceptance* occurs when there is a one-to-one correspondence between global scripts and national enactments. Common examples are adopting a U.N. Model Law in toto or by ratifying an international Convention without reservations. (2) *Adaptation as replication* takes place when a global frame is translated into local guise without fundamental change in its primary goals or mission. (3) *Adaptation as hybridization* takes the form of a merger of global frames, goal and mission, with local forms but in ways that are reducible neither to the global or local (Merry 2005). And then, of course, there is always the prospect of (4) *rejection*, when intermediaries either are unsuccessful in bridging the gap or they convince one or other of the parties in the global/local encounter not to pursue a reform. In these situations, intermediaries loyal to the nation-state seek to develop defenses, or to frame issues, in ways that justify a refusal to comply with a global norm.

Defining the Local and Global

While the shorthand of "global" versus "local" offers a convenient binary, to signal, at one pole, the centers from which global movements emerge,

and at the other pole, peripheries where global norms and institutions encounter indigenous alternatives, the distinction is fraught with difficulty. Insofar as it appears to differentiate sharply two poles of social organization, and to maintain a fiction that the global and local are themselves unitary, the usage can obscure rather than reveal the intricacy of globalization.

We conceive of the global in terms of structure and discourse (Halliday and Osinsky 2006). On the one hand, global institutions exhibit structural capacities for global reach. They have organizational mandates that extend to most or all countries and organizational capacities that enable them to reach across the world in pursuit of their mandates. On the other hand, global actors sustain their expansive reach by discursive claims to universality. These claims rest upon ideologies (e.g., rule of law, human rights, free trade) that may be codified in conventions, model laws, U.N. declarations, global best practices, and evaluation instruments used by international development banks.

In the insolvency field, the "global" in fact decomposes into several distinct types of organizations: international professional associations, most notably the International Bar Association and INSOL, the International Federation of Insolvency and Restructuring Professionals; international financial institutions, including both global (International Monetary Fund, World Bank) and regional banks (Asian Development Bank, European Bank for Reconstruction and Development (EBRD)); international governance organizations, such as the U.N. Commission on International Trade Law, which develop model laws; and international clubs of nations, such as the Organization for Economic Cooperation and Development, a club of the world's thirty wealthiest nations that functions as an international think-tank and develops standards and best practices, and the G-22, a forum for finance ministers and central banks of twenty-two of the world's wealthiest nations. Behind these lie some influential nation-states with global scope—the United States and Germany—and some other states with important regional influence, such as Australia in South-East and East Asia.

There are wide variations across these international organizations in their legitimacy, their ability to develop global scripts, and their capacity to obtain compliance by nation-states. In the reform cycles of China, Indonesia, and Korea, we shall see that all these organizations formed a normative tapestry that provided the backdrop for specific interventions. The latter, however, were almost entirely relegated to a subset of the "global," namely, the International Monetary Fund and the World Bank, with a supporting interventionist role played by the Asian Development Bank and the aid arms of the United States and Germany, with the Government of Japan even further in the background, mainly as a source of funds.

The "local," too, is fraught with ambiguity. One danger is to assume that the local is equivalent to the periphery in the world system or to confine its use to developing nations. We believe it is better to begin with the premise

that the national or subnational (municipal, village, tribe, professional association, firm, national network) of *any* country is "local." "Locals" are found in the North and in the South. Using this logic, and to escape reification, Portuguese scholar, Boaventura de Sousa Santos (2002), maintains it is more defensible to contrast globalized localisms with localized globalisms. *Globalized localisms* represent the process whereby "a given local condition or entity succeeds in traversing borders and extending its reach over the globe and, in doing so, develops the capacity to designate a rival social condition or entity as local" (Jenson and Santos 2000, 11). In the development of global legal scripts, for instance, this process requires that scholars work backwards to ask whose "localisms" are being globally institutionalized. In the case of insolvency law, the central principle of U.S. corporate bankruptcy law, the option that failing companies might be rehabilitated while under the protection of courts, has permeated all global standards and thereby a U.S. "localism" is globalized. *Localized globalisms* refer to what Merry calls indigenization, that is, the selective adaptation of a global ideal to a local situation. Hence, while China, Indonesia, and Korea will all admit to the reform of their law in conformity with the global norm of corporate reorganization, each of them has done so rather differently, whether in substantive and procedural law or in bankruptcy institutions in-court, or out-of-court.

In the development of global scripts, intermediaries from advanced countries with sophisticated bankruptcy systems—that is, "locals" from the North—exert more influence than their counterparts from developing countries—that is, "locals" from the South. Often they accomplish this through international associations of professionals who are called to assist global institutions in norm development. In the institutionalization of global norms locally, however, those intermediaries with loyalty to the nation-state and with influence in practice are likely to exert the greater influence. These intermediaries influence the pace, form, and substance of localizing globalisms.

Just as the global can be disaggregated unto groups of not always consonant institutions, so, too, it is useful to unpack the "local," especially when a tension between enactment and implementation helps explain the ultimate effects of the global/local encounter. Our focus on enactment effectively means that the counterparty to the international financial institutions is not a generalized "local" but leaders of the nation-state. It is government ministers, officials in the government bureaucracy, and sometimes senior judges who negotiate with their global counterparts. After the outcomes of those negotiations are enacted, however, the field of action shifts to implementation that is truly local—to the corporations, judges, lawyers, workers, and banks who are spread across the mainly urban centers of the country. The interests of state leaders and those of the corporate sector, banks, and workers, are not necessarily consonant. In fact, we observe instances where global and nation-state officials join forces against local interests that are reluctant to

comply with new regulatory regimes. And there are occasions when local groups, such as the Indonesian NGO, Center for Law and Policy, joins forces with the global to force the hand of nation-state officials. Similarly, academic draftsmen of the new bankruptcy law in China may invoke global norms and practices in order to push state law-drafting officials more closely to global norms. Thus, intermediaries bridge gaps between the global, nation-state, and truly local, although the last of these may be the most difficult to recruit.

We thus distinguish between the *global*, which itself may be differentiated into different fractions, the *nation-state*, which refers to leading officials and politicians from different branches of government, and the truly *local*, which includes all the actors who actually implement the law. In each of these cases—the global, nation-state, and truly local—we observe internal differences—struggles among global institutions for primacy in establishing the global "gold standard," struggles among government ministries, and struggles among local actors. These struggles get expressed in alliances that elide the categories of the global and local and render their relationships highly complex over time and across countries. Thus, while we will continue to use the labels of global and local, since it is a useful shorthand, for the most part, we shall be referring to that subset of the global that includes international financial institutions and to officials of the nation-state. Where it is necessary to differentiate, within the local, between the nation-state and truly local, we do so.

Crafting Global Scripts

The negotiation of a settlement between global and local actors depends, in part, on the coherence of global norms. Does a single global norm exist or are there multiple competing norms? If there is a dominant or sole set of global norms, have they been codified? And what role do local actors have in crafting the global? Answers to these questions differentially affect the capacity of intermediaries to exercise more or less discretion and craftsmanship as they translate the global to the local. If a local intermediary has had a hand in crafting a global norm, we can expect that there will be close conformity of a subsequent reform in the intermediary's country to the global standard. If norms are not codified, and they are not manifestly responsive to problems in countries at the periphery, then intermediaries loyal to a nation-state may use the ambiguity to deviate from global standards.

Global norms may become codified in global scripts. A global script is a stylized formal document that prescribes how a group of actors, such as parties to corporate bankruptcies, should interact with each other. Sometimes these specify under what conditions they may be applied, and, at other times, they effectively propose that one-size-fits-all. Global legal scripts bear

metaphorical similarities to scripts in the arts. Scripts may be commissioned or solicited by an international body, such as the G-22 Finance Ministers who requested that the World Bank create standards for debtor-creditor regimes, or they can arise spontaneously from groups, such as professional associations, who offer solutions to problems they have encountered in practice. Scripts are authored, sometimes by a handful of experts, or a single institution, or by coalitions of institutions, and the bona fides of authorship carry differing degrees of legitimation. Like the first stages of a play, however, global scripts may be partly "authored" by the actors—nation-states and specialists who comment on initial versions and propose changes. Global scripts are formalized, but there are several varieties of formalization, ranging from statements of principles to lists of best practices or evaluation instruments, model laws, or international conventions. Scripts imply directors who mediate the translation of the written word into its public expression and may adapt it for particular audiences. In this process, scripts invariably anticipate interpretations that may vary considerably in their points of emphasis. Unlike scripts for the stage, however, global legal scripts may crafted at differing levels of abstraction or specificity.

Convergence in the Emergence of a Global Insolvency Script

In the insolvency field, global institutions have adopted increasingly convergent formalized scripts over the past decade to constrain the local variations possible on universal themes. From the fall of communism through the Mexican debt crisis and the Asian Financial Crisis, the international financial institutions (IFIs) and OECD applied ad hoc or in-house solutions to the construction and reconstruction of corporate bankruptcy regimes. These responses were reactive, and while it is clear that they had some underlying consistency, they appeared to be adapted on a case-by-case basis through direct interventions and aid programs.

The Asian Financial Crisis so unsettled the world's dominant economic nations and multilateral institutions that the reactive response on an ad hoc basis yielded to a more proactive and thoroughgoing orientation. Since 1999, a global movement has been under way to formalize global templates for national insolvency laws and institutions. The Asian Development Bank released in 1999 a report on eleven Asian nations that was notable less for its country-by-country evaluations than for its articulation of thirty-three standards by which those nations would be compared to each other and, more importantly, to a notional absolute standard (ADB 2000). In 1999 the IMF released a small book in which it outlined the main policy options available to national makers of insolvency law and expressed its "conclusions" of the optimal or preferable practices (IMF 1999). That same year the World Bank began work on developing "principles" not only for substantive insolvency

law but for supporting institutions, such as courts, administrative agencies, and professions (World Bank 1999).

The initiatives by the global and regional institutions proliferated technologies and templates. In the case of the EBRD, the technology took the form of a Legal Indicators Survey, which it administered to its twenty-six countries of operation in order to rank countries by the comprehensiveness and effectiveness of their bankruptcy laws—but without any formalized prescriptive standard (Ramasastry 2002; Ramasastry, Slavova, and Vandenhoeck 2000; Bernstein 2002; Averch et al. 2002; EBRD 1999).[4] In the case of the ADB, it took the form of cross-national comparisons against a formalized set of standards. In the case of the IMF, it consisted of a fairly open prescriptive standard without the diagnostic instruments developed by the two regional banks. And the World Bank has developed in cooperation with the IMF a quite precise diagnostic instrument—its Reports on Observance of Standards and Codes (ROSC)—to operationalize some thirty principles it has been developing for "efficient and effective" bankruptcy regimes. A common standard for evaluation of insolvency systems has now been adopted through the cooperation of the World Bank, IMF, and UNCITRAL. To varying degrees, all of these have developed inductively, that is, they systematically assimilate global experiences of the IFIs with the local and bring these back to the global. In every case, the global template or diagnostic instrument emerges only after years of interventions in scores of countries in financial difficulty or making transitions to a stable market economy (IMF 1999; ADB 2000; World Bank 1999).

These activities to develop global scripts in insolvency reached a climax in 2004. Formalization of standards shifted its basis of legitimation while moving to a higher level of aspiration and specificity. Whatever merits may have been inherent in IFI products, they all rested to some degree on legitimation warrants of expertise and economic influence, whether benignly, as in the case of aid, or coercively, as in the case of conditionality (UNCITRAL 2004).[5] IMF and World Bank products were tainted by their proximity to the United States and resented for their association with institutions often seen as coercive by developing countries. In 1999 the U.N. Commission on International Trade Law (UNCITRAL) entered the field of alternative (competing) technologies and scripts by offering its distinctive technology on alternative bases of legitimation—expertise wedded to representation. With the strong backing of the United States and IMF, who saw the United Nations as a much more palatable source of global normmaking for prospective recipient nations, the general principles and guidelines of the IMF/ADB/and World Bank have

4. In 2003 the EBRD has followed this up with very detailed substantive standards by which countries are ranked and compared (Interview 3014).

5. Economic assistance is given only if countries will agree to specific reform programs, including law reform.

yielded to UNCITRAL's bold effort to develop a Legislative Guide that might assist policymakers who are undertaking insolvency reforms.[6] In June 2004 the Commission, comprised of some sixty nations and numbers of observer organizations, approved a several hundred-page Legislative Guide of general objectives, policy alternatives, and detailed recommendations upon which consensus has been reached through twice yearly meetings of a Working Group.[7] Again, while dominated by advanced countries, especially the United States and its supporting expert organizations, there is a somewhat inductive process at work here, for local voices (national delegations) have been assimilated to the global in order to develop a loose model for adoption by local nation-states. While the Legislative Guide effectively "shadows" the main chapters and subchapters of an insolvency statute, it has obtained its degree of consensus by setting minimal standards that offer alternatives to accommodate some of the variation in the world's advanced insolvency systems and that are somewhat sensitive to limitations in institutional capacities of developing countries. Even then, the document has some 198 recommendations, often with subrecommendations, and some of which are drafted in statutory form.[8]

The universal consensus inscribed in the UNCITRAL Legislative Guide on Insolvency will then be propagated by international organizations. UNCITRAL, itself, has a newly established technical aid section that will advise nation-states on how to adapt the Guide to their circumstances.[9] The IMF and World Bank will use the Guide both as a diagnostic instrument, as part of their aid and financial support programs, and as a normative standard to guide national reforms.[10] It is probable that overseas law and development programs of rich nations will likewise link their aid on commercial lawmaking to this U.N. standard. Over ten years, therefore, the developing nations, which once were confronted by ad hoc and often inconsistent norms propagated from global centers and then were exposed to a handful of fairly consistent alternative templates, from 2005 will be the subject of diverse influences from the global center, all of which emanate from a single unitary standard.

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6. Draft legislative guide on insolvency law, U.N. Commission on International Trade Law, Working Group V (Insolvency), Thirtieth session, New York, March 29–April 2, 2004, September 30, 2003, U.N. Doc. A/CN.9/WG.V/WP.70 (Part I), U.N. Doc. A/CN.9/WG.V/WP.70 (Part II).

7. The WG comprises some forty to fifty official and observer national delegations alongside a dozen or so professional associations and representatives of IFIs and interested INGOs (Halliday and Carruthers 2003b).

8. Draft legislative guide on insolvency law, U.N. Commission on International Trade Law, Working Group V (Insolvency), Thirtieth session, New York, March 29–April 2, 2004, September 30, 2003, U.N. Doc. A/CN.9/WG.V/WP.70 (Part I), U.N. Doc. A/CN.9/WG.V/WP.70 (Part II).

9. http://www.uncitral.org/uncitral/en/technical_assistance_coordination.html (last accessed October 24, 2005).

10. Interview 4205.

Despite its symbolic distance from the local, the Legislative Guide has two features that facilitate its adaptability to local circumstance. As a process, the Guide emerges from as close to a legislative proceeding as is possible in the global domain, both through the debate among national delegations in the Working Group and Commission, and its adoption by the U.N. General Assembly. Its procedural auspices therefore launder or cleanse it of much of the odium that might engender local resistance to hegemonic nations or unilateralist global institutions (Halliday and Carruthers 2003b).[11] In its form, the Guide further eases its approach to the local in several respects. It sets out both high order objectives for the whole law and section-by-section objectives for each section of the law: both provide national legislators with broad goals they could pursue without descending to the particularity of specific recommendations. The Guide couches its commentary in a continuing refrain of "some countries" do this while "other countries" do that, thereby signaling that no "one-size-fits-all" will compel local lawmakers to adopt provisions singularly inappropriate for their situations. And the Guide's specific recommendations, as often as not, are in the form of alternatives or of recommendations that certain measures should be stipulated, often with examples, but without a level of specificity that precludes legislative discretion (Block-Lieb and Halliday 2006).[12]

This global script effectively combines two elements that international institutions consider critical for success. On the one hand, the U.N. deliberative process, involving expert organizations and representative delegates from all the world's regions and levels of economic development, endows the Guide with a legitimacy that rival scripts did not have. On the other hand, by assimilating the Guide to IMF and World Bank ROSCs, the UNCITRAL recommendations potentially can be enforced by use of IFI positive (technical aid) and negative (conditionalities for loans) incentives.

From the absence of a global script in 1997 to a multiplicity of global scripts three years later to a single consensual norm articulated by the United Nations in 2004, global standards in the insolvency field have converged at remarkable speed. This has significance for framing the reform environment in the countries of East Asia. When the Crisis hit in 1997, international institutions intervened without any global script for countries to adopt. Three years later, governments and intermediaries in China, Indonesia, and Korea could all be pointed to scripts now offered by the Asian Development Bank, World Bank, and IMF. By 2005 all countries in the region had a single standard legitimated by the United Nations to which they are pressed to conform.

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11. For instance, its IMF proponents champion the Guide on grounds that, in their words, it "cleanses" their association with a global standard.

12. Ibid., UNCITRAL Draft Guide 2004.

Variations in Forms of Global Scripts

The variations in global scripts available to nation-states indicate several analytically distinct possibilities, each of which yields varying degrees of discretion to intermediaries.

1. Single-standard, fully explicated formal rules that exemplify the "best" alternative (in this case, what diffuses around the world is a highly formalized and fully articulated optimal version). In the insolvency field, UNCITRAL's Model Law on Cross-Border Insolvency (UNCITRAL 1997) best exemplifies this instance, for it is intended to be adopted in toto by nation-states, although in practice adopting countries have made amendments to it.
2. Single-standard, fully explicated formal rules that represent best practices (here, what diffuses is the best among preexisting alternatives, not necessarily the best overall). No equivalent to this has emerged in the insolvency field.
3. Minimum-standard, fully explicated formal rules (these set a standardized floor below which countries will not go; however, they may exceed minimum standards to varying degrees if they wish). Certain recommendations in the UNCITRAL Legislative Guide approximate this criterion. They take the form, either "if a nation chooses to have a law on 'x', then it should have the minimal conditions of 'y'" or "a nation should adopt this provision 'x' with the minimal conditions of 'y'" (Block-Lieb and Halliday 2006, 69).
4. General principles, to be specified or interpreted as appropriate (these set overall goals that can be implemented in different ways, depending on the local situation). The World Bank Principles take this form in theory, although operationalization of these Principles are allegedly intended to deliver results more closely approximating the U.S. model (this claim has been made by countries under pressure by the World Bank to reform their laws in accordance with the Principles) (World Bank 2002).
5. Menus of options, giving alternative viable ways to resolve a problem or meet a standard. The 1999 IMF Guide (IMF 1999) took this approach, but it has been greatly elaborated by UNCITRAL's Legislative Guide on Corporate Insolvency Law. While the Guide discusses alternative approaches to each chapter of a bankruptcy law, it often proposes a single recommendation. In cases where there are substantial differences among legal families that nevertheless conform to the overall objectives of the Guide, it presents alternatives, sometimes expressing a preference as to which is more desirable (UNCITRAL 2004).

These five alternative forms have quite different implications for local variability, the role of intermediaries, and the task of translation. Alternative 4 allows for the most local variation. It appears to offer intermediaries considerable discretion and creative options in translation to local scripts. However, the high level of abstraction in the World Bank Principles, which exemplify this alternative, have been criticized by other IFIs because they lack specificity, and criticized by countries, because they assert it is difficult to appraise their laws against vague standards or to defend themselves if they are allegedly not in compliance. Alternatives 1 and 2 allow for the least

discretion. Alternative 1 is possible, indeed necessary, for the Model Law on Cross-Border Insolvency, for it covers a quite precise procedural issue and because it relates specifically to cross-border bankruptcies, standardization is especially important. It allows intermediaries little room to move and requires of translation something closer to transliteration. Alternatives 3 and 5 are in the middle, and this is precisely where the UNCITRAL Legislative Guide fits. These options seem to anticipate local variability and offer interpretive room for maneuver by local intermediaries.

Proximity to the Local in the Crafting of Scripts

If global actors vary in their distance from the local, it follows that their capacity to apprehend the local, to comprehend the singularity of national development, or to discern the complexity of local institutional logics, will similarly vary. In the insolvency legal field, the capacity to comprehend the local is a function of organizational constitutions, structures, and functions.

International organizations differ in their scope of jurisdiction. Other things being equal, truly global organizations, whose reach extends to most or all nations, should be spread more thin, should be farther removed from any given nation, and should be more prone to treat countries as the same as a matter of organizational expediency. An organization with finite degrees of freedom can better respond with requisite variability to three distinct national situations than to thirty. Hence the IMF, World Bank, and United Nations—all players in the global field of insolvency reforms—by this criterion confront problems of reaching the local that are greater than the regional development banks also committed to insolvency reform programs, such as the Asian Development Bank (ADB) and the European Bank for Reconstruction and Development (EBRD).

However, other things are not equal, even among global and regional institutions. The IMF has a truly global mandate that, in the insolvency field, is activated in two contrasting patterns. One occurs in situations of balance of payment or fiscal crises, usually in developing or transitional countries. There the IMF subjects crisis countries—Mexico, Russia, Indonesia, Thailand, Korea, Argentina—to intense, short-term scrutiny as a basis for intense, short- and intermediate-term institution-building and lawmaking (Interviews 2256, 2305, 2044). The other occurs more systematically in the course of IMF preventive appraisals of countries' financial and legal systems (ROSCs)[13] often as part of the IMF's Article IV reviews in which it subjects every country to an annual review of its fiscal—and often contributing legal—situation

13. We shall see below that ROSCs are systematic evaluations of a country's insolvency (and other) legal systems insofar as they affect a country's financial stability.

(Interview 3004). In theory, preventive actions, as a result of the second regularized approach to the local, should help forestall the need for emergency interventions. Sometimes one reinforces the other. The IMF intervened in Korea during the Asian Crisis in 1997 with a set of recommendations for insolvency reforms, some of which were implemented, but the most important of which was not—the integration of Korea's three corporate insolvency statutes into one seamless statute (Oh 2003b). In 2000 the IMF undertook an Article IV consultation with Korea in collaboration with the World Bank and recommended again (with a reminder about the earlier unfulfilled commitment of the Korean Government) that a single unified insolvency law be enacted. A comprehensive bankruptcy act was passed by the National Assembly in 2005 (Interviews 3004, 2281, 2291).

The World Bank's mandate is focused on poverty and thus is directed principally at developing and transitional countries.[14] It, too, approaches the local in emergencies and in regular evaluation and aid programs. Yet in contrast to the IMF, the World Bank has a huge staff in Washington and in developing countries, with substantial offices in the capitals of large developing or transitional countries, such as Jakarta and China. The in-country staffs comprise expatriates as well as local experts. Since the World Bank has an investment branch, the International Finance Corporation (IFC), it obtains local knowledge from the practical experience of underwriting local enterprises and observing at close quarters their travails (Interviews 2251, 2263, 4010). Moreover the Bank's mandate enables it to invest over the intermediate and longer term, a capacity effectively denied the IMF whose primary mandate ties it to short-term interventions. The World Bank also has aid funds that further enable it to experience the local at first hand. Overall, then, the Bank has a closer proximity to local conditions than the IMF and so can more readily adapt its global scripts to the particularities of indigenous situations.

Ironically, in the tussles that occur between IFIs over which of them will take the lead during a financial crisis, in Indonesia it was the IMF, the organization with little local knowledge, rather than the World Bank, with a history of local involvement, that won out. It does not follow, therefore, that proximity of a global institution to the local determines leadership in financial and legal restructuring at a time of crisis. This situation makes the character of direct and mediated relationships between IFIs and the nation-state quite uncertain until IFIs resolve their own interests in taking leadership.

The other two global institutions in the insolvency field—the U.N. Commission on International Trade Law (UNCITRAL) and the Organization for Economic Cooperation and Development (OECD), a club of the world's thirty richest nations—are much farther removed from the local. Since

14. For no very clear reason, the World Bank has also been conducting insolvency ROSCs on advanced countries, such as Britain.

UNCITRAL develops global scripts for commercial law and has had a very limited capacity to provide technical assistance to particular countries, its engagement with the local occurs through the participation of nation-states in its Working Groups, and Commission meetings, and with quite occasional episodes of technical assistance.[15] In practice, UNCITRAL functions in the opposite way—extracting and assimilating the local into global scripts. The OECD is a club of rich countries, but it does have an aid program, and insolvency reforms in Asia have been a small part of its Corporate Affairs program (Interview 2045). Its engagement has therefore been regionalized, such as its annual conferences in Asian countries (e.g., Indonesia, Korea, India) where specialists and officials from other Asian countries, together with other experts, compare national situations on whatever is the theme of the conference.[16] Either resources or mandates limit the ability of UNCITRAL or the OECD to approach the local with the immediacy or continuity of the IMF and particularly the World Bank.

Since regional development banks have fewer countries in their catchment areas and arguably more homogeneity among those countries, their ability to comprehend local situations with more nuance gives them an advantage denied global multilaterals. The European Bank for Reconstruction and Development (EBRD) deals exclusively with countries in Central and Eastern Europe and the former Soviet Union, which are making transitions from command economies (EBRD 2002). These countries vary considerably, but they share in common a forty-year heritage of Soviet influence and the need to construct *de novo* market institutions, such as insolvency regimes, that are entirely absent in communist systems (Interviews 2022, 3014). The ADB faces more variability, since its area of concern includes wealthy countries (e.g., Japan, Singapore, Australia, New Zealand, and Hong Kong), fast-developing countries (the former Asian Tigers), transitional countries (e.g., Vietnam, China), all the way to impoverished islands in the Pacific and the countries of former Soviet Central Asia (ADB 2000). Yet a substantial number of these countries fall within Japan's sphere of economic influence, and many in East Asia share the economic benefits of vibrant commercial communities of overseas Chinese.

However, the ADB and EBRD approach the local through differing orientations. Founded in an earlier phase of development ideology, the ADB invests heavily in public sector development, aid programs, and technical assistance. This engages it extensively with governments and government-led infrastructure programs (ADB 2000). Founded in 1990, the EBRD invests

15. In the 2004–2005 biennium, the United Nations has allocated UNCITRAL new budget lines to establish a four-person technical assistance group to carry its Model Laws, Conventions, and Legislative Guides into countries that are undertaking insolvency reforms.

16. In 2003 the FAIR (Forum on Asian Insolvency Reforms) conference in Seoul focused on nonperforming loans.

primarily in private infrastructural development (EBRD 2002). This engages it substantially in private commercial markets, banking, and law. The proximity of each to their countries of operation may be similar, but their competencies differ markedly insofar as one views a country principally through its government agencies, whereas the other sees a country principally through its markets. The two contrast in the insolvency field, because the availability of significant aid and technical assistance funding in the ADB has enabled it to take on more extensive cross-sectional evaluations of member countries and more intensive support for particular countries (e.g., China), whereas the EBRD has been restricted to rather superficial surveys of member countries and more recently of systematic reviews of law and practice that are somewhat similar to World Bank and IMF ROSCs (ADB 2000; Averch et al. 2002; Bernstein 2002).

The empathetic proximity to the local is best reflected in the insolvency field by the contrast of the ADB with the IMF. The ADB Legal Department maintains that its affinity with member countries gives it an acuity of perception that is mostly absent from global institutions. The Singaporean Chinese—and American-trained—leader of the insolvency reforms at the ADB maintains that three elements of East Asia demand an approach to insolvency regimes tailored to that region. One is the historic irrelevance of law and the courts as institutions of market regulation, and hence the ineptness of current courts and their vulnerability to corruption. Another is the pervasive influence of Chinese methods of doing business in the heights of the economies of many of the most successful developing countries (e.g., Thailand, Malaysia, Indonesia, Philippines, Hong Kong, Taiwan). Yet another is the closely related problem of ethnicity in economic and legal reconstruction—how the minority Chinese will be treated by national majorities. All these require an approach to insolvency that differs from the emphasis of global scripts (IMF, World Bank) on solutions that privilege courts and lawyers (Interview 2032).

Dominant sovereign nations in the world system may also seek to stand for the global and to translate its supposed universals to the local (Boyle and Meyer 2002). From the vantage point of the primary globalizing nation, the United States, this occurs by capture or infusion of multilaterals with policies and practices consistent with those of the global power. This takes place through the promulgation of purportedly universal principles that accord with sectional interests of dominant nations, or by the articulation of global "best practices" or international standards that ostensibly represent the most efficient or most acceptable practices of advanced countries (Halliday and Carruthers 2003b). The efficacy of multilateral "laundering" of dominant national interests depends considerably on the latency of that influence. In other words, the more visible the hand of a dominant nation, the less effective will be the legitimating effect of channeling its influence through a multilateral intermediary.

In the insolvency field, the influence of the U.S. Treasury, and to a lesser extent the U.S. State Department, has been exerted on both the World

Bank and IMF initiatives to develop global scripts, principles or criteria for effective insolvency regimes (Interviews 2256, 2305). That influence occurs positively, through encouragement by the United States or the G-7 or G-22 to craft scripts (G-22, 1998), and negatively, by the diversion of resources previously committed to development of insolvency scripts to new priorities such as the fight against terrorism.[17] Even more important than the IMF or World Bank, however, has been the energetic involvement of the U.S. State Department in UNCITRAL's initiative to develop a global legislative guide for insolvency laws. Since 1999 the United States has actively encouraged and often directly coordinated professional NGOs and INGOs (International Non-Government Organizations) to ensure that the United Nation's final product will be competent by American standards and in accord with U.S. financial interests in developing economies and stabilizing the international financial system. While the United States has been the most prominent sovereign nation within UNCITRAL, it has been amply supported, albeit with some variations in emphasis, by France and the United Kingdom. This more complex strategy for localizing the global is necessarily indirect for it requires that the United States, and allied advanced nations, act imperceptibly to place their sectional stamp on a universal script that subsequently will serve as a model for local adoption by other nation-states.

While the approach to the local through the legitimate intermediary of global governance bodies has much to recommend it, at least from the vantage point of derogated countries or international actors, this means of influencing the local necessarily is diffuse and unfocused. A more direct, if also more transparently nationalist, method is delivered through aid programs by rich nations. These, too, proceed through indirect and direct channels. Japan supported bankruptcy reforms in China through moneys from the Asian Development Bank's "Japan Fund." More common are direct aid programs where a global or regional actor champions "global" standards while obviously underwriting them with a nationalist interest. Most far-reaching are the programs of USAID (e.g., in developing a draft bankruptcy law in Indonesia) but also Germany (e.g., in its economic law reform program in China) and regional powers (e.g., support by AusAid, Australia's aid agency, for insolvency reforms in Indonesia), and former colonial powers (e.g., the Netherlands for insolvency programs in its former colony, Indonesia). Yet, even these programs rely, for their efficacy, on some semblance of universality in the ways the programs are articulated locally. All these nations stand for "advanced" economies and "advanced" regulatory systems.

In sum, the capacity to localize the global presupposes some articulation of the global itself. The range of options for localization may turn on the homogeneity or diversity of globally acceptable standards and alternatives.

17. In the case of the IMF that diversion took the form of a shift in priorities toward prevention of money laundering (Interview 2305).

In the insolvency field over the past decade, global institutions have adopted increasingly convergent formalized scripts to place limits around the local variation possible on universal themes.

GLOBALIZING THE LOCAL

In the politics of insolvency reforms the movement to globalize the local is manifest in at least three ways.

Socializing Individuals

In developing and transitional countries, a proportionately small number of privileged individuals are socialized into more cosmopolitan sensibilities and *habitus* through formal education. It is a well-established pattern for the children of indigenous elites in colonial societies to be sent to the metropolitan country for first or second degrees. The children of wealthy families in East Asia commonly are sent to Australia, Canada, the United States, and Europe for first degrees. In professional fields, however, it is more common for the initial professional qualification to be taken in the home country and for an advanced degree to be obtained in the North. Of the handful of Indonesian lawyers who aided the IMF in the drafting of the initial amendments, one key figure, Fred Tumbuan, had fluent English from years of study in Australia. The main draftsman of all the Korean insolvency reforms has his primary qualifications from the preeminent Seoul National University and a Masters in Comparative Law from the University of Michigan. Of the three scholars in the main drafting committee for China's insolvency reforms, one has had visiting appointments at Uppsala University and the University of British Columbia, another has a doctorate from Moscow State University, and the third has a doctorate in law from Japan (Interviews 2268, 2281, 2001:106, 2001:104).

Qualifications get parleyed into memberships in international NGOs, participation in global networks, and visits and tours. Some of these follow from earlier contacts, others from language facility. They are frequently reinforced by involvement in initiatives by global and regional institutions. Professor Soogeun Oh, a primary drafter of the Korean insolvency reforms, is thoroughly integrated into global networks through his membership in the prestigious International Insolvency Institute, which is based in Canada, his regular participation in the regional forums hosted by OECD, as an invitee to regional and global forums hosted by the World Bank, and as one of Korea's official delegates at the UNCITRAL Working Group on Insolvency. Professor Wang Weiguo of the Chinese drafting team has participated in regional research projects led by an Australian team, has traveled with multilateral-funded

educational tours of Germany and Australia, and is one of the China scholars most prominently featured in forums hosted by the World Bank and OECD on insolvency.

Conversely, individuals in globalizing societies become integral conveyors of the Northern "local" to the periphery. Their local standing becomes regionally or globally leveraged often through the sponsorship of multilateral organizations. Three individuals exemplify this pattern in the insolvency field. Manfred Balz is a distinguished German corporate lawyer who currently serves as General Counsel for one of Germany's largest companies, Deutsch Telekom. In the insolvency field, he is more notable as the principal drafter of Germany's sweeping reforms in the 1990s. Baltz's avocation, however, is as a global consultant, roaming the world during his vacations variously drafting and commenting upon current and draft laws. Balz is a favored consultant for the IMF, for instance, as in the drafting of Cambodia's new law in 2003 and as an advisor to the IMF and indirectly to the Korean Ministry of Justice on Korea's new consolidated law also in 2003 (Interview 4202). An Australian, Ronald Harmer, established his credentials by chairing the commission that drafted Australia's strong creditors' rights regime in the 1990s. The Asian Development Bank has employed Harmer extensively from the mid-1990s consultations on China, through the late 1990s eleven-country evaluation, to a multicountry consultation at the present. Since the Australian system strongly emphasizes creditor rights and gives courts less prominence in corporate liquidation and restructuring, Harmer's approach has affinity with the ADB's skepticism about relying too heavily on courts in Asia. Harmer has joined forces recently with Neil Cooper to undertake consultations for the EBRD in its twenty-six countries of operation. An English accountant and insolvency practitioner, Cooper's credentials rest on his long-time leadership of the international federation of insolvency practitioner associations and his integral role in the two main law-making initiatives of UNCITRAL (Interviews 2063, 2032).

The local intermediaries from the North and South intersect. They attend regional and international conferences together. Harmer (Australia), Cooper (United Kingdom) and Oh (Korea) have all been delegates at UNCITRAL's Working Group on Insolvency. Balz (Germany) commented on Korea's comprehensive bankrupty law drafted by Oh. Harmer and Cooper have sat around conference tables in China with Professor Wang Weiguo on China's draft law. The 2002 OECD Asian Regional Forum that was held in Indonesia brought together the Indonesian reformers together with Harmer, Cooper, Balz, Oh, and Weiguo.[18] While some of the insertions of locals in

18. Forum for Asian Insolvency Reform, OECD with ADB and APEC, hosted by the Ministry of Finance of Indonesia and the Ministry of Justice and Human Rights, Supported by Government of Japan and AusAid, "Insolvency Reform in Asia," Bali, Indonesia, February 7–8, 2001.

the global are self-generated, particularly at earlier career stages, others are enabled by global actors who constitute and reconstitute networks of locals from the North and South in one forum after another, whether it be in UNCITRAL meetings held in Vienna and New York or OECD Forums held in Sydney, Bali, Bangkok, Seoul, New Delhi, and Beijing, or World Bank forums in each region of the world.

From diverse points of origin, therefore, locals themselves become cosmopolitanized as they enter into an elite network of reformers authoritatively familiar with their national situations (often having "authored" those situations themselves) and broadly familiar with global trends and norms. These potential intermediaries, with an authoritative foot in both the local and global, are scarce and valuable. There are only two Koreans, Professor Oh and a Supreme Court judge, who are integrated simultaneously into the global networks and have high standing in their own country. There was no such person from Indonesia. And there are only two law professors, Wang Weiguo and Li Shuguang, who, at once, are variously integrated into international networks (Wang Weiguo with the OECD and World Bank; Li Shuguang with the ADB, World Bank and OECD) and were members of the Chinese drafting team. Given that the intermediaries from the South are likely to be more loyal to their country than to international institutions, this places the global institutions at a disadvantage. However, it places these individuals in a strategic position between the IFIs and nation-state to broker knowledge in either direction.

Contacts by Government Agencies

Government agencies vary in their proximity to the global. As might be expected from the pervasiveness of economic globalization, ministries of finance tend to have stronger global connections and are familiar with economic ideologies propagated from global centers, whereas ministries of justice tend to be more local and less connected with international institutions. The IMF, which is a principal agent of economic reform in developing countries, has its primary correspondent relationship with finance ministries. These formal relations are solidified through personal careers, as local economists serve in the IMF and former IMF officials return home to senior positions in the finance ministries.

Korea best exemplifies this pattern in the corporate restructuring reforms. The official in the Ministry of Finance and Economy (MOFE) who drove the 2001 Corporate Promotion Restructuring Act through the National Assembly was a former IMF staffer, and when MOFE wanted the IMF to exert some influence on the domestic scene, it channeled it through a Korean economist on staff in Washington ((Interviews 2290; UNCITRAL fieldnotes, 2004). Interventions by the Asian Development Bank in China were entirely

with the former State Economic and Trade Commission, which was responsible for all of China's state-owned enterprises, rather than the Ministry of Justice.[19]

Even when agreements between the IMF and national governments involve legal institutions and infrastructure, the primary coordinating ministry is the ministry of finance, not justice. Indeed, the IFIs tend to think of justice ministries as regressive, conservative, and resistant to change. When the World Bank entered Korea at the height of the financial crisis in 1997 and early 1998, even the lawyers in the World Bank preferred to deal with MOFE, since they saw the Ministry of Justice as part of the problem, not the solution. Moreover, since the legal departments of the IFIs are smaller by far than their staffs of economists, the openings for locals to serve within global institutions have been very limited.

In a comparison of our three Asian case studies, it is the most economically developed country, South Korea, which has the closest ties between its finance ministry and the IFIs (Halliday and Carruthers 2004a). This results from a pattern of advanced professional education taken by Korea's brightest graduates in the United States and other advanced countries since the earlier 1990s, a strong status hierarchy in Korean education that links successful careers in Korea both to graduation from top Korean institutions plus elite overseas universities,[20] and a pattern of mobility between Korean think-tanks and economic ministries, on the one side, and IFIs, on the other. Indonesia, by contrast, has a much more limited pool of foreign-trained economists, quite apart from lawyers, on which to draw. In the insolvency area, we have identified no U.S.-trained economist or Indonesian lawyer in the front ranks of reformers. While China's earlier generation of senior government officials rarely had foreign qualifications, and ministry links to IFIs were few, that is rapidly being remedied, as higher-level officials, such as Directors-General of Legislation, will now bring to consultations with foreign experts their younger staffers with postgraduate qualifications from the United States or the United Kingdom and who are fluent in English (or other Western languages).

"Internationalizing Palace Wars"

Dezalay and Garth (2002) argue that the politics of globalization frequently involve a selective engagement from the local to appropriate the global in order to pursue local politics by transnational means. Rather than

19. R38–95 (1995), Report to ADB Directors; TA 2271-PRC (1996), Final Report on State Enterprise Insolvency Reform; TA 2748-PRC (1997), Draft Final Report on Restructuring of Insolvent State Enterprises.

20. For example, in November 2003, on a panel on debt-restructuring held at the elite Korea Development Institute, all four Korean presenters and two Korean commentators quite coincidentally had their doctorates from the Economics Department at the University of Chicago, something pointed out with amusement (and pride) by the KDI chairman.

the global triumphing over the local, local groups in civil society, counter-elites, or marginal segments of the state reach out to enlist the global in order to strengthen their internal political positions. Traces of this phenomenon can be observed in the Asian insolvency reforms.

The reforms in Indonesia well exemplify these contrasting narratives. From one perspective, the reforms stemmed from the projection of raw IFI power. Seemingly without financial alternatives, Indonesia embraced an IMF-led bailout in return for which Indonesia agreed to a long list of macro-economic and institutional reforms, including substantive reform of its bankruptcy law, the creation of new debt restructuring institutions, and the establishment of a dedicated Commercial Court that was intended to be modern, well-resourced, competent, and clean. In this story Washington imposed a solution on a hapless Jakarta that lacked any capacity to resist.

A more complicated version of events, however, features a small law reform movement that had begun to grow among progressive officials during the last years of Suharto's authoritarian rule, and they drew support from a handful of academics at the University of Indonesia and a smattering of indigenous lawyers. In the mid-1990s, the World Bank sponsored research and a report that recommended reforms in law, including establishment of a new Commercial Court. Later, on the eve of the crisis and after Suharto's fall, USAID provided technical support to the drafting of a bankruptcy initiative launched by a reformist cabinet minister. In this, a reform trajectory was already under way before the crisis, and, in each instance of local initiative, its sponsors reached outside the country to draw upon external resources in order to strengthen a weak reform impulse. The crisis served to inject urgency and provide external constraints that catapulted a weak reform movement into the driver's seat of political response to a desperate balance of payments situation. The second, fuller, Indonesian story thus views the coercion apparently exercised by the IFIs over the Indonesian Government as a triumph for an indigenous reform movement that found an irresistible global ally to move otherwise inertial domestic politics. Global institutions were used to pursue a truly local agenda that had some support from progressive factions in the Indonesian Government (Interviews 2306, 4011).

Elements of a similar pattern can be observed in Korea. Before the crisis, a macroeconomic report prepared for the MOFE by an American consulting firm, Booz Allen, pointed to a looming cataclysm if Korea did not take drastic steps to restructure its banking sector, its industry debt overhang, and its state-driven economy (Booz Allen Hamilton 1997). Within the legal field, modest reforms were already being mooted to make corporate reorganization law more efficient. The crisis again provided a precipitating event to push each reform farther, effectively appropriating politically weak internal reform impulses and giving them powerful external impetus. Again this story interprets the restructuring of relations among the state, market, and law less as a simple foreign incursion against a unified domestic resistance than

an alignment of the global with a local progressive faction against the domestic forces of inertia. Yet, this very alliance of global institutions with local reformers has been construed by its opponents as the "IMF crisis," thus effectively abdicating domestic responsibility for the crisis through the classic political maneuver of finding a scapegoat.

In both Indonesia and Korea, it is therefore an error to construe this globalizing moment as a struggle between a monolithic global and local. The politics of local and global alliances lead to cross-alignments where a local faction in favor of particular changes obtains an ally in global institutions just as other local factions either seek alternative foreign allies or engage in some kind of resistance. Marriages of convenience enable global actors, which require local allies, and local reformers, that seek global leverage to find each other and wage common cause. There often is an asymmetry in these competing global/local alliances, for, in crisis instances, one party to internal political struggles will be better able to harness the global to its purposes than another, which relies on indigenous claims and legitimation for its preferred course of action.

MEDIATION OF THE LOCAL AND GLOBAL

The gap between the global and local the area in which they intersect—is an arena of power. Into that arena move actors that mediate the relationship between the global and the local. We proposed that the nature of the mediation and the role for mediating actors will vary systematically across the two-dimensional space in which we locate our case studies. We turn now to examine more precisely the relationships that mediate the global/local encounter in the area of insolvency law. We consider who were the mediators in each case study, reflect upon the roles they were called upon to play, appraise their capacity to exert influence in either direction (i.e., localizing the global, globalizing the local), and identify the mechanisms they employed. We approach the intermediation from the vantage point of the international institutions—how they sought to bridge the gap they confronted and endeavored to institutionalize a global script in a form they found acceptable.

Indonesia

Since, in this case, a wide gap existed in 1997 between the local and global, it follows that the intervention of the IFIs during the crisis involved extensive efforts for global institutions to find local counterparts, partners, allies, and sources of information and political support. Yet, precisely because the distance between Indonesia and the global center was so great, intermediaries with expertise on Indonesia were difficult to find, and questions

of competency and loyalty were acute. And because the asymmetry of power was particularly pronounced in favor of the IFIs, the mediation over enactment was disproportionately undertaken on terms dictated from abroad.

In the insolvency field, the Government of Indonesia managed initial and subsequent relations with the IMF—the principal IFI—through negotiations between government finance and justice ministers and the lead IMF legal representative, Sean Hagan. Government ministers diverged over the scope and depth of reforms: the finance ministry was prepared to concede any law reform that would garner international financial support; the justice minister remained substantially opposed to the broad sweep of reforms and yielded ground on enactment only to the extent necessary for a strategy to shift the battle against the global to the ground of implementation. However, the Government of Indonesia strengthened its negotiating position by hiring a leading American law firm that specialized in insolvency—Hebb and Gitlin of Hartford, Connecticut—to advise it in negotiations with the IMF. Richard Gitlin, the lead lawyer, had impeccable international credentials, since he had served as president of INSOL, the international federation of insolvency practitioners, and could engage the IMF with great authority.[21] After enactment of the first wave of measures agreed upon between Indonesia and the IMF, senior civil servants, such as the Director of the Jakarta Initiative (a new corporate debt restructuring agency) dealt directly with the IMF through formal reporting protocols and in periodic conferences about insolvency in Asia where senior Indonesian civil servants and IFI staff would participate (Interviews 2252, 2305, 2306, 2025, 2253).

On the IFI side, the crisis in Indonesia required rapid action from the IMF and World Bank, in particular, to get their own personnel on the ground in Jakarta, while finding Indonesian counterparts on whom they could rely for local knowledge and connections. The principal World Bank employees were Douglas Webb, a New Zealander from the Legal Department, and Gerry Meyerman, a Canadian businessman at the Private Sector Development Group of the Bank. Meyerman focused on out-of-court mechanisms for corporate debt restructuring, which the Bank had used in other crises, while Webb attended to the legal and judicial sides of reform. The World Bank had the advantage that its International Financial Corporation, a private investment arm of the Bank, had an office and long experience in Jakarta, and thus the Bank had immediate access to Bank employees, mostly expatriates, with extensive local knowledge about corporate investment. The Bank had a further advantage because it had funded in the mid-1990s an Indonesian-led research and reform effort that produced a report (Bappenas 1998) whose recommendations were salient to the interests of the IFIs, such as the creation of a specialized Commercial Court. Thus, the Bank had

21. This relationship ended on a sour note over a dispute about fees between the Government of Indonesia and Hebb and Gitlin.

Washington and Jakarta employees, as well as extensive local contacts through the Bappenas project, on whom it could call. Further, USAID had also been active immediately before the crisis in the drafting of a new bankruptcy law, so the resources and contacts of yet another U.S. agency were available (Interviews 2251, 2261, 2263, 2273, 2040, 3002).

The IMF, by contrast, had few local contacts. To compensate, it proceeded along two lines. It retained a local law firm whose partners included the Dean of the Faculty of Law at the University of Indonesia and a long-term American resident of Jakarta who was fluent in Indonesian. After a brief struggle between the IMF and World Bank over who would lead the insolvency reforms, the IMF triumphed (Interviews 2305, 2271, 2250, 2256, 2305).

The immediate reforms of Indonesian insolvency law in early 1998 were drafted by a small group whose members were nominated by Indonesia and the IMF, respectively. A coordinating minister and cabinet secretary nominated two distinguished Indonesian lawyers. Kartini Muljadi had created a very successful commercial law firm that purportedly handled much of President Suharto's personal commercial interests. Formally a Jesuit priest, Fred Tumbuan had a tiny commercial law firm but a strong reputation as "clean." Both the Government of Indonesia nominees previously had worked on the USAID draft bankruptcy law, so they were effectively moved sideways from one Washington-funded reform effort to another. On its side, the IMF nominated Mardjono Reksodiputro, Law School Dean and a name partner of the firm that had produced, under contract, the Bappenas Report on justice reforms.[22] The IMF was also advised by two lawyers who performed a strong bridging function: Jerry Hoff, a Dutch lawyer with experience in Indonesian and Dutch insolvency law and practice, who could intelligently fuse the best of Dutch insolvency innovations into the outmoded 1905 Indonesian insolvency law, which itself had been based on Dutch statutes, and Greg Churchill, an American partner of Mardjono's firm who had extensive practice in Indonesia and who could "translate," for the IMF negotiator, concepts in American bankruptcy law that might be salient (or not) for Indonesia and consistent with Dutch/Indonesian law and practice. Over three weeks of intensive work, this small group hammered out a reform program that could be incorporated into the first Letter of Intent signed by the Indonesian Government and the IMF (Interviews 2306, 4010, 2268, 2318).

The reform cycles continued for the next several years in a recursive process of enactment, incomplete implementation, and corrective amendments (Halliday and Carruthers 2003a; Halliday and Carruthers forthcoming). To monitor and advise on this process, the IMF hired a Dutch legal scholar,

22. The IMF discovered Mardjono through an indirect route. One of the IMF lawyers had worked at a Harvard program where he had come across the Bappenas diagnostic report on law in Indonesia (Bappenas 1998). From the report, it identified a principal author, Greg Churchill, who in turn pointed the IMF to his senior partner, Mardjono (Interview 2305).

Sebaastian Pompe, who had been undertaking his dissertation on the Indonesian Supreme Court and knew the justice system intimately, but with the detachment of an outsider. He became the IMF's resident point person in Jakarta. The IMF found NGOs on the ground it could work with. At the time of the crisis, a number of senior lawyers and academics, including Mardjono, formed The Center for Indonesian Law and Policy Studies, which obtained funding from Western foundations (e.g., the Asia Foundation) to disseminate information about law and the courts, undertake research on problem areas of the law (e.g., anticorruption, regulation of the legal profession), work on the judiciary, and act as a lobbying group for constitutional and other legal change. The Fund also contributed to the formation of an ad hoc monitoring group. It became clear in the early days of the new Commercial Court that decisions were often made for "inexplicable" reasons. The IMF persuaded the government to set up a "Team of Seven" expert committee to review all Commercial Court decisions and to report on which decisions (and which judges) appeared questionable (Interviews 2528, 2254, 2318).[23]

The Indonesian case suggests that the wide distance between the IFIs and the nation-state required the constitution of several types of intermediaries to handle the problems of translation and enactment (Table 1).

(1) Experts who could perform a bridging function of mutual translation among the key legal systems in play. They included: (a) the Indonesian system; (b) the Dutch system; and (c) the American system. The lead IMF lawyer[24] believed that competency in the Dutch system was necessary, since the insolvency law was derived from Dutch colonial law and because the IMF needed to know what current Dutch law and practice would meet IMF standards and yet be readily grafted into the outdated Indonesia law. The ideal translator would be able to translate in both directions—from the Dutch to Indonesian and vice versa. Familiarity with the American system was important, since Hagan, the IMF lead lawyer, was most familiar with the American system and because the American emphasis on reorganization and the involvement of the courts represented the best empirical instance of the normative standard for corporate bankruptcy being advocated by the IFIs. The ideal translator would therefore also be equally familiar with both the Indonesian and U.S. systems. Thus, Hagan brought an unformalized global script, based on the IMF's accumulated experience, to be negotiated with the purveyors of three national scripts—Indonesia, the United States, and the Netherlands. In principle, these translators might equally well have been Indonesian nationals with extensive legal experience in the Netherlands or the United States, but the relatively low capacity of their systems of professional training meant a scarcity of indigenous candidates (Interviews 2250, 2305, 4010, 2306).
(2) An indigenous expert who was at once authoritative in his advice to the IMF and legitimate within his own country. That is, the IMF needed to be

23. The IMF had a role in setting up the Team of Seven.
24. Unless otherwise indicated, the IMF hereafter refers to the IMF Legal Department.

TABLE 1.
Cross-National Comparisons of Mediating Agents for International Institutions in the Globalization of Insolvency Reforms

	China	Indonesia	Korea
(1) Bridging Experts	Domestic consultants	Dutch and American consultants	Domestic experts Law firm consultants
(2) Indigenous Experts	Law professors	Indonesian law dean and commercial lawyer	None
(3) IFI On-site Manager	Not present (World Bank office in Beijing)	Present: Dutch expatriate specialist on Indonesian courts (World Bank/IFC office in Jakarta)	Not present
(4) Domestic constituencies for international institutions	Very limited	Very limited	Limited
(5) IFI Political Sponsor	Limited (Finance and Economic Committee, National People's Congress; State Economic and Trade Commission)	None	Ministry of Finance and Economy

Notes: (1) Experts who could perform a bridging function for IFIs of mutual "translation" among the key legal systems in play. (2) An indigenous expert who is authoritative in his/her advice to IFIs and legitimate within his/her own country. (3) An on-site manager/monitor/advisor with unquestioned commitment to the IMF or other IFI. (4) Domestic constituencies committed to monitoring, intelligence, and lobbying IFI-led or aided reforms. (5) A powerful political sponsor.

confident that an expert loyal to the Fund (because his services were retained in a client/lawyer relationship) could advise the Fund on courses of action that his *professional* credentials would guarantee were juridically defensible and practically feasible and that his *political* sensibilities would suggest were enactable. The IMF's bargaining position would be enhanced if its indigenous intermediary had high local cultural capital, and the prospect of reaching an agreement eased if the IMF's indigenous representative had high status in the view of the Government of Indonesia's drafters. In Mardjono's case, his credentials appealed to the IMF because he had high local status (as Dean of the Law School), he knew commercial law and practice from experience (he was the partner of a prominent local law firm), he came recommended by a trusted American, he had a track record in legal diagnosis and prescription (i.e., in the contract for the Bappenas Report), and he had a positive record of working with multilaterals (in the Bappenas Report) (Interview 2271).

(3) An on-site manager/monitor/advisor with unquestioned loyalty to the IMF. Since the IMF had no equivalent of World Bank staffers resident in Jakarta, its Legal Department decided it needed a resident manager both to facilitate and monitor implementation and to feed those experiences into the next rounds of corrective law reform. This could be achieved in two ways. By appointing a foreigner, the IMF protected itself from the chance that nationalist identity might compromise the quality of work or that national connections might be used to compromise reports and recommendations. By placing a manager on the IMF payroll, the Fund ensured that its agent's primary occupational commitments were to its principal. Both steps also helped ensure integrity, an element of character commonly under assault in Indonesian commerce and politics. A foreigner who was also fluent in Indonesian and thoroughly familiar with the evolution of its court system could also provide some authority for the IMF's institutional analyses and recommendations (Interviews 2250, 2305).

(4) Domestic constituencies: their functions—domestic monitoring and social control; domestic intelligence; domestic lobbying—all add up to localizing and indigenizing the global. If groups are already in existence, then the IMF will use them, as it made use of the Center for Indonesian Law and Policy Studies. If those groups are not in existence, it will create them, as it did with the ad hoc Team of 7 to scrutinize the judiciary. And if there is an institutional vacuum, then it will push for the establishment of such institutions. In many countries, corporate liquidations and reorganizations are handled by licensed insolvency practitioners, usually accountants but sometimes lawyers, who specialize in financially distressed corporations. No such occupation existed in Indonesia. The IMF pressed the Government of Indonesia to establish such a profession, not only because it would bring expertise into an underdeveloped occupational domain, but also because it hoped the new profession would act as a self-regulating body for its own members as well as an informal regulatory monitor of the judiciary. Yet, the capacities of all these actors were limited. Their mechanisms of analysis, monitoring, publicity, lobbying, and informal regulation have been manifestly overwhelmed by stolid political resistance and enormous commercial counterpressures. Fragile new institutions, previously unknown in this country, occupied structural positions without power. Their known association with foreign influences may even have delegitimated themselves locally.

(5) A powerful political sponsor. Ideally, an IFI seeks an internal political ally—a minister or government department—that has the willingness and ability to navigate the difficult shoals of local politics and carry the reform program through to enactment and, most importantly, implementation. In Indonesia the IMF never did find an enduring partner with the political will and capacity to execute the letter and spirit of the IMF/Government of Indonesia agreements. The IMF believed that the Minister of Justice steadfastly resisted reforms and the finance ministries, where the IMF usually has most sway and affinity, appeared neither willing nor able to push reforms forward vigorously.

The structure of relationships between the IMF and Indonesia included direct interaction, first- and second-order intermediation. The opening negotiations, the closing of the initial and later agreements about reforms all involved

face-to-face discussions between IMF staff from Washington and government ministers in Jakarta. Most of the actual work in crafting law reforms was delegated to first-order intermediaries—individuals or organizations who had the trust of one side or the other but dealt directly with each, such as the drafting committee and the Team of 7. Second-order and third-order intermediaries were less visible, as is often the case. Although IMF officials did have some contact with selected individuals in the legal and accounting professions, they relied on the intermediation of government agencies and lawyers to obtain the views of the banking industry and the corporate sector. So far as we can discover, the IMF had no contact with Indonesian unions or consumers. On occasion a second-order intermediary became inserted between the global and local parties. The IMF's on-site manager, while initially advising the IMF and working to implement programs locally, became progressively involved as a first-order intermediary.

At the formal enactment stages of the reform cycles, the translation process yielded what Merry calls replication rather than transliteration, hybridization, or rejection of the global norms. In substantive, procedural, and institutional reforms, the Indonesians either directly imported changes or modified them only enough to be adaptable to local circumstances while satisfying the broad goals of the IMF. However, we shall note later that translation also occurs informally and in the recursive phase of implementation. There a different outcome prevailed. Indonesia also was confronted with changes in the scripts available to it. During the crisis in early 1998, there was no formal document against which Indonesia's system could be appraised or its reforms calibrated. The IMF relied on an unformalized protocol that it had developed on an ad hoc basis in other crisis situations. Discussions about the IMF's expectations and Indonesia's response began initially in a very small circle of direct and indirect contacts. By the time that the OECD began its annual Forums on Asian Insolvency Reform in 1999, the World Bank Principles had become available in an early draft. From that time forward both Indonesian and foreign experts were able to compare and debate progress in Indonesia implicitly or explicitly in relation to the World Bank Principles, a matter of no small consequence since the IMF was constantly monitoring conformity to its own norms and Indonesia's commitments from 1999 to 2004 as a condition of its continued structural adjustment loans.[25]

Korea

Whereas a large gap existed between Indonesia and the global center, and the balance of power favored global financial actors, the Republic of

25. See Government of Indonesia, Letters of Intent, June 24, 1998; November 12, 1998; March 16, 1999; April 9, 2002; Government of Indonesia, Memorandum to IMF, June 24, 1998.

Korea stood much closer to the global centers, and the balance of power was much more even. In Asia, Korea has a former colonial and strong trading relationship with Japan, the world's second-largest economy. In its relationship with the United States, Korea occupied a key geopolitical position in the Cold War and thus came to have its military, economy, and higher educational systems closely integrated with its Cold War protector (Carruthers and Halliday forthcoming). And Korea in 1996 was admitted to the OECD, the world's premier club of rich nations.

These associations with the global centers positioned Korea quite differently when the crisis hit in late 1997. On the Korean side, the relationships with IFIs, such as the World Bank and IMF, were handled by the powerful Ministry of Finance and Economy (MOFE), which had been the technocratic driver of Korea's economic miracle. While it was obvious that this relationship would obtain for macroeconomic and structural adjustments to economic institutions, it also held for legal reforms. The principal World Bank lawyer in the first intervention teams, Douglas Webb, made MOFE his primary counterpart in substantial part because the Ministry of Justice was considered weak and reactionary. Similarly, Gerald Meyerman, who weeks previously had also been part of the Indonesian crisis team of the World Bank, dealt directly with MOFE. Neither the World Bank nor the IMF had offices in Korea, since it had graduated from its status as a developing nation in need of foreign aid (Interviews 2040, 3002).

The closeness of Korea to the United States, however, changed the structure of mediation between the global and local. Within MOFE, representatives of the IFIs could find economists trained in exactly the same prestigious economics departments in the United States as the best and brightest recruited to the IMF and World Bank. Dr. Byeon, a senior MOFE official, who presided over drafting and passage of the 2001 Corporate Promotion Restructuring Act, had himself been an IMF staffer in Washington. The theories and practices of neo-liberal economics prevailing at the Bank and Fund were entirely familiar to—if not entirely practiced by—Korean finance ministry technocrats. They talked the same language and understood each other. In other words, the global had been internalized within the local in theory if not entirely in practice. While Korea's leading economic technocrats may have learned neo-liberal economics at the University of Chicago and elsewhere, when they returned home, their technical competence was directed to an economy strongly directed and underwritten by the government and heavily protected in many sectors of the economy from foreign competition (Interview 2290).

Moreover, Korea had developed a sophisticated cluster of government-funded research institutes that enabled the IFIs to diagnose quickly and efficiently the deficiencies in the Korean bankruptcy system. For example, the efficiency measures introduced into the 1998 insolvency amendments by agreement between the IFIs and Government of Korea came originally from

proposals generated before the crisis by the prestigious Korean Development Institute, which housed some of the nation's leading economists. Later, insolvency reforms to speed up the handling of cases relied on research undertaken by Korean scholars and the Korea Economic Research Institute (Interviews 2040, 4010).[26]

On the law side, the IFIs proceeded initially through MOFE to bring on board the Ministry of Justice, which created its own drafting teams. Later the IMF and World Bank dealt directly with the Ministry of Justice, although MOFE always hovered in the background and was always ready to exert pressure on the Ministry of Justice to deliver whatever agreement MOFE had concluded with the IMF.[27] The legal mediators on the Korean side functioned *within* the Ministry of Justice and not in direct relationship with the IFIs as had been the case in Indonesia. Partly this was possible because the drafting teams themselves included key members whose own biographies assured the IFIs of their familiarity with foreign, and especially American, law and practice (which most closely approximated IFI global norms). Professor Soogeun Oh, who has been a primary drafter on all the reform committees (1998, 1999, 2001, 2004), has both law and business degrees from prestigious Korean universities and an advanced law degree from the University of Michigan. Yong Seok Park, the only practicing lawyer also in all the reform committees, has economics and law degrees from Korea, advanced training at Harvard Law School, and six months of practice in a major New York law firm. While their proposed reforms from 1998 to the present all went back to the IMF in Washington for comments, they were drafted at arms-length from the IFIs (Interviews 2283, 3004, 2313, 2314, 2315).

Where further expertise in depth was needed, the Ministry of Justice retained two leading law firms to advise on comprehensive reforms of Korean insolvency law: Shin and Kim, a distinguished Seoul law firm, and Orrick, Herrington, & Sutcliffe, a New York firm. The recommendations of these firms were debated and selectively adopted by the Ministry of Justice in association with a technical assistance project of the World Bank. When the IMF needed further advice on the draft legislation produced in response to those recommendations, it turned not to a Korean specialist but to its long-time consultant, Manfred Balz, whose annotated comments on the draft eventually ended up on the desk of the Minister of Justice (Interview 2316).

The structure of mediation in Korea therefore differs markedly from Indonesia because greater competence and common professional backgrounds in the former assured the IFIs that Korea could be delegated more discretion

26. On Korean insolvency reforms in general, see Nam et al. (1999), Nam and Oh (2000), and Oh (2002, 2003a, and 2003b).

27. An incipient conflict between the economists and lawyers in the respective ministries continues as a backdrop through all the reforms, since each profession has a different notion of law's capacity to regulate markets (Halliday and Carruthers 2004a).

to draft its own reforms in response to general goals agreed upon by the IFIs and the Government of Korea. Consider again the roles that intermediaries played in this distinctive situation.

(1) On experts who could perform a translating role among the key legal systems in play, the IMF or World Bank in Korea had less need to retain experts who could perform this bridging function. Those experts already existed within Korea because they integrated within their own biographies a familiarity with the two most salient legal systems and IFI global norms. Moreover, since Korea's bankruptcy law was based on earlier U.S. law, IFIs familiar with U.S. law found it far more familiar than the more alien Dutch law incorporated into the Indonesian system.
(2) On indigenous experts and (3) On-site managers or monitors, since the IFIs were persuaded early in the reform cycles that Korea would comply with its agreements for insolvency reforms, and that the capacity of Korea to implement reforms could be relied upon given the sophistication of its professionals, neither the IMF nor World Bank felt any necessity to repeat in Korea what they did in Indonesia, namely retain the services of an indigenous expert or hire an on-site manager with unquestioned commitment to the IMF.
(4) On sponsorship, in MOFE the IMF had a powerful political sponsor—indeed the most powerful government ministry, which not only had great influence inside the government bureaucracy but long and deep ties with the heights of industry and especially the banking industry. Although the primary responsibility for the insolvency reforms moved over to the Ministry of Justice in the last several years, the IMF could still continue to rely on MOFE to bring pressure inside the government if progress was slow.
(5) The international institutions did not find any need to build domestic constituencies, since they believed they could attain their ends entirely through bureaucratic and later parliamentary means. Oddly enough, domestic constituencies in the bar and industry opposed parts of each of the reforms, but the IFIs relied rather on the political will of the government and the effective alliance of policy institutions (e.g., Korea Development Institute) and MOFE to overcome residual reluctance for change from the profession, courts, or Ministry of Justice.

Korea therefore exhibits a quite different pattern of intermediation to Indonesia. The IFIs retained no Koreans as bridging experts, indigenous experts, or on-site managers. In fact, they relied on direct relationships between the IMF Legal Department and the Ministries of Finance and Justice. While those departments retained their own advisors, essentially as second-order intermediaries, first-order intermediaries were absent. Essentially the IMF relied both upon its assumption that translation was not a major problem, because the Korean bankruptcy law looked so much like U.S. law, and on the political will of Korea to ensure that a replication of the increasingly formalized global script would take place. In fact, Korea did not accept entirely the provisions of that script, most notably in refusing to accept a key procedural step in corporate reorganization.[28] It did yield on the IMF's repeated

request that it combine its three bankruptcy laws into a single unified bankruptcy code.

China

Like Indonesia, China, too, stands at substantial distance from the global center. Since China never experienced a sustained Western colonial presence,[29] it has no inherited Western legal system to draw upon (although it does have an attenuated civil law heritage via Japan) or even a close relationship with a European country based on a colonial heritage, such as Indonesia or Japan (Lubman 1999; Potter 1999).[30] This deprives it of obvious foreign models to which it could easily turn and thus places it even farther from the global centers than either Indonesia or Korea. And the recency of China's integration into regional and global markets and educational systems means that its penetration or awareness of global paradigms remains quite shallow. By the same token, this distance from any particular center offers it a diversity of possibilities—with no sunk costs or predispositions, China can pick or choose the global centers to which it will orient itself in different spheres (e.g., commerce, science, education), and this endows it with some degrees of freedom. Moreover, the vast size of China's economy and its lack of reliance on multilateral financial institutions redresses the balance of power that in Korea and Indonesia substantially favored the global center. And it is not without significance that China remained relatively immune from the Asian Financial Crisis, although its leaders were alerted to the dangers that could occur in modernizing economies.

With this configuration of a wide gap and a relative symmetry of power between the global and local, the structure of global/local mediation should differ from the Korean and Indonesian cases. On the one side, China would need to assimilate that part of the global, which advanced its local interests, without needing to trade off so extensively its national singularities. On the other side, global institutions sought means of engaging and enlisting the nation-state without exercising the financial muscle available to them in the crisis countries of Korea and Indonesia.

In the insolvency field, China began its twenty-year recursive cycles of reform with a purely indigenous Interim Bankruptcy Law 1986 (Cao 1998a, 1998b; Zheng 1986; Peng 1987). That law owed virtually nothing whatsoever

28. The automatic stay is a provision pioneered in the 1978 U.S. Bankruptcy Code, which upon filing and commencing a bankruptcy case, "stays" or stops all efforts by creditors to collect on their debts from the company until a court permits. Korea successfully persuaded the IMF that doing this would interfere with banking law and practice in Korea.

29. Hong Kong and Macau are exceptions.

30. Oddly enough, it seems to draw little in law from its two most proximate Sino-capitalist systems—Hong Kong and Taiwan. In the insolvency field, it dismisses the former as too common law oriented; and the latter cannot be an exemplar on ideological grounds.

to any outside law or legal system, since information on foreign systems were not available to drafters or the National Peoples Congress (NPC) (Interview 2001:100). Progressively through the 1990s, China has approached the global for selective incorporation of foreign ideas and practices into China's law and practices, but it has done so experimentally and incrementally. That has occurred on two tracks (Halliday and Carruthers 2004b; Halliday and Carruthers 2006).

The first, a set of reforms undertaken by the former PRC ministry responsible for state-owned enterprises (the State Economic and Trade Commission (SETC)),[31] brought China to the international financial institutions (IFIs) for technical advice. The SETC commissioned several reports and recommendations from the Asian Development Bank.[32] In these cases, the mediating personnel have been, on the ADB side, principally ADB staffers and foreign consultants, most notably Australians Ron Harmer (the drafter of Australia's bankruptcy law) and John Lees, a long-time Hong Kong insolvency practitioner and, later, the president of the international association of insolvency practitioners, INSOL.[33] Their position allowed them to inject into the Chinese bankruptcy debates a vision of a regime that would rely substantially on an insolvency practice profession and less on courts, a model that was more congenial to the Asian Development Bank and different in emphasis from the Washington-based IFIs. In the developing market for Chinese professional services, they sought to legitimate a jurisdiction for insolvency practitioners, but they played the mediating role judiciously, for at once they advocated that China adhere to various global standards and international norms and yet conceded that in certain matters China would need to go its own way.[34] In these studies China allowed the ADB consultants to find Chinese counterparts as informants on Chinese law and practice. The ADB consultants found one or two legal academics in Beijing to advise them.[35]

Later the SETC invited a World Bank team to provide a further analysis that was published in 2001 (World Bank 2001). In this case the Bank relied heavily on its own economists and to a lesser degree lawyers, both in Washington

31. In 2003, the SETC was abolished and its functions absorbed into other agencies, such as the Ministry of Commerce and SASAC (State-owned Assets Supervision and Administration Commission).

32. Asian Development Bank TA 2186-PRC, October 18, 1994; TA 2271-PRC, "State Enterprise Insolvency: Final Report," March 1996; TA 2748-PRC, "Restructuring of Insolvent State Enterprises," December 7, 1997.

33. On some of these consultations they worked through a corporate reorganization firm, Ferrier Hodgson, which is active in several South and East Asian countries. On another, Harmer's Australian law firm won the contract, though principally as an organizational vehicle for Harmer's activity.

34. For example, they conceded that the enduring problems of state-owned enterprises, especially those most strategic to the Chinese economy, required a special, perhaps administrative, solution that stood outside the structure of a conventional insolvency regime.

35. See Asian Development Bank TA 2186-PRC, October 18, 1994; TA 2271-PRC, "State Enterprise Insolvency: Final Report," March 1996; TA 2748-PRC, "Restructuring of Insolvent State Enterprises," December 7, 1997.

and Beijing. The Bank has a large office in Beijing staffed by foreigners and Chinese nationals with overseas credentials. In some respects this report internalizes conversations between the global and local most of which are situated within the global. The primary authors of the report are economists based in Washington with broad international experience and thus bring to the Chinese case contexts from every other like-case where privatization and restructuring of the corporate sector have been encouraged and tried.

The Bank could further rely on two different types of "locals" to help ensure an indigenous adaptation of the global. American William Mako, a World Bank employee resident in Beijing, came to Chinese reforms from an extensive tour of duty, including negotiating the corporate restructuring conditionality for the $2 billion adjustment loan in Korea, advising the Bank of Thailand on its corporate restructuring program, and advising Turkey and countries in Central Europe and the former Soviet Union on measures to alleviate corporate distress resulting from financial crisis.[36] Mako combined broad global experience with short-term local exposure. The Bank complements this expertise with the obverse configuration—a PRC-trained staffer with extensive foreign education. Zhang Chunlin has economics training from China, an advanced degree in Soviet and East European Studies from Glasgow University, and advanced training at Oxford University. Before his tenure began with the World Bank in 1999, he had worked in the SETC—that is, the very government ministry most implicated in IFI consultations on the privatization of Chinese state-owned enterprises. The Bank hired two outside consultants—a law professor from the Chinese University of Politics and Law (Beijing), Li Shuguang, and a Chinese finance specialist, Wu Yalin, with Lloyds, the diversified U.K.-based financial services firm (Interviews 2001:107, 2001:106, 2309, 2310).

China's second track of reform, and alternative tactic for obtaining access to the global, has proceeded from the decision of the National Peoples Congress in 1994 to draft a comprehensive bankruptcy law that covers most kinds of enterprise in China.[37] The drafting process has continued on and off until the present. In mid-2006 it still awaited a third review before the Standing Committee of the National Peoples Congress (Interview 4201; OECD 2005).

The core drafting team of about seven members had three law professors who performed a boundary-spanning role from the Chinese side.[38] Li Shuguang, who has been a consultant to both the ADB and World Bank, has been integral to all formal Chinese-foreign reform initiatives and has served coincidentally as a consultant to the SETC since 1993. While all his formal education has been within China, as a consultant he has been sponsored for visits to observe the insolvency systems of Germany, Australia, and the United States. These three systems essentially framed the conceptual universe

36. Biography, Proceedings of Third FAIR conference, Seoul, November 2003.

37. At the present time, a patchwork of different laws, regulations, and court rules cover different kinds of enterprises, often in different parts of the country.

38. The other drafters are civil servants.

for China: Germany, because it is a civil law country, the progenitor of some earlier East Asian legal systems, and a country that emphasizes the rights and influence of banks in corporate reorganization; Australia, because it is a common law system that emphasizes the voluntary nature of bankruptcy and has strong provisions for employees; and the United States, because it is a common law system that emphasizes the rights of debtors and managers and champions the role of management in corporate reorganization. Wang Weiguo did his legal training in a provincial university and is Dean, School of Civil, Commercial and Economic Law, China University of Politics and Law in Beijing. After his formal training, he has had extensive contacts with Western institutions, some as an arbitrator[39] and others as a visiting professor at Uppsala University (Sweden) and the University of British Columbia. He also has strong contacts with Australian insolvency scholars with whom he has collaborated on comparative research. Li Yong Jun, also a professor at the China University of Politics and Law, has a degree from Shandung University and was slated to do postgraduate study in the United States on a Fulbright program. Tiananmen Square and 1989 intervened, Fulbright pulled out of China, and he went instead to the Soviet Union to take a doctorate in debtor-creditor and contract law (Interviews 2001:107, 2311, 3010, 2320, 2001:106).[40]

Compared to the indigenous Indonesian drafters, the Chinese draftsmen among them have extensive exposure to the major types of bankruptcy regimes offered by the world's legal systems. While their foreign exposure is more eclectic, compared to the two key Korean drafters—whose background included advanced degrees, programs, and employment in the United States—their socialization has been less intensive in any particular system.

The infusion of global scripts into the Chinese reform process has been channeled through three global actors. We have seen that the Asian Development Bank has advised government ministries responsible for state-owned enterprises continuously from 1994. In practice, however, its advice has strayed beyond that narrow mandate to include all enterprises—private and state-owned—and to encompass social security options and implementation and training, among others.[41] The World Bank has become involved directly only since about 2000. Its higher profile can be observed through the survey published in its 2001 Report (World Bank 2001). A lower profile of suasion has also occurred through the Insolvency Initiative of the World Bank's Legal Department and its thirty-plus principles of effective and efficient insolvency regimes (World Bank 1999, 2001, 2003). On at least one occasion the World Bank has

39. He has served as a coarbitrator at the Arbitration Court of the International Chamber of Commerce and the Arbitration Institute of the Stockholm Chamber of Commerce. Biography, GTZ Expert Conference on the Draft Bankruptcy Law, 2001.

40. Biography, GTZ Expert Conference on the Draft Bankruptcy Law, Beijing, 2001.

41. See Asian Development Bank TA 2186-PRC, October 18, 1994; TA 2271-PRC, "State Enterprise Insolvency: Final Report," March 1996; TA 2748-PRC, "Restructuring of Insolvent State Enterprises," December 7, 1997.

reviewed the latest Chinese bankruptcy draft against these global norms and met with the Chinese drafting committee in Beijing to review consistencies and discrepancies (Interview 2307). Most recently, the OECD hosted its 2006 Forum on Asian Insolvency Systems jointly with the Government of China in Beijing, another opportunity for the latest draft of China's bankruptcy law to be compared with UNCITRAL's global script, the Legislative Guide.

Arguably, the most influential initiative from overseas has been undertaken by the German aid agency, GTZ, which has offered extensive technical assistance to the NPC committees drafting economic law. The GTZ has a resident office in Beijing with several lawyer-staffers. Its primary technique for exercising suasion has been to host a series of conferences on successive drafts of the bankruptcy law. To these conferences GTZ has invited specialists from across the world's insolvency systems. For example, the 2000 conference included five foreign experts: an American lawyer, Salvatore Barbatano; a Russian judge, Sergey Sarbash; Lusina Ho, an Oxford-trained Hong Kong Chinese; a Danish judge, Lars Lindencrone Petersen; and a German academic and judge, Stefan Smid. These sat down with two GTZ lawyers and five Chinese experts: Cao Siyuan, author of the 1986 PRC bankruptcy law; Jiang Xinxiong, a member of the NPC Standing Committee; Wang Weiguo, an academic member of the drafting committee; Zhu Shaoping, the Director of the Legislative Office for the Financial and Economic Committee of the National People's Congress; and Zou Hailin, a member of the drafting committee and an academic specialist on bankruptcy law at the Chinese Academy of Social Sciences.[42] In other conferences, experts have been drawn from Australia, Britain, and other locations (Interviews 2001:103, 2317, 3009).

Each foreign expert was allotted several chapters of the draft guide for detailed commentary. GTZ authored a final report that fused expert commentary and subsequent discussion into a set of explicit recommendations for the drafting committee. These were subsumed under a set of principles, which GTZ avowed represented "the collective experience [of] those bankruptcy systems which are regarded as highly credible and efficient."[43] The

42. Biographies, GTZ Expert Conference on the Draft Bankruptcy Law, Beijing, 2001.

43. GTZ Expert Conference on the Draft Bankruptcy Law, 2001, Conclusions to Symposium, 2000. For instance, three recommendations read:

(1) "[I]t is strongly suggested, that in the event that it becomes necessary for the State Council to act pursuant to Art. 174, such actions should be governed by the fundamental principles articulated above" (9).

(2) "Chapter 2 Section 5 of the Bankruptcy Law dealing with bankruptcy costs and common debts should be amended to include, in Art. 46, the following:—The first priority of distribution should apply to secured loans made to fund business operations during the bankruptcy case; the second priority of bankruptcy costs should be the claims of secured creditors arising from the use of such creditors' collateral to fund operation during the bankruptcy case; the third priority should include items 1 through 5 in the present Art. 46 of the Bankruptcy Law" (10).

(3) "[I]t is strongly recommended that Art. 114 and the last paragraph of art. 115 of the Bankruptcy Law be deleted" (4).

GTZ has kept a running scorecard for its own purposes on the extent to which the drafting committee has responded to these recommendations. It finds the response has been positive more often than not. The Germans followed a subtle strategy: rather than pursue a heavy-handed, explicitly *German* model (which might offend the nationalist sensibilities of the Chinese), the Germans imported specialists from across the world's major insolvency systems and forged a global consensus that the Germans merely mediated, a united "global" front at once more coherent and less objectionable than a nationalist global "other."

For the global institutions, therefore, their entry into China has been inhibited by a lack of financial leverage and a balance of power generally favorable to China. While China has wanted and needed foreign expert advice, it has done so on its own terms, spreading out the sources from which it has accepted technical assistance and selectively adopting features in accordance with its own preferences.[44] Again, consider the roles intermediaries have played in the Chinese case in contrast to those of Indonesia and Korea:

(1) On experts to play a bridging function of mutual translation among legal systems in play (e.g., Chinese, civil law, Australian, United States), the IFIs have relied almost entirely on consultants, but their expertise has almost always been far greater on foreign systems than China's indigenous system. This is partly a function of the limited experience that expatriates have with Chinese bankruptcy practice. The World Bank has been able to rely on its own staff experts in Beijing. IFIs have not, to our knowledge, consulted with indigenous Chinese private lawyers or accountants.
(2) On indigenous experts who might be authoritative with IFIs while legitimate in their own countries, the IFIs in China did not find the equivalent of a Professor Mardjono in Indonesia. Perhaps the closest person in China is Professor Li Shuguang from the Chinese University of Politics and Law who has been retained both by the ADB and World Bank as a consultant, yet whose position on the NPC drafting committee and as a consultant to SETC has him straddling both tracks of the Chinese reforms. By contrast, the World Bank insolvency initiative and the OECD forum on Asian insolvency turn regularly to Dean Wang Weiguo, along with Li Shiguang, also on the NPC Drafting Committee.

These alternative alignments between a particular local expert and an international organization reflect a more general pattern observed in numbers of countries—that the IMF or World Bank or ADB enlist international and local consultants who are identified most particularly with a given international institution and thus by implication are faithful to its distinctive emphases. For international institutions, scarcity in the late twentieth or early twenty-first century is not of territory but authoritative expertise—a professional technical

44. For a detailed analysis of the various techniques used by nation-states to foil international organizations, see Halliday and Carruthers (forthcoming).

facility, and bridging knowledge that is also accompanied by linguistic facility. For countries long outside the orbit of British or American influence, the number of professional experts with all the attributes of competency, power, and loyalty, not to mention being fluent in English, are few indeed. IFIs and aid programs thus compete for indigenous experts in a similar fashion to their competition for loyalty by the leading international experts.

(3) Since the IMF and World Bank in China do not have a sustained lawmaking and institution-building program that is linked to a structural adjustment program, as is the case in Indonesia, they have no need of a resident manager. A distant parallel in China might be the lighter touch of the German aid program, which has had resident managers for the economic law program. Immanuel Gebhardt, the GTZ manager for a number of years, built up substantial local knowledge and contacts among the lawmakers in government departments and the NPC.
(4) Domestic constituencies. Because China does not permit independent NGOs, it leaves IFIs no prospect for finding indigenous nongovernmental allies who might provide domestic intelligence or lobbying. Instead it must rely on relationships built with contesting government agencies or on factions within the top political leadership that find the global scripts supportive of their factional preferences.
(5) A powerful political sponsor. In China it does not appear that the IFIs have found any internal political allies that are unequivocally committed to carrying the draft comprehensive law through the NPC into enactment and implementation (Interview 2328). By contrast, one or two veto individuals (or groups) have been blocking advancement of the legislation. At most, it could be argued that progressive forces within the SETC used foreign legitimation to force reorganization of the state-owned enterprise sector in the face of steadfast resistance by many local and provincial authorities. While membership in the WTO may be used to similar effect in other areas of economic restructuring, the impact of entry into the WTO seems attenuated in the insolvency field (Interviews 2328, 2001:100, 3006).

The structure of the engagement between the IFIs and China includes direct contacts between IFI employees and state officials, but their character is mutually consultative and revolves around reports and conferences rather than negotiations over loans and law reforms. Here the principal IFIs have been the World Bank and Asian Development Bank, together with the German aid agency. First- and second-order intermediation can be observed in the ADB's use of consultants (e.g., Harmer, Lees) and in the GTZ's reliance on foreign experts to review drafts of the bankruptcy law. Like Indonesia, third-order intermediation occurs through representations by the banks, industry, and labor to their respective government ministries who articulate and balance these interests in their interagency negotiations. For instance, the penultimate moment of third review of the Bankruptcy Bill before the NPC Standing Committee is held in hostage to a dispute between the premier, who leans

toward the interests of the banks, and the chairman of the NPC, who leans toward the workers (Interview 4201).

The substantive movement in successive drafts of the bankruptcy law and administrative reforms from 1994 to 2005 can be characterized as a shift from translation as hybridization to translation as replication. For instance, earlier versions of the law allowed arbitrary interventions by the State Council in the resolution of bankruptcy cases in a manner that fell outside any version of global scripts. With the removal of this and the tightening of other provisions, the World Bank (2001) and the GTZ have announced that China's local script now translates sufficiently closely to the global script that it should be implemented.

GLOBAL CONTEXT, INTERMEDIARIES, AND TRANSLATION

We have shown that the structure of intermediation differs considerably by the situational vulnerability of nation-states. The gap was widest and the balance of power most asymmetrical in Indonesia where the availability of experts was also most scarce and the perceived need for action was most urgent. The most complex set of intermediating structures were put in place by the IMF. In Korea, by contrast, the ready availability of Korean academics, lawyers, and economists, who were familiar with foreign and domestic situations and the lesser urgency of reform, enabled the IFIs to take a more relaxed and less directive approach that could rely on domestic availability of expertise. Since protracted institution-building was needed only in Indonesia's case of extreme vulnerability, only Indonesia warranted an on-site manager to preside over reform cycles. In Korea the IFIs believed that the elite and sophisticated state apparatus could deliver the reforms agreed upon by the IFIs and the Government of Korea without intrusive foreign presence in Seoul.

Since all externally induced or supported reforms require effective domestic political constituencies, the variation across our cases is more complicated. Paradoxically, while by far the greatest volume of substantive and institutional reforms have actually been enacted or established in Indonesia, the wide gap between law-on-the-books and law-in-action and the need for repeated reform cycles reflect the almost complete absence of diverse domestic constituencies or strong political sponsors. But with much less external leverage, domestic constituencies and political sponsors in China also remain quite limited, as China's very slow and tentative refinement of its administrative system and draft law well illustrate. Effectively, China can manage foreign and international influence on its own terms, keeping enactment at bay until it is ready, whereas Indonesia must proceed on the terms and timing of IFIs, using implementation—with slim domestic sponsors and tepid political will—

as its only option for keeping unwanted global incursions at bay. In Korea the IFIs do have a ready and powerful partner, but its influence is not uncontested internally as the lawyers and economists struggle over the role of law in the reconstruction of Korea's markets. Both China and Korea share endogenous reasons for reform, although they manage external pressures and resources rather differently. Korea's weakness during the Asian Crisis has enabled the IFIs to penetrate more deeply into its endogenous law-making process, a vulnerability not so far exposed by China.

Global Scripts and Global Actors

Between 1998 and 2005 the insolvency field moved quickly from a situation where there were no formal global scripts, to a multiplicity of alternatives, to the single prescriptive standard promulgated by UNCITRAL's Legislative Guide on Insolvency. The diversity of global normmakers and the status of scripts available to nation-states and truly local actors affects the role of intermediaries.

First, where there are multiple actors and no formal scripts, then intermediaries are likely to have more degrees of freedom, other things being equal. Global actors have less discursive power and weaker legitimation, because their proposed reforms in the name of the universal can actually be construed as particularistic to a given global institution. Yet, if a particular international financial institution does have coercive economic power over a particular country in the absence of any formal script, as was the case with the IMF in Indonesia, then the creativity of intermediaries is likely to be limited except insofar as distance allowed room for local maneuver.

Second, where there are multiple actors and multiple formal scripts, the discursive and structural elements of globalization change, other things being equal. The insolvency scripts, as we have seen, varied in their form, and each form gave intermediaries differing degrees of discretion in translation. Intermediaries acting on behalf of nation-states can compare and contrast, play off one against the other, or be empowered by the realization that a global consensus does not exist on all points, or at all levels of specificity, and thus undermine claims to universality from the global center. For instance, a leading Korean draftsman refused to include in the Korean bankruptcy law an automatic stay on application by a firm for bankruptcy protection. This is preferred in the World Bank Principles, but, as a delegate to UNCITRAL, Professor Oh knew full well that its draft gave lawmakers options and UNCITRAL could claim a global consensus that the World Bank could not. The capacity to play off one script against another depends on other factors. Intermediaries for the Government of Indonesia in the middle of a desperate financial crisis had little option but to accede to IMF demands,

since it was the lead institution, no matter what other scripts (e.g., World Bank, Asian Development Bank) might have prescribed. Korea in 2005 had paid off its debts from the Asian Financial Crisis, IFI leverage was diminished, and a new universal global script had emerged from the United Nations whose form and substance gave considerable flexibility to lawmakers.

Third, competing scripts from competing global actors have another effect. The existence of multiple models and paradigms makes it easier to create hybrid forms. Translators have more elements to combine and recombine in order to produce creative alternatives. In its insolvency lawmaking, the Chinese have taken advantage of this multiplicity of alternatives coming from different international agencies and nation-states. Even within the German aid agency's program we saw that China welcomed contributing experts from many legal systems, thus giving it ample opportunity to pick and choose combinations best suited to the government's policy preferences and difficulties in balancing competing interests.

Fourth, where there are multiple global actors who reach consensus on a single global script, such as UNCITRAL's Legislative Guide, then the implications for intermediaries on both sides are quite complex. Where there is a single global standard with both expert and representative warrants of legitimacy, this could appear to empower global actors and their agents and diminish the freedom of translation by those intermediaries loyal to nation-states. Yet, insofar as those intermediaries from developing nations had a hand in the "global" script, the global/local difference was already blurred and thus the intermediaries themselves can no longer be so clearly identified with one or the other. More importantly, the form of UNCITRAL's Legislative Guide managed to converge on higher order objectives and many substantive and procedural recommendations while still leaving considerable discretion for national lawmakers to indigenize the global norms in replicated or hybrid forms, as China manifestly has done.

In the insolvency field, however, together with many other areas of commercial law, it must be recalled that there are in fact *two* types of global script. On the one hand, there are the descriptive/prescriptive codes represented by the IMF, World Bank, Asian Development Bank, and UNCITRAL documents. They draw on experience and ideology, describe alternatives, and prescribe preferences. These arise from at least some measure of international consultation and are subject to public analysis and debate. They are in the public domain and shape its discourse in one or another conference hosted by the World Bank or the OECD and overseas aid programs. On the other hand, the invisible diagnostic tools used by the global and regional financial institutions are devised and applied by a handful of IFI staffers and consultants. The detailed instruments used to rate countries are not in the public domain, nor are the precise results, although sanitized versions of the results may be posted

by the IMF, World Bank, or European Bank for Reconstruction and Development.[45]

There is of course a contingent relationship between these two scripts. The ROSC on insolvency has now been brought into conformity with the recommendations of UNCITRAL and any serious lapses in a nation-states' conformity with the norms evaluated by the diagnostic instrument leads back to the relevant recommendations in the Legislative Guide. Conforming a nation's laws to these recommendations improves the good standing of a nation-state with IFIs, should it in the future require technical assistance, loans, or investment.

The evolution of the insolvency field has therefore substantially blurred the global/local dichotomy, it has consolidated the link between a normative consensus and enforcement or tangible incentives, and yet its flexible form, at least in the UNCITRAL Legislative Guide, legitimates some freedom of translation by intermediaries and may even tolerate hybrid adaptations that advance the highest order objectives of the Guide. In private negotiations between state officials and IFI representatives, or in public forums such as international conferences, the negotiation of globalization turns on the capacity of officials directly or through intermediaries to agree on whether a local translation conforms to a global script or whether a hybrid solution advances the spirit of global consensus.

TRANSLATION AND IMPLEMENTATION

In this article we have largely restricted ourselves to the politics of enactment and formal translation. Nevertheless we cannot conclude without relating translation to the other phase of reform—implementation. We noted earlier that the politics of enactment are interwoven with the politics of implementation in recursive cycles of legal change. Different actors and different types of intermediaries may be involved on either side of the reform cycles. In fact, it is usually the case in bankruptcy reforms in any country

45. The IMF states: "The IMF has recognized 12 areas and associated standards as useful for the operational work of the Fund and the World Bank. These comprise accounting; auditing; anti-money laundering and countering the financing of terrorism (AML/CFT); banking supervision; corporate governance; data dissemination; fiscal transparency; insolvency and creditor rights; insurance supervision; monetary and financial policy transparency; payments systems; and securities regulation." "Reports summarizing countries' observance of these standards are prepared and published at the request of the member country. They are used to help sharpen the institutions' policy discussions with national authorities, and in the private sector (including by rating agencies) for risk assessment. Short updates are produced regularly and new reports are produced every few years" (last accessed at http://www.imf.org/external/np/rosc/rosc.asp?sort=date, October 6, 2005. For the ROSC (Reports on the Observance of Standards and Codes) on Colombia, August 2005, which covered Securities Regulation, Insolvency and Creditor Rights Systems, and Payment Systems, see http://www.imf.org/external/pubs/ft/scr/2005/cr05287.pdf (last accessed October 6, 2005).

that key actors in implementation, most notably business, trade creditors, and consumers, are not directly involved in enactment, a mismatch that often leads to resistance in practice by those excluded from the formal lawmaking.

But as sociolegal scholarship conventionally asserts, "law" is law as it is experienced, not law as it is encoded in state documents. It follows that translation is not simply a matter of moving from a formal script codified by global agents to a formal script enacted through legislation, regulatory orders, or court cases. While translation can take the forms of formal replication or hybridization, it also takes on an informal character. Formal law may be implemented badly, by design or not. A new kind of truly local intermediary may emerge—the judge, a lawyer or accountant, corporate management, a government tax department—who uses the obscure site of a local court or out-of-court settlement agency to amend in effect or frustrate in result the global norms inscribed in national law. This may be done inadvertently, simply out of an incapacity to deliver what promises are encoded in formal law, or deliberately, as a manifestly political act to resist, in practice, what could not be resisted in the politics of enactment (Halliday and Carruthers forthcoming). The opportunities open to these local agents, who are effectively renegotiating the shape of globalization on their home turf, are many. For instance, a country like China or Indonesia may simply not provide the court capacity to handle a substantial volume of complex cases. Or a newly minted structure for implementation, such as Indonesia's Commercial Court, may be staffed with inadequately trained and insufficiently protected judges. In other words, a global script may be adopted formally but indigenized compositionally with the result that law as it is experienced, deviates the further it is removed from global and nationally enacted scripts. This process of symbolic decoupling enables a government to signal to global actors its compliance with global norms, while quietly signaling to its local constituencies that it has little interest or ability to comply with them in practice. Put another way, just as global scripts may differ in form and substance from each other, so too may local scripts vary between those enacted by the local nation-state and those implemented by the truly local practitioners of law in everyday life. We may view this as a more inchoate and diffuse but nonetheless very real translation of the global, which will tend toward rejection or hybridization rather than acceptance or replication.

Distance, Power, and Intermediation

Informal translation in the phase of implementation complicates even further the relationships between asymmetries of power, distance between the global and local, and the structure of intermediation and its outcomes. Once informal translation in the implementation phase enters the analysis, the balance of power between the global and local must be differentiated

more carefully. The balance of power will be most favorable to global actors at the point of enactment. Asymmetries in that power balance are often lessened or even reversed in implementation, since it is more favorable to the local. That is, countries which appear relatively powerless over enactment nevertheless have some power to shape implementation. Groups within countries, which may be unable to block enactment, can (as in weapons of the weak) undermine or frustrate implementation. Even the balance of power between global centers and the nation-state can be altered by the degree of consensus over global scripts. Competing global scripts are likely to reduce asymmetries of power since the global center is divided against itself. Yet, it does not follow that a unified script necessarily widens the asymmetries of power, because unified scripts based on representative deliberation, in which nation-states from global centers and peripheries have participated, may in that very process have modestly mitigated power differences.

Asymmetries of power influence intermediation depending on where the power lies between global centers, nation-states, and the truly local. If global institutions and nations are dominant, then the local will be pulled in the direction of the global, although how far depends in part on the distance to traverse, and the ability of intermediaries to effect that shift. The strength of the pull will be greater for enactment than for implementation. Moreover, a strong global influence will likely empower intermediaries with the global competencies and loyalties that are consistent with the global professional division of labor; that is, they elevate particular types of intermediaries (e.g., those fluent in English) over others with equivalent competencies or power. In part those competencies themselves result from spheres of influence in which nation-states have been embedded and thus their facility in languages and legal cultures that dominate in the center.

We have argued that a greater distance between the global center and nation-states requires more bridging work. This opens up more structural paths for intermediation and potentially creates more opportunity for multiple intermediaries and multiple intermediation strategies. This helps explain why the IMF built the most complex of the IFI intermediation structures in Indonesia, for that country lay farthest in distance from global norms and practices. But distance is not "measured" only from a global center, such as IMF Headquarters in Washington, and the finance ministry of a nation-state. While this is mostly true at the phase of enactment, even more important may be the distance between a global script adopted by the United Nations in New York and truly local actors engaged in implementation. While a greater distance of the nation-state from a global center should multiply opportunities for bridging work and the creative compliance of translation, the widening of that gap between the global and truly local will, correspondingly, open up the prospects for translation that leans more heavily to hybridization and effective rejection. In short, the degrees of freedom for how the work of liquidating and restructuring companies will be effective are greatest in the phase of implementation.

Our cases also suggest that where the global/local distance is great, and where the former has power relative to the latter, then the bridging work done by intermediaries may consist in a relatively straightforward translation of global institutions and rules into a local idiom for enactment. Global scripts will be given a local name or label and be subject to cosmetic alterations, but otherwise will be little changed. When the balance of power is a little more even, then a more basic reworking of the global may be expected because there is a greater capacity for intermediaries to deliver a hybrid product or even reject parts of the global scripts.

The position of intermediary is a position of power. In all of our cases the most critical actors are professionals, and most importantly, those in the legal profession. Since these professional mediators stand at the intersection of the local and global they have a unique opportunity to shape the field of power in directions that benefit professional ideologies and interests. Just as economic actors struggle to obtain control over property rights, legal actors can use their integral role in lawmaking to obtain jurisdictional rights over work (Carruthers and Halliday 1998). Can this extraction of a "price" for the mediation between the global and local also be observed in Asian insolvency reforms?

In the translation of the global to national law-making scripts, the global universal of allocating insolvency work to qualified professionals also finds its way into the laws of China, Indonesia, and Korea. But which professions and which professionals? Advanced economies divide between those in which insolvency work is undertaken principally by accountants qualified as insolvency practitioners (e.g., Britain, Australia) or by lawyers who specialize in bankruptcy (e.g., United States, Canada, and Continental Europe). At the outset of global normmaking by international institutions, it appeared that a struggle between these two professions might break out as each laid claim to potential new domains of work. In fact, each profession came to realize that a division of occupational territory was unlikely to prevail on its terms, and thus they advocated general norms (e.g., credentialing, regulation, competency) at the global level with the expectation that national histories, colonial experiences, and local contexts would determine outcomes nation by nation. It followed that the Indonesian lawmakers adopted the Dutch model of lawyers and accountants working as insolvency practitioners, the Koreans followed the U.S. model in which lawyers dominate, and China has so far hedged by stressing the general norms without specifying them, despite the dominance of lawyers in the drafting committee.

The pervasiveness of lawyers as first- and second-order intermediaries can be observed in the centrality all three laws give to courts as the institutional locus of corporate liquidation and restructuring. In this indigenization, intermediaries reflect global norms which also give courts centrality, although this institutional orientation is more emphatic in the earlier IMF and World Bank scripts than it is in the UNCITRAL Legislative Guide. The most striking case of intermediaries using their position as an opportunity

for self-interested indigenization was that of Indonesia. We saw that international institutions sought to inject more expert services into Indonesian insolvency practice by opening up practice to Indonesian citizens and foreign professionals. Indonesia agreed with the IMF to do so, but in the implementation phase, officials in the Ministry of Justice adopted regulations that required the qualifying examination be taken in Bahasa Indonesia. The result was to nullify almost entirely the goals of the IFIs. This translation as resistance by second- and third-order intermediaries again reinforces the point that implementation is a phase in which the imbalance of power at the point of enactment may be partially redressed.

In sum, we find that even in a relatively confined space—one area of law in one region in one period—the process of negotiating globalization has proceeded in systematically different ways. Standing at the nexus of those negotiations are a quite small number of collective and individual actors. Their relative capacity to shape the encounter of the global with the local varied in some measure by the relative balance of power and distance between their nation-states and the global actors that drove legal change. Each locus in this space produces a different structure of intermediation, which gives local actors differing degrees of freedom vis-à-vis the global centers.

CONCLUSION

Our study of insolvency lawmaking in East Asian countries following the Asian Financial Crisis has shown how international organizations, and international financial institutions in particular, have negotiated the relationship between the global and local through substantial reliance on intermediaries. Since we have introduced a complex framework with which to interpret our empirical cases, we conclude by pulling together our argument, extending some of its implications and indicating what further lines of inquiry might follow from it.

First, we have argued that negotiation of the global/local relationship varies by the vulnerability of a country to global forces. On one dimension, nation-states vary in their balance of power with global actors. A weak, poor state in a financial crisis is much more vulnerable to the formidable financial power of international financial institutions than a strong, rich state outside of a crisis. On another dimension, nation-states vary in their social and cultural distance from the global. Whereas some states have few leaders or experts who are linked and familiar with global institutions and their scripts, other states are closely integrated with global institutions through revolving personnel, policy influence, and concordance of ideology and practices. We proposed that states that are weak on both dimensions, or weak on one dimension and strong on another, will experience a sharply different interaction between the local and global than those strong on both dimensions. That

interaction has consequences for the structure of intermediation, the degrees of freedom for crafting local scripts, and the breadth of the gap between law as it is enacted and law as it is implemented.

Second, understanding negotiation of the global/local relationship is complicated by the limitations of those terms both in themselves and in relation to each other. We have shown that the "global" in the insolvency field had a dynamic character that evolved from a scattered set of organizations acting in an ad hoc manner, to a number of competing organizations, to an alliance among organizations around a common standard. Even then the global manifests itself differently, depending on whether a country is in a crisis or not or whether one or another international financial institution takes the leadership in "partnerships" with nation-states. The local, too, dissolves at certain points. In our case it makes sense to equate the local with the nation-state at the phase of enactment in a crisis, since the interaction between the global and local is sharply limited to relationships between senior government officials and politicians on the one side to senior IFI officials on the other. In our case it is also necessary to recognize that below the level of the national—in provinces and states, municipalities, professional services markets, local courts and government agencies, banking and business, NGO—the local fractures into many parts that become particularly salient in the phase of implementation. These fragments of the local can combine and recombine with each other on one issue or another, or with national leaders, or with global agents of change in ways that complicate the global/local binary distinction. Not only may local actors divide among themselves over the commitments of national leaders or global expectations, but local actors may reach out to global actors in order to form mutually beneficial alliances in local struggles, just as global actors will use their access to local actors to similar effect. And, of course, we have also observed that the global always refracts some combination of localisms just as the local selectively institutionalizes an indigenized global. That is, localized globalisms interpenetrate globalized localisms (Santos 2002).

Third, negotiating globalization relies on direct and mediated interactions. The extent of direct interactions depends on how fully a global IFI has penetrated a particular "local" or vice versa. When the interpenetration is high (e.g., the IMF in Korea), then direct interactions will substantially suffice. When the interpenetration is low (e.g., the IMF in Indonesia), then IFIs seek to fill the "structural hole" with mediating agents, as do their local counterparts. Reliance on higher-order intermediaries depends on the availability of individuals or organizations with three sets of attributes—competency, power, and loyalty. However, in relationships between global centers and many developing countries, actors with these attributes are rare. This scarcity can lead to competition for intermediaries among international agencies, between global and local actors, and even among local actors. Scarcity can also increase the potential leverage of intermediaries in negotiating the global/local relationship.

Fourth, we identify three types of intermediaries. First-order intermediaries have direct relationships with global principals (e.g., World Bank) and local principals (e.g., Minister of Justice). Second-order intermediaries have direct relationships with one principal, as advisors, consultants, or employees, and an indirect relationship with the other principal in the global/local negotiation. Third-order intermediaries have indirect relationships with both, since they are mediated by political parties, professional associations, and networks, among others. The structural proximity of an intermediary to both principals is likely to influence the degrees of freedom available for crafting the global/local mix. Our data are not fine-grained enough to establish what structural position will yield most influence over the global/local settlement. On the one hand, first-order intermediaries might have a greater impact on outcomes of the negotiations, because they are mediating between the parties in negotiation and thereby can help forge agreements or create solutions to disputes that bear the mark of the intermediary. On the other hand, third-order intermediaries, acting in the marketplace, can substantially or even completely subvert an agreement between an IFI and the state by not using the law or through creative compliance. Further, reliance on intermediation places higher-order intermediaries in a contradictory position: they may be empowered but also suspected, critical for the success of an enterprise yet conflicted insofar as their loyalties are divided or competencies unequal. Intermediaries who are at once members of the international network of experts and members of international organizations that craft global norms, yet who are also eminent local authorities, may find themselves subject to pressures of different kinds from both sides, simultaneously needing to signal their universality to the global audience and their localism to their fellow citizens.

The East Asian insolvency reforms indicate that up to five kinds of mediating agents will be sought by IFIs. Some act as bridging experts, while others function as indigenous authorities. IFIs may appoint an on-site manager to preside over enactments of reforms and monitor their implementation. In all cases, they endeavored to find domestic constituencies and, if possible, a powerful political sponsor to champion reforms consistent with global norms or IFI demands.

Fifth, negotiation and the role of intermediaries depends on global scripts. We define a global script as a formal document that prescribes, through a set of rules, how a group of actors (e.g., international banks and national corporations, international corporations and national banks, courts and state agencies) should interact with each other. The dynamic of negotiation and role of intermediaries depends on contexts constituted by scripts. A variety of scripts advocated by competing global actors has quite different consequences for intermediaries, nation-states, and local actors than a single global script consensually agreed upon by an alliance of global actors. A global script that is legitimated by the active participation of representatives from the North and South has a potential impact on negotiations, enactment, and

implementation that will differ markedly from a global script that local actors believe is illegitimately imposed by an international institution whose interests cannot be assumed to align with local constituencies. And a global script diffused through economic coercion will be negotiated and implemented locally in a spirit of conformity that will differ markedly from a script disseminated through persuasion and active choice.

Sixth, mediated interaction requires translation. Because we have concentrated upon enactments of law and insolvency regimes by nation-states, we have principally treated translation from global scripts to formal local scripts. We have shown that in the insolvency field there were several forms of global script, each of which might give intermediaries different facilities to shape the global/local settlement. These translations can result in four kinds of outcomes—acceptance in the form of a virtual transliteration or one-to-one correspondence between the global and local document, translation in the form of replication, translation in the form of indigenization, and translation that amounts to rejection. However, we argue that translation may also be informal. Although translation into a formal national piece of legislation or executive order or presidential decree or organizational structure was the IFI's first goal in facilitating reforms, their ultimate goals were changes in behavior. But here translation occurs as a form of institutionalization in practice, as truly local actors implement a formal script tendentiously or implement it badly (according to IFI appraisals) or fail to implement it all. This, too, is a form of translation. It may not be immediately formalized, but, eventually, everyday practice will be codified in court cases, regulations, administrative rules and another round of reforms.

Seventh, since the insolvency reforms followed a recursive process, cycling between enactment of law on the books and law in action, the impact of intermediaries varies by the phase of the reform in which they participate. Direct interaction between the principals and the activities of first-order intermediaries are likely to dominate in the enactment phase. But we hypothesize that second- and third-order intermediaries will play a more dominant role in the implementation phase. It follows from our characterization of translation that the kind of translation they undertake in each phase is also likely to differ. Direct interactions and first-order intermediaries who are focused on enactment will immediately translate their policy prescriptions into definitive formal scripts, such as statutory amendments or executive regulations. Second- and particularly third-order intermediaries will translate through their everyday instantiation of law, a process that we have proposed might eventually lead to a new formalized scripting of local practice.

While these theoretical reflections do arise from our data, they travel a good distance beyond three case studies in one area of legal globalization. We therefore pose as questions several possible extensions.

While our orientation has been primarily from the point of view of global actors, does the logic of analysis work if the orientation had been

primarily from the nation-state or other local actors? For instance, if the IFIs required bridging experts, do nation-states also? If the IFIs sought indigenous experts, do nation-states seek global experts? In our case, a certain symmetry does appear to hold for these structural positions, but is there any analogue for the nation-state to the IFI's appointment of an on-site manager, or for the nation-state to the IFI's search for national advocates?

Our findings on insolvency law should plausibly extend to other areas of commercial law, such as secured transactions, banking law, antimoney laundering or securities law. In all these cases, the IFIs have taken a strong interest, and they have worked directly and indirectly to push for changes in developing countries in a similar manner to insolvency. They have developed global scripts and pressed them on nation-states, sometimes by economic coercion, sometimes through persuasion, and sometimes by offering normative models and hoping for conformity. Reactions of nation-states and other local actors appear to also have been similar, although that conclusion awaits confirmation through further research. Yet, we expect that there may be systematic differences in other areas of national and international law. In areas of human rights, such as women's rights or crimes against humanity and genocide, the power dimension of our framing theory may rest less on economic asymmetry and more on geopolitical influence, and the measure of distance will be in terms of a cultural affinity that may differ from that of commercial law. Areas of law will also vary by the consensus and uniformity of global scripts and their capacity for enforcement. The U.N. Convention for the Elimination of Discrimination against Women or the international law on genocide and crimes against humanity may be globally codified through international organizations in a way that family law or immigration law is not. These examples also raise the question of whether differences in enforcement capabilities alter the structure of negotiation. Does economic coercion by a single IFI achieve a commensurate result to sanctions imposed by the International Tribunal for the Former Yugoslavia or the International Criminal Court? And do areas of law without enforcement capacities disseminate more through international networks of experts and international NGOs than through structures tightly linked to the principals of the global and local as we have observed?

The precipitating event for a particular global/local encounter also affects the nature of intermediation and translation. Part of the asymmetry of power in our theoretical framing relates to the degree of economic vulnerability of a nation-state to an international financial institution. That vulnerability is greatest during a financial crisis. It may be that in a crisis, where urgency compresses time, for deliberation over reforms, the power advantage to the IFIs will reduce the number of intermediaries and freedom for creative indigenization. By contrast, China, which did not suffer severely from the Asian Financial Crisis, has taken a rather relaxed ten years to bring its draft bankruptcy bill to the final stages in the National Peoples' Congress

and even Korea, which experienced the Asian Financial Crisis but rebounded quickly, took seven years to pass its comprehensive Bankruptcy Act. But there are different types of precipitating events, such as the crumbling of the Soviet bloc or a change in government. Can systematic differences in the negotiation of globalization be observed by the types of pressures that led to formal lawmaking?

Finally, while outside the scope of this article, states in the North have particularly complicated relationship with the global and local, because they may constitute both on more even terms of exchange. It is clear that the United States and France were leading players in the crafting of the UNCITRAL Legislative Guide, effectively integrating some features of their localisms into global norms. The extent to which global scripts bear the strong imprint of any countries or blocs of nations in the global North must be a primary focus of research (Braithwaite and Drahos 2000), not only for their impact on global scripts but also because often they have the resources to constrain international organizations and to act directly through aid programs in the negotiation of enactment and implementation. Yet, an unanticipated outcome of the UNCITRAL deliberations has been that the most immediate effects have less been on the developing and transitional countries for which the Guide was primarily created, but on countries in the North that were revising their laws during the Commission's consultations. Delegates to UNCITRAL, who were also key figures in national law reform initiatives, carried ideas from the former into the latter, some of which have already been enacted in countries such as Spain and France. In commercial and other areas of law, this relationship between globalizing localisms and localizing globalisms, especially for countries in the North, warrants careful attention.

The globalization of insolvency reforms, as we have observed them in East Asia, not only opens up a new area of law for theoretical reflection but offers theoretical and conceptual building-blocks for an extension of sociological and sociolegal inquiry into a range of global/local encounters. These inquiries might also bring into closer encounter three strains of research that do not always engage each other—the emerging scholarship on global normmaking and business regulation, the comparative quantitative and now institutional research undertaken by the world society school of sociologists, and the sociolegal interdisciplinary scholarship led principally by anthropologists. By engaging in our own "negotiations" over ways to comprehend the global/local encounter, we can understand more fully what has too often been a black box in studies of globalization and law.

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