Socio-Economic Review (2009) 1–36 doi:10.1093/ser/mwp024

Rhetorical legitimation: global scripts as strategic devices of international organizations†

Terence C. Halliday[1,2,*], Susan Block-Lieb[3], and Bruce G. Carruthers[4]

[1]American Bar Foundation, Chicago, IL, USA;
[2]Center on Law and Globalization, American Bar Foundation and University of Illinois College of Law, Chicago, IL, USA;
[3]Fordham University, New York, NY, USA;
[4]Department of Sociology, Northwestern University, Evanston, IL, USA

*Correspondence: halliday@abfn.org

This paper focuses on a largely neglected aspect of legitimation in international organizations (IOs)—the rhetorical work done by IO scripts as a legitimation strategy of IOs. Based on extensive research within regional and global IOs, we demonstrate four aspects of rhetorical legitimation. First, IO texts draw upon a finite repertoire of rhetorical devices (a) to propagate legitimation strengths of an IO, (b) to amplify or compensate for legitimation weaknesses and (c) to express rhetorical repertoires which convey their own intrinsic merits. Second, configurations of rhetorical devices in IO texts are affected by temporal contexts, such as exogenous shocks and the historical sequencing of IO norm production. Third, the negotiation of relations of IO interdependency, including competition and cooperation, are partly signaled and managed through the rhetorical repertoires of IO products. Fourth, texts have their own properties, formal and substantive, that are crafted to persuade domestic law-makers.

Keywords: economic development, financial crisis, financial markets, globalization, international economic order, norms
JEL classification: K law and economics, international trade law, O19 role of international organizations, Z1 economic sociology

1. Introduction

Scholarly observers and international civil servants broadly agree that legitimacy matters for international organizations (IOs) (Barnett, 1997; Hurd, 2002; Franck, 2006). The legitimacy of IOs has an impact both on a politics of

†A previous version of this paper was presented at the Conference on Law and Legitimacy in the Governance of Transnational Economic Relations, Max Planck Institute for the Study of Societies, Cologne, June 22–24, 2008, Villa Vigoni, Italy.

domestic enactment and on a politics of local implementation (Halliday and Carruthers, 2009). In this paper we focus on a largely neglected aspect of legitimation in IOs—the design and traces of legitimacy that inhere within the products of norm-making IOs.[1] Legitimation not only inheres in organizations, but also conveys in the texts they produce. The rhetoric and form of texts can assist critical audiences to assess whether or not they should propagate, enact and implement its terms. Legitimacy, after all, depends on subjective orientations of actors to institutions they come to consider 'rightful' or authoritative (Suchman, 1995; Hurd, 2007). Yet we find little attention in the field of global legal regulation or in sociological institutionalism (Meyer *et al.*, 1997) to the rhetorical attributes of IO normative products themselves. What then is the relationship between the IO from which norms emanate, and their formal presentation in a script?

Our research reveals a rhetorical discourse within a variety of normative products for market regulation. From the early 1990s through 2008, we have undertaken research inside IOs and in Asian national capitals which documents the efforts of many national, regional and global organizations to create norms for two purposes: handling corporate bankruptcies that spill across national frontiers (i.e. cross-border insolvency) and for constructing bankruptcy systems within countries that forestall national and regional financial crises (Block-Lieb and Halliday, 2007*b*; Halliday and Carruthers, 2007, 2009).[2] This plethora of activities was driven by professional associations, international financial institutions, clubs of nations, international governance bodies and powerful countries. It was fuelled by the collapse of command economies after 1989, debt crises in Russia and Latin America, the Asian Financial Crisis, and accelerated by a judgment of consequential global actors that corporate bankruptcy systems are integral to a stable and robust international financial architecture (G-22, 1998). It has produced a variety of textual products-reports and surveys, standards, conclusions, principles and recommendations (European Bank for Reconstruction and Development (EBRD), 1999; International Monetary Fund (IMF), 1999; Asian Development Bank (ADB), 2000; World Bank, 2001*a*; United Nations Commission on International Trade Law (UNCITRAL), 2004).

[1]There is a promising scholarship developing on rhetoric and legitimation in organization theory but it does not easily translate into the field of international organizations and global normmaking (Suddaby and Greenwood, 2005).

[2]The research included extensive interviews with drafters of global norms by IOs, documentary analysis of IO scripts, participant observation in norm-making by the World Bank and UNCITRAL, and field research in three Asian countries (China, Indonesia, Korea) on the reception of global norms.

We proceed in four steps. First, we develop a theoretical framework for our conceptualization of legitimacy as it has played out in the politics of global norm-making. Second, we show how rhetorical repertoires emerge, compete and complement each other in norms promulgated by five IOs—the EBRD, the ADB, the IMF, the World Bank and UNCITRAL. Third, we elaborate the logics that connect varieties of rhetorical legitimation to types of IOs and to their emerging dynamics of interdependency. And, in conclusion, we summarize our main arguments and point in directions that are necessary to advance the theory of legitimation, texts and IOs.

The article makes four principal arguments. First, the normative texts produced by IOs draw upon a finite repertoire of rhetorical devices to perform three functions: the propagation of legitimation warrants of an IO; the amplification of IO warrants that may be weak; and the articulation of formal rhetorical devices that carry their own warrants of legitimation. Second, configurations of rhetorical devices in IO texts are affected by temporal contexts, especially by major exogenous shocks that influence the historical sequence of IO textual projects. Third, the emergence of global normative fields and the negotiation of relations of IO interdependency are partly signaled and managed through the rhetorical constructions of respective IO products. Fourth, texts have their own properties, formal and substantive, that are crafted to appear self-validating in increments of legitimation beyond the properties of the IOs which produced them.

2. Legitimation politics in global norm-making

To produce global regulatory norms that have some reasonable probability of domestic enactment and implementation, IOs confront several challenges. They endeavor to identify critical audiences that must be persuaded of the value of reforms, an effort that turns in part on persuading audiences of the legitimacy of the IO advocating reforms. The product or text that conveys the justification, form and substance of an IO's norm must also be persuasive and practicable. Since this text embodies or instantiates normative content, it both conveys the legitimation claims of the IO and contains a discourse and rhetorical structure of its own.

There are two complementary ways to approach this engagement between IOs and audiences. The first is to understand how IOs use their texts tactically to advance claims to legitimacy. The second is to ascertain how audiences react to those claims and the rhetorical construction of texts. In this article we focus on the first, although it should be recognized that tactical moves by IOs depends on their anticipation of what audience reactions are likely to be, whether or not they have direct evidence to that effect.

2.1 Audiences

Legitimacy rests on subjective orientations of audiences toward the claims of an institution. It is a perception of the 'rightness' of a course of action by a particular audience, a concession from its regulatory subjects that an IO has the right to promulgate and possibly enforce norms. In the regulation of market behavior through insolvency laws, there are three key audiences for IO norm-makers.

First, the intended recipients of global norm-making are *state policy-makers.* Since accession to a multilateral convention or enactment of a law or regulations will require domestic policy initiatives, it is necessary that a state, the governing political party and the officials in its relevant ministries acknowledge that an IO has authority to propagate the regulatory regime.

A secondary audience for national policy-makers will be all the domestic interest groups that will be affected by the reforms. Since policy-makers in states may rely on *experts*, usually professionals, to assist in articulating and implementing regulatory reforms, the probability of enactment and subsequent implementation turns on agreement by experts and professionals on the quality and feasibility of proposed norms. That these norms meet certain technical standards will influence whether national and international professional associations will mobilize their formidable organizational apparatuses to press for reforms and to policy-makers in their drafting and passage through legislatures and regulatory rule-making processes.

Third, in a field of IOs, potentially with competing interests and claims upon the priorities of domestic policy-makers, any given IO may seek to signal to other IOs that it has a legitimate role to play in the formulation and propagation of norms. Indeed, if IOs in a field such as insolvency regulation are not to present a cacophony of competing norms to policy-makers, a situation that may breed confusion and frustration among other audiences, IOs may be urged to adopt legitimation strategies that are complementary or consensual to other IOs such that national policy-makers will consider them legitimate.

2.2 Legitimation warrants and deficits

We have previously argued (Halliday, 2007; Halliday and Carruthers, 2009) that the leaders of IOs essentially adopt a calculus of self-understanding that informs the ways they build legitimacy for their organizations. They are aware that they already have or may be able to construct legitimation warrants, i.e. positive attributes that recommend themselves to respective audiences. At the same time, the more self-reflective leaders are aware of IO legitimation deficits, i.e. of organizational histories or current practices or attributes that detract from their authority with one or more audiences. To construct a regional or global influence

therefore requires that warrants are maximized while various expedients are employed to minimize, redress or compensate for legitimation deficits.

2.2.1 Legitimation warrants Contemporary theory on IOs posits three dominant legitimation warrants, each of which came into play in the creation of global bankruptcy norms (Hurd, 2007; Cronin and Hurd, 2008). IOs can seek *representation* of the diverse interests that are either stakeholders or who will determine effectiveness. Making a claim to representativeness of nation-states can be undertaken by a legislative method, as in UNCITRAL's Commission of 60 delegate nations, which are selected to represent economies at different levels of development, all regions of the world, all major legal families and all positions in the world economic system. Representation frequently involves non-state actors, either interest groups or experts, or both. There is little point in developing a global standard if the interest groups most affected by it will reject it on arrival, or if the experts who practice around the standard find it technically deficient. With insolvency norm-making, representation of expert professionals relied on participation by international associations of bankruptcy lawyers and insolvency practitioners, or by distinguished academics or practitioners. Various norm-making initiatives also integrated bankers and civil servants, though virtually never corporate debtors. The inclusion or exclusion of key interests can have wide-ranging repercussions for adoption.[3]

Procedural fairness constitutes a second basis for IO legitimacy (Tyler, 2001; Cronin and Hurd, 2008). The supposition is that subjective orientations to an IO's products will be more positive when participants can exercise voice, weak players can obtain some protections from strong players and decision-making is not arbitrary but rule-bound, even if the rules themselves favor some parties rather than others.

A third basis of legitimacy for IOs is their *effectiveness.* Legitimacy must not be reduced to an examination of the perceived effectiveness of the current product. Rather, the legitimacy inscribed in a present norm-building exercise rests on the prior record of the IO. Adoption of prior products may be less important as a quantitative criterion (i.e. how many nations signed a convention) than a qualitative criterion (i.e. which nations have adopted global norms). Effectiveness and its legitimation payoff for IOs are amplified when global powers take the lead. When Japan, Australia, the USA and the UK integrated UNCITRAL's Model Law on Cross-Border Insolvency into their domestic bankruptcy law, this sent a powerful signal to all other nations that the Model Law norms would

[3]Halliday and Carruthers (2009) argue that actor mismatch—a disjunction between those actors that implement policy in practice and those that write the laws that codify policy—is a mechanism that drives the recursivity of law reforms with adverse effects on legal change because it invariably produces an implementation gap (ch. 12).

become pervasive in trade among advanced economies and thus should likewise be adopted by other nations. Effectiveness is also demonstrated by the breadth of national actors that embrace the terms of a text. For example, one of the UNCITRAL's most successful products, the Convention on International Sale of Goods (CISG), is viewed as globally significant, not simply because a large number of countries have acceded to this convention, but more importantly because a large number of developed and developing nations have acceded to its terms.

2.2.2 Legitimation deficits IOs also have legitimation deficits. IO norm-makers are often self-consciously reflective about how potential audiences perceive them, as for instance, when IOs do *not* appear representative of all states potentially affected by their norms; or when IOs seem to be captured by a particular state or interest group; or when IOs apparently do *not* incorporate key professions or experts or interest groups; or when IOs ostensibly do *not* adopt practices of deliberation which fairly give voice to all participants or interested parties or when IOs do *not* have a track record of propagating norms that have proved enactable and practicable.

Legitimacy can also erode when IOs use mechanisms to pressure nation-states into conformity with global norms that are perceived as improper or coercive. The IMF and World Bank legal departments, for instance, are acutely aware that careless exercise of conditionality, a form of economic coercion to insist upon adoption of law reforms, is perceived by many nations as heavy-handed, an illicit form of leverage that detracts from their authority. Or an IO bases its authority on a narrow pedestal of legitimacy if it relies entirely on experts. Or an IO may have authority in one region, but not another, or in one area of law, but not another. Not the least, IOs risk losing legitimacy when their global scripts are deficient in themselves because the rhetorical formulation of norms fails to meet criteria of clarity, consistency, persuasiveness, completeness, flexibility, adaptability, or adequate guidance for enactment and implementation.

2.3 Inter-dependency in global regulatory domains

A global regulatory domain often follows a temporal trajectory that begins with one or a few organizations, each with a particular audience or set of constituencies which do not necessarily compete or even encounter each other. In the 1980s, the insolvency field was inhabited by professional associations (e.g. the International Bar Association (INSOL)), by courts in Canada, the USA and England, and by regional bodies such as the EU Commission, all of which began work on cross-national or regional norms for corporate bankruptcies, but without coordination or competition. In the early 1990s, international financial institutions began to formulate norms for newly minted market economies in

the former Soviet Union. They were joined by UNCITRAL's initiative to develop a model law for cross-border corporate bankruptcies in the mid-1990s, and then by other regional (ADB) and global international financial institutions (the IMF, the World Bank) after the regional and global threat posed by the Asian Financial Crisis. This historical unfolding of organizations entering the field of global norm-making set temporal contexts in which any succeeding organization potentially could be constrained, informed or enabled by any of the preceding IOs and the normative products and texts they produced.

By the late 1990s, however, the field of global insolvency norm-making was inhabited by professional associations, international governance bodies, international financial institutions, clubs of nations and powerful states, such as the USA and France. No longer did these IOs and states remain disassociated from each other. They inhabited the same field, members overlapped and ambitions potentially conflicted. The synchronic dynamics of inter-dependency posed for every IO the problem of how to establish, defend or extend its legitimacy and authority vis-à-vis the others. Audiences now had several potentially conflicting sources of normative authority to which they could turn.

In circumstances where multiple IOs occupy a global arena, what are the potential strategies they can adopt to manage the necessity of inter-dependency? Two broad options present themselves.

On the one hand, IOs can compete with each other to produce the 'gold standard' of global norms. That conflict would result in a legitimation struggle as each IO seeks to convince its key audiences that its legitimation profile makes it uniquely authoritative. The result might be a single dominant text produced by one ascendant IO; or it might be a small number of alternative texts from which state policy-makers and other interested audiences could choose.

On the other hand, IOs might agree to cooperate. IOs with less legitimacy might choose to fold their efforts into those with more legitimacy. Or IOs might opt for a division of labor, where, for instance, one IO might develop norms for substantive law and another might produce norms for regulatory institutions. Or IOs might carve up the world among themselves with regional international financial institutions (IFIs) retaining primary responsibility for their regions; or professional associations taking the lead, respectively, in countries where lawyers or accountants might historically have predominated. But even a division of global labor would turn on the legitimacy of the respective IOs for it is unlikely that any one IO would cede 'jurisdiction' to another if it were not convinced of its legitimacy.

A primary medium by which relations of inter-dependency are expressed and negotiated occur through the respective texts produced by IOs. Texts become means of codifying competitive advantages or expressing outcomes of inter-IO negotiations. The form of texts themselves become a subject of negotiation

insofar as different IOs bet on particular products which they believe will be most persuasive to key audiences. We will show that a division of labor can occur in the product of texts insofar as one IO places its bets on one type of legal technology (e.g. the World Bank *Principles*) while another opts for explicit legislative language (UNCITRAL's *Legislative Guide on Insolvency Law*). Hence, the legitimation politics of a global inter-organizational field become ultimately crystallized in the final products of IOs, most often their normative scripts.

2.4 Texts and rhetoric

When IOs create global norms, they articulate them in varieties of products—legal technologies, instruments or products that run the gamut from multilateral conventions and regional treaties to model laws and legislative guides to principles, standards and rules. We argue that these textual products are not simply records of decision-making by IOs. They incorporate rhetorical features that are deeply permeated by the legitimation strivings of the IOs themselves. By this means, texts are crafted by IOs to appear to be partially autonomous from the organizations that produced them.

A script is itself tangible evidence of global norm-making. Whatever may be known by a state official, legislator or national expert about the organizations and processes and histories of the norm-making, it is the script that crystallizes much that brought it to fruition. The script is a medium by which the IO frames its own definition of a reform issue: a diagnosis of problems followed by a set of prescriptions.

If a script conveys authority, then it follows that IOs will seek to craft their scripts in ways that encapsulate all the legitimation warrants they can marshal. The written products, the texts, that are propagated by IOs are crafted by their authors to advance the legitimation claims of an IO in three respects.

First, they *register* or record the legitimation warrants of the IO. A text can point to the particular strengths that a given IO can offer as its claim to authority. The text can review the expert qualifications of the IO's consultants, the representativeness of the IO's delegates, the incrementalism of the IO's reliance on previous IO efforts and texts produced from them. Here the text functions to report to far-flung audiences what they might not have known, given their remoteness from the process or limited knowledge of the IO. The text points back to the organizational and deliberative context from which it emerged.

Second, a text can *amplify* legitimation warrants. If an IO appears to have legitimation deficits, if its warrants might be questioned by its target audiences, the text may construe an IO activity as more than it was or seemed to be. If an IO seemed to be lacking in representativeness, for instance, the text may construe the process of consulting experts or soliciting far-flung opinions as a form of

representativeness. If it appeared that key interest groups or experts were absent, the text can imply that other participants stood in the stead of the missing parties. Here the text may carry claims and make self-justificatory assertions well beyond those immanent in the deliberative process. In this sense, the text has a compensatory function, taking a deficiency and seeking to paint it in a brighter color; or reaching outside the IO to appeal to other legitimating criteria.

Third, texts can be articulated as rhetorical *devices* with a form and structure that have their own intrinsic merits. Adroit use of more or less abstract formulations, more or less approximation to the form of statutes, greater or lesser identification with one or another dominant state or profession, more or less choice for policy-makers based on less or more explanation for textual recommendations—all these combine in a variety of configurations to produce texts that have more or less appeal to key enacting and implementing audiences, and thus a greater or lesser probability of successful reform in practice. Here texts essentially reveal the bets of an IO about what rhetorical form will be most persuasive to critical audiences.

It will be seen that these three functions—registering, amplifying, devising—move progressively away from attributes of the IO to attributes of the text itself. It should follow that maximal legitimation benefit will be a sophisticated combination of all three: reminders of the best legitimation warrants exercised by the IOs; clever efforts to amplify those weaker aspects of IO deliberations that require compensatory window-dressing; and the craftsmanship of the rhetorical vehicle itself, the normative text that mediates between the IO and its respective audiences.

2.5 Rhetorical Repertoires

IOs create rhetorical repertoires from distinctive combinations of devices. We find three clusters of devices that are differently configured to bolster the legitimacy of their materials.

2.5.1 Formal properties A normative script has its own formal properties of legitimation that inhere in the form of the text and the arrangement of its content. The choice of products, what elsewhere we have called legal technologies, is not simply an instrumental adaptation to what might be politically possible, either in global norm-making or local adoption. Formal properties convey meaning. If a script rests on a diagnostic survey, a penumbra of science or rigor is invoked. If a script takes the form of an international convention, the sense of multi-lateral diplomacy conveys authority. If a script is contained in a model law or legislative guide, it conveys the sense of statutory authority by appearing like a statute, thereby conveying an expectation that the norms will properly obtain domestic parliamentary assent.

The formal properties of global rhetorical scripts, including those we analyse here, can be categorized along four dimensions. (a) Are the norms proposed by an IO embedded in a wider theoretical justification? In the case of insolvency reforms, this justification would connect law reform with market regulation and stability, investment and economic development. (b) Are the norms in the product organized in a hierarchy of abstractness or specificity? A choice to offer only one level of principles or standards has the merit of parsimony. A decision to offer higher and lower levels of specificity gives policy-makers the flexibility to follow higher level principles in ways best adapted to local circumstances, which could not be anticipated by IOs for the entire world, or to implement specific provisions that ease the task for drafters. (c) Do the normative scripts offer statutory-like recommendations? IOs confront a conundrum: norms that are too abstract supply too little practical guidance to legislative draftsmen and specialists; norms that are too rule-like or specific risk irrelevance in jurisdictions where they seem unsuitable. (d) Do transnational and national scripts transcend national referents? Efforts at transnational neutrality will craft norms as if they are universal without positive or negative reference to particular countries. Products that make specific reference to particular countries risk tainting a transnational product with whatever legitimation warrants or deficits are attached to that country's regulatory system.

2.5.2 External warrants A normative script may enhance its impact if it can incorporate evidence of warrants of legitimation that are beyond the attributes of the IO generated in the norms. These can be diverse. A script may state explicitly that it is standing on the shoulders of giants, that this new entry into the arena of normative prescriptions builds upon prior scripts from other IOs and expresses a global consensus. A script may justify its general orientation or particular provisions by pointing to positive or negative examples of national models. Indeed, national models may be aggregated and construed as a trend, most persuasively, towards a 'modern' or 'advanced' way for nation-states to regulate their economic or social systems. A strong claim will reach for universality—the notion that ideas or doctrines, trends and developments, span the differences that conventionally divide legal families, advanced or developing economies, the Global North or Global South. In all these approaches, a script effectively situates itself at a moment in time and accumulates claims to legitimacy which it signals plainly to its potential adopters. It internalizes external warrants.

2.5.3 Internal organizational warrants A normative script reinforces its claims to authority when it signals that its organizational products and processes are legitimate. We have argued that this justification within IO texts can be signalled along several dimensions: (a) can the IO deliberative process be construed as

representative? (b) As a critical element of representation in technical areas of law, does the IO buttress its authority by invoking the involvement of authoritative experts in its production of norms? (c) Is the process of deliberation over regional and global norms presented as procedurally fair? And, (d) can the IO point to prior sets of norms that have been legitimated by their wide-ranging implementation?

Two implications follow from this classification of rhetorical expressions of IO texts. In the first place, because IOs target their texts at different audiences at different moments in time, it is plausible to expect that rhetorical repertoires will also vary. It should be possible both to show variations in configurations and to explain what choices those variations reflect.

In the second place, we expect that not all rhetorical justifications for legitimacy carry the same weight. We shall show that the ultimate legitimation claim that emerges temporally and finally trumps all other claims to IO ascendancy is that of representativeness.

3. The rhetoric of formal IO texts

The development of global norms for corporate bankruptcy law provides a particularly useful empirical site at which to investigate the occurrence of rhetorical legitimation. From the early 1990s until 2008, five IOs entered the field of international insolvency norm-making. Each proceeded with its own technology, each with its distinctive labelling: surveys and reports (European Bank for Reconstruction and Development (EBRD)), standards (ADB), procedures and conclusions (International Monetary Fund (IMF)), principles (World Bank) and a legislative guide with recommendations and commentary (UNCITRAL). We analyse the final product of each of these organizations, examining it for evidence of rhetorical construction that invokes formal, internal and external warrants of legitimation.

Table 1 organizes the products of IOs in historical sequence, moving from left to right.

3.1 European Bank for Reconstruction and Development: surveys and reports

The EBRD pioneered normative templates for insolvency regimes. Founded in 1991, the EBRD was the first new European multilateral institution to be formed after the collapse of the command economies in the former Soviet Union. From its inception, the EBRD articulated an explicit development theory which held that economic liberalism proceeds in tandem with liberal politics; that the preferred route of private investment would demand significant infrastructural investment, more in institutions than massive public sector

Table 1 Rhetorical variations across scripts of international organizations

Rhetorical Devices	European Bank for Reconstruction and Development (EBRD)	Asian Development Bank (ADB)	International Monetary Fund (IMF)	World Bank	UNCITRAL
Geographic scope	Regional	Regional	Global	Global	Global
Date(s) of publication	1997–2004	1999	1999	2001–2005	2004
Technology	Survey reports	Standards	Procedures	Principles	Legislative guide
Formal properties					
Theoretically justified			X	X	X
Hierarchically layered norms			X		X
Statutory language					X
National exemplars	X	X			
External warrants					
IO consensus			X	X	
Advanced, modern, normal	X		X	X	X
Universal, preponderant, spans legal families		X	X	X	X
National cases	X	X	X	X	
Research, evaluations	X	X		X	
Historical trends				X	X
Internal organizational warrants					
Representation				X	X
Expert authority			X	X	X
Procedure					
Enactability					X

Sources: The sources for corporate bankruptcy law norms derive from the primary documents of the following international organizations: EBRD (1999), IMF (1999), ADB (2000), EBRD (2000), World Bank (2001*a*, *b*), UNCITRAL (2004) and World Bank (2005).

projects; that small and medium sized business should be prioritized; and that underlying macro- and micro-economic stability will rely upon legal and regulatory structures that would sustain a rule-of-law society.

3.1.1 Formal properties From the start, the EBRD saw law reform as critical to economic reform and development. Its Legal Transition Programme approached its institution-building by investing in diagnostic surveys of the Bank's member countries. In each country, it asked about the *extensiveness* of insolvency law, that is, whether a country both covered the breadth of areas which should be

characteristic of bankruptcy law in a developed country (i.e. was it exhaustive and modern) and whether its coverage of each topic conformed with the EBRD standards. In classic sociolegal fashion it also evaluated *effectiveness*, a judgment that 'legal rules are clear and accessible and adequately implemented administratively and judicially' (EBRD, 1999, Annex 2.2). In both cases the assumption is that extensive law that is effective in practice for failing companies provides for orderly and predictable steps for investors and lenders (European Bank for Reconstruction and Development (EBRD), 2000).

On the basis of the survey, countries were classified into five classes: comprehensive, adequate, barely adequate, inadequate and detrimental, each of which was briefly specified in the EBRD reports. After each survey, the EBRD published a summary report that ranked countries in relation to each other on each of five core areas of bankruptcy law. This ranking does more than implicitly derogate countries that fail to comply. The EBRD uses the poor results to pedagogic effect, for it describes, under each of the five main subject areas, the principal shortcomings it has observed in the region, why they are problematic, and thus why they should be remedied.

The EBRD did not make public its diagnostic instruments. These were not available to any of the three audiences of national policy-makers, insolvency experts or other IOs. It did, however, publish periodic reports, which took three forms. *Descriptive* reports merely state the nature of changes without any value placed upon them. A weak form of *evaluative* reports is exemplified in the characterization of Bulgaria's amendments, which are 'aimed at speeding up bankruptcy . . . ' and 'introducing an improved system . . . ', both implicitly a good thing (EBRD, 2000, p. 61). With more evaluative bite are the Bank's comments on the Czech Republic whose 'amendments introduce a number of positive changes but fail to address key weaknesses as well as introducing some negative changes'. Four positive changes are adduced. Four other changes are described as amendments that have been 'subject to criticism'. And several non-changes or omissions are subsumed under the judgment that 'the amendments do not address . . . pressing reforms' (EBRD, 2000, p. 61). A *consequentialist* report not only describes reforms, but also predicts their likely impact. For instance, in the Slovak Republic, 'it is expected that the new provisions will contribute significantly to the improvement of the investment climate' and 'will encourage foreign investments' (EBRD, 2000, p. 72).

In its comparative reports, where countries are not only compared with an abstract standard but their rankings are compared with each other, the EBRD engages in amplifying and compensating tactics which are intended to induce reforms to forestall future shaming. These tactics borrow something of the penumbra of science. Although lacking in scientific rigor, the representation of its survey results for each country in a compelling graphical format connotes

science. And, comparisons of country advance or retreat in the adherence to norms over time similarly connotes a legal equivalent of economic trend data. By scientific standards, these formal representations are not defensible. As rhetorical devices, they are intended to be potent forces for change.

It is note-worthy that the EBRD reports do not regularly provide theoretical justification for the enactment and implementation of its norms. Significantly, among the five IOs, it alone does not provide systematic explicit norms at any level of generality. Its proprietary diagnostic surveys seem designed to drive EBRD countries either to technical assistance from the EBRD itself or to other sources of norms from advanced member countries or, later, global IOs, such as the World Bank.

3.1.2 External warrants The rhetorical character of its *Transition Reports* relies heavily on external legitimation, but from nation-states. In the early 1990s, the EBRD cannot point to global consensus or other IOs, since none have yet propagated norms. In the later 1990s, when the World Bank becomes involved in global norm-making, the EBRD begins to justify the norms in its reports with reference to the emergent norms of the World Bank and in the 2000s to its cooperation with UNCITRAL. Until then the EBRD reports construct a notional 'global standard'. The reports appeal to the preponderance of practice in advanced countries, which serve as standards for effective insolvency systems. Thus, 'most western European insolvency systems' have a standard to trigger bankruptcy, or 'a majority of insolvency systems of industrialized economies' remove management and appoint a trustee or administrator. The concept of 'normalcy' satisfies a similar rhetorical function in such statements as 'reorganization in industrialized economies insolvency systems normally requires two-thirds or a majority of creditors . . . '. Occasionally the EBRD will rest on its own authority—that, for instance, 'both debtor and creditor should be allowed to file a petition' or 'it is important that the reorganization procedure includes a stay on creditors . . . ' (EBRD, 1999, pp. 160–163).

Against the standards the EBRD has distilled from 'advanced' and 'modern' legal systems, the Bank deftly uses positive and negative exemplars to reinforce the degree of norm compliance. Positive examples show that countries are heeding, mindfully or not, EBRD standards. Hence, the '1994 Bulgaria Law provides this clear priority for secured creditors' (EBRD, 1999, pp. 161–162) and Estonia and Croatia have established standards for trustees along lines advocated by the Bank. Negative examples may be adduced simply to show that standards have not been attained, as in the assessment that minority shareholders in Russia complain that they are not heard or cannot vote on reorganization plans. A stronger version of the negative example, however, is obtained when it can be shown to produce adverse effects. Sometimes, the undesirable outcome is left implicit, as in the judgment that the Ukraine has 'extensive and time-consuming impediments' to filing a petition. Here is understood that

'time-consuming impediments' will produce harm. At other times, the harm is made clear, as in the case where Hungary chose an automatic trigger and the courts were flooded with filings; or 'some transition economies in early versions of their bankruptcy laws allowed secured creditors to continue filing legal actions against the debtor . . . .this can quickly defeat the purpose' (EBRD, 1999, p. 161) of the bankruptcy proceeding.

Rhetorically, even the minimalist EBRD standard for a bankruptcy regime balances normative appeal with pragmatic outcomes. It acknowledges that resource and other limitations may require a solution that differs from that used by advanced economies. Yet, at the same time, it indicates that countries not in compliance with the standard may experience harmful effects which will require further legislative remedies.

3.1.3 Internal organizational warrants The EBRD places little emphasis on internal warrants. It does not seek to show that its diagnostic norms emerged from any process of representative consultation, whether or not of member nations. Rather than make a major effort to bolster its authority through reference to outside experts, it rests its authority implicitly on the experts in its legal department. Since there is no express deliberative process, it makes no claim to procedural fairness. Nor does it point to examples of prior successes in regional lawmaking.

3.2 The ADB: standards

The ADB was founded in 1966 and now is underwritten by 58 member countries to reduce poverty, produce economic development, enhance human development and protect the environment. Although the ADB had been active in consulting on insolvency regimes before the Asian Financial Crisis, particularly in China, the aftermath of the Crisis led the ADB to also consider programmatic reform programs across key Asian economies. In 1997 the Legal Department retained an Australian law firm, led by Australia's leading bankruptcy reformer, to create core bankruptcy standards that would become the normative standard against which 11 countries would be appraised: Hong Kong, Singapore, Malaysia, India, Pakistan, Korea, Japan, Taiwan, Philippines and Thailand (ADB 2000).

3.3 Formal properties

Published in 2000, the 80-page ADB Report opens with a brief overview of global and regional developments and then describes its own methodology. It then offers some 33 standards at a mid-level of abstraction. For each standard, the introductory text explains the issue, introduces the policy options and provides justification for why the recommendation has been made. The ADB then rates every

country on a three-point scale—whether it applies, applies in part or does not apply the standard. The evaluations are presented standard by standard, in tabular format, and are summarized for every country at the end of the report. Following the stark ratings of each country for compliance on each standard, the report provides summary observations, comments on the experiences of particular countries that were evaluated and sometimes makes recommendations.

The ADB Report does not premise its prescriptions on a broader theory of law, markets and development but simply asserts that they are part of a legal and commercial system. Nor does it offer a hierarchy of norms, nor a set of specific legislative recommendations. However, unlike the EBRD's reports, its mid-level standards are public and explicit. But like its European counterpart the ADB Report makes extensive use of national exemplars. Not only does it classify its 11 countries and rate them against each other, but also it provides textual commentary on which are prime exemplars for better or worse on a given standard.

3.3.1 External warrants The ADB rests heavily on textual allusions to external legitimation of its norms. Its principal appeal inheres in the justification of the 33 'good practice standards' it produced as reflective of 'common basic policies' and 'principles' that fall across all countries, irrespective of legal families or stage of economic development. That is, it stakes a claim to universality at the outset. These principles, it asserts, are 'well established, widely accepted and respected' and thus should properly be normative for Asian law-makers. Frequently it is stated that most or few countries will follow a certain practice. Thus, 'precedents from the experience of many countries suggests . . . ' or 'very few, if any, jurisdictions would permit . . . '. In the former case, the allusion clearly is to important or successful countries, whereas the latter is simply an appeal to preponderance of practice. Modernity is also valorized. A label or modifier will be attached to countries which adhere to a standard as examples of a modern regime. Note, for instance, the statement that an '"automatic" stay or suspension is a feature of many *modern* insolvency regimes' (ADB 2000, pp. 25–26, 27–28, 35).

Like the EBRD, the ADB Report relies extensively on national examples. These are both displayed starkly in tabular format and then elaborated extensively in an evaluative commentary that freely allocates praise and criticism. When making a criticism, the practice in a country may be described as a 'matter of concern,' or that the position in Thailand, Indonesia and the Philippines, for instance, 'is not entirely satisfactory'. Or even that a practice 'runs quite contrary' to the standard. Criticism may be accompanied by a direct challenge that a country should remedy its fault: 'Reform on this aspect is urgently required in Thailand'. In contrast, general shortcomings may be accompanied by merely general recommendations, e.g. 'It is recommended that the absence, in some reorganization processes, of an initial automatic stay, should be remedied' (ADB, 2000, p. 47, 33, 36).

When handing out praise, the Report may state, for instance, that Indonesia has 'a particularly good, low threshold, criteria . . . '. Or Indonesian and Thai provisions on time limits 'provide very good models.' Or even that Hong Kong and Singapore 'provide the best examples' (ADB, 2000, p. 32, 38, 40). Rhetorically, this performs an important function for it implies that remedies to problems within the region can be found in the region. Moreover, it allows the ADB to positively reinforce countries which otherwise are criticized elsewhere. This careful allocation of praise and criticism suggests that the report has been crafted with care to induce change while remaining mindful of national sensitivities.

The Report underlines its commentary with warnings about the cost of deviance from the standards. Here, the language purports to summarize empirical experience from failure to adhere to the standard, such as 'the first of these options' will result in 'delay, increased expense and inefficiency,' or obversely, 'the unitary approach produces a desirable amount of flexibility, choice and freedom' thereby avoiding 'possible confusion, efficiency and expense . . . '. Or, 'unless creditors are involved in the insolvency process the law will seem irrelevant' (ADB, 2000, p. 30, 41).

But the ultimate form of leverage employed by the Report mirrors that of the EBRD: it is a form of public shaming. Quite self-consciously, ADB officials appropriated a cultural process indigenous to the region—the prospect of losing or gaining 'face'. By erecting public standards, and by publicly ranking each country on each standard, all countries could see whether they perform comparatively well or poorly. For countries that perform poorly, their officials and legislators are shamed before their regional peers. Thus, simultaneously, the ADB subjects every country to expert review (what the ADB wants) and peer pressure (how other countries perform).

The ADB's rhetorical product, therefore, shares several features with that of the EBRD. It follows a diagnostic study of members in the region with a public report. It makes claims of modernity, universality and advanced status for its norms. Both IFIs rely heavily on national comparisons as a form of shaming that might lead to peer pressure, national competition for conformity to regional standards and technical assistance. Neither depends upon the internal warrants of representativeness, procedure or effectiveness. Yet, there are differences: the ADB relies upon a much smaller number of cases, no statistics and a single-moment appraisal of bankruptcy law in one point of time. In its articulation of explicit standards, however, it offers a significantly more substantial basis for country-by-country evaluation than the EBRD.

3.3.2 Internal organizational warrants The ADB Report rests predominantly on the institutional legitimacy of the ADB. The ADB makes no claim to representativeness, although it does refer to widespread consultations, including two

symposiums with 'government officials . . . , judges, bankers, insolvency practitioners . . . , and academic experts' (ADB 2000, p. 13). Neither does it argue that its standards derive from outside experts, other than its single consultant. It does not point to prior products and their widespread application or beneficial results, although it notes that reforms are under way in several countries. It does not engage at all in amplification.

3.4 IMF: procedures and conclusions

The IMF acts as the world's bank of last resort for sovereign debtors. The series of debt crises in the 1990s, capped by the Asian Financial Crisis, spurred the Fund into active institution-building, not only of macro-economic institutions, but also of the legal frameworks that enable those institutions to withstand economic shocks. In 1998, the G-22 and G-7 made it clear that bankruptcy law must be one support for national financial architectures. This call to arms provided an opening for the IMF Legal Department to complement its conventional transactional lawyering with institution-building. Insolvency law was one of its first ventures.

The Fund had been contributing ad hoc advice to countries in the former Soviet Union and to Mexico, Ecuador and others. It was not until Thailand and Indonesia required IFI bailouts, however, that the IMF legal team was invited to join the frontline first-wave interventions of IMF and World Bank economists in a financial crisis. From its experiences in Indonesia, in particular, the IMF Legal Department recognized that a codification of its experiences would be timely both to guide its own staff's interventions and to provide developing countries worldwide some systematic guidelines. The Legal Department published its 93-page volume, *Orderly and Effective Insolvency Procedures* in 1999 (IMF, 1999).

Compared with the EBRD and ADB, the IMF confronted a qualitative difference in scope. Its mandate extends to most countries in the world. Its authority, therefore, confronted not only extraordinary diversity but also much skepticism given its past use of economic conditionality to compel desperate countries to make domestic policy decisions that are often deeply unpopular (Babb and Carruthers, 2008). The legitimation deficit it faced, therefore, was acute. Hence, the text uses recording, compensating and formal rhetorical tactics to strengthen its claims. It does so by building its case on all three pillars of rhetorical legitimation.

3.4.1 Formal properties The IMF's *Insolvency Procedures* goes further than any of its predecessors by explicitly justifying its norms in theoretical terms. It begins narrowly with an advocacy of insolvency lawmaking on the grounds that its

absence will 'exacerbate economic and financial crises' (IMF, 1999, p. 1). The IMF points to two over-riding objectives. One is to allocate risk 'among participants in a market economy in a predictable, equitable and transparent manner' (IMF, 1999, p. 5). Another objective states that an insolvency law should 'protect and maximize value for the benefit of all interested parties and the economy in general'. Put together, these objectives will discipline debtors, increase the 'competitiveness of the enterprise sector' and 'facilitate the development of capital markets' (IMF, 1999, p. 6). Here, for the first time, an IFI presents the underlying mantra of IOs engaged in legal regulation of global markets for economic development: good law and institutions (a) will increase investment, (b) will produce economic growth and (c) will reduce poverty.

Insolvency Procedures follows its opening section on objectives and features of insolvency systems with chapters on liquidation, rehabilitation, institutions and participants as well as cross-border insolvency. In the substantive law chapters, *Insolvency Procedures* states high-level objectives, follows with a detailed discussion of elements that would achieve those objectives and presents 'principal conclusions'. Altogether, the 25 conclusions from all the chapters are crafted with considerable subtlety and contingency, as if there is a clear intention to repudiate the expectations of readers that the IMF Legal Department will demand that 'one-size-fits-all', or that its way is the only way. We observe both hierarchies of abstractness and a clear recognition that countries will follow different paths by selecting IMF-authorized alternatives.

Frequently, conclusions take the form of a single programmatic recommendation such as its general recommendation that insolvency law should not introduce 'social or political' considerations in setting its priorities for what creditors get what scarce moneys that are available for distributions (IMF, 1999, p. 50). Sometimes, it will set up minimal criteria for every system and leave it to a country's discretion to go beyond the threshold. In a close variant, *Insolvency Procedures* will propose a core minimum feature, but indicate that additional features may be desirable but not necessary. Hence, 'there must be provision' on 'x', but 'countries should consider . . . ' additional elements (IMF, 1999, p. 37, 60).

Sometimes the text gives variations across legal systems, or outlines policy choices on an important matter of principle, then indicates the preferred choices that follow each choice with some options. Occasionally, *Insolvency Procedures* will make a recommendation only for one class of countries.

3.4.2 External warrants The IMF text rests heavily on external validation. Its premise is that 'recent experience' has shown how an absence of an effective insolvency system can have disastrous consequences. The features of an effective system are not simply pronouncements of the IMF. *Insolvency Procedures* assures its readers that the norms it contains are consistent with the wave of

institutional initiatives by other multi-lateral organizations. Unlike the EBRD or ADB, the IMF 'builds upon' and is 'consistent with' the 1998 G-22 Principles. By acknowledging the comments on earlier drafts from other IOs—the World Bank, OECD, European Bank for Reconstruction and Development and International Finance Corporation—it informs internal and external audiences that it stands in solidarity with its institutional peers, and implies, without quite saying so, that it expresses a convergence of experience and opinion.

Throughout the recommendations by *Insolvency Procedures*, the IMF supports its position by reference to global usage and frequency of occurrence. There are frequent assertions to universality—that 'it is universally recognized', or in 'virtually all countries' or in 'most laws'. Sometimes, this allusion to the universality of practice gets expressed normatively with a descriptor such as 'normally' practice will take one form or another. The text also alludes to 'a number of countries', 'some countries' or 'a few countries', allusions that imply, to the sophisticated reader, references to the United States or other advanced countries. As a diplomatic document reaching for universality, it is significant that there is never an explicit reference to any particular country.

3.4.3 Internal organizational warrants The IMF text cannot rely on an internal legitimation of national representativeness because the process of constructing the guide did not draw national and other stakeholders into a quasi-legislative or multi-lateral bargaining chamber. But, for the first time, for an IO in the insolvency field, the IMF does acknowledge explicitly its reliance on outside experts. The Legal Department recruited seven distinguished international insolvency specialists to represent broadly some of the major global variants in bankruptcy regimes. In its Foreword, *Insolvency Procedures* lists their names and underlines their credentials. Manfred Balz, for instance, was a drafter of the new German insolvency law, the former Chairman of the Group on Bankruptcy of the EU Council and General Counsel of Deutsche Telekom. He was a frequent consultant to the IMF on insolvency reforms in developing countries. Richard Gitlin, an American, is styled a specialist in transnational insolvency law, but Gitlin and his firm had participated in some of the most notable early cross-border cases and had been counsel to the Indonesian government during the Crisis. Professor Junichi Matsushita was a key figure in Japan's insolvency reforms and a delegate from Japan to the UNCITRAL. The credentials of Professor Jean-Pierre Sortais from France, Professor Jay Westbrook from the United States, Philip Wood from England and Professor Christoph Paulus from Germany are likewise rehearsed. This selective consultation of experts from leading economies further ensured that the IMF's dominant stockholders were represented. The Foreword sets a precedent by acknowledging the involvement of the world's main peak association of insolvency practitioners, INSOL.

Like other IO texts, however, the IMF makes no reference to procedures by which its text was created and certainly no reference to other codified norms that show its prior effectiveness.

The IMF norms, therefore, balance the three pillars of rhetorical legitimation quite deftly, drawing on the external warrants of legitimation that are available to it, establishing its expert auspices, and allowing the bulk of the text to unfold with an underlying current of reasonableness and flexibility. All these go a significant distance to compensate for the legitimation deficits the Legal Department fully understood that it confronted—its lack of a deliberative process of representative nations and interests, and its reputation for coercion and unresponsiveness to national difference.

3.5 World Bank: principles

The World Bank Legal Vice-Presidency began to develop global norms after the Asian Financial Crisis (1997/1998) at about the same time as the IMF. The evolution of those norms took much longer (they were not finalized until 2005) and were developed more openly than any of the other IFIs to that date. The Bank essentially combined two recursive approaches—one to earlier scripts by other IOs and their perceived legitimation deficits; the other to reactions from its intended domestic audiences in anticipation of domestic enactment. The Bank's insolvency unit within the legal department released numerous drafts, beginning in 1999. Here we focus on two: its 'Principles and Guidelines for Effective Insolvency and Creditor Rights Systems' released in April 2001 (hereafter *Principles 2001)* and a significantly revised version of 2005 (hereafter *Principles 2005*) (World Bank, 2001*b*, 2005). Like the IMF, the World Bank confronted extensive legitimation deficits. It has been subject to wide-ranging criticism for its use of economic coercion (conditionalities) to obtain law reform as the price for loans to countries in severe financial distress (Stiglitz, 2002; Babb and Carruthers, 2008). This posed a more severe legitimation problem than the regional development banks. The Bank's insolvency initiative drafted *Principles* so as to record, amplify and compensate for its legitimation warrants and deficits, drawing on the range of rhetorical devices.

3.5.1 Formal properties The World Bank chose to articulate its norms as a set of principles for legislators. The 2001 draft, comprising 88 pages in all, included an introduction and an executive summary, 35 'principles' relating to the legal framework for creditors' rights, insolvency, corporate rehabilitation and informal corporate workouts and restructuring, and to the implementation of the insolvency system, that is, the institutional and regulatory framework of an insolvency regime.

The principal content of the draft provides commentary that explains the purposes of each of the principles in numbered paragraphs. Within the commentary

are embedded the rhetorical justifications that go beyond the mere assertion of expert authority (World Bank, 2001*a*, *b*, p. 18).

A shift in philosophy between the versions of 2001 and 2005 is reflected in the formal properties of the *Principles 2005*, a move that responds to criticism by experts in developing countries that earlier drafts were too inflexible and too reminiscent of 'one-size-fits-all' templates. By *2005* no longer does the Bank view global harmonization of insolvency law around best practices as its stated purpose. Harmonization connotes conformity to a single standard or best practice. Now the *Principles* are 'designed to be flexible in their application' as modern practices are 'evolutionary in nature' to 'take account of significant changes and developments' in global markets and domestic settings. Here the Bank implicitly invokes the recursivity of norm-making, through its responsiveness to changed circumstances, as a legitimation warrant in itself. It emphasizes that 'many combinations' of 'structural, institutional social and human foundations' enable a well-functioning market economy and that the Principles 'have been designed to be sufficiently flexible to apply as a benchmark to all country systems'. Furthermore, 'the application of the Principles at the country level will be influenced by domestic policy choices and by the comparative strengths (or weaknesses) of applicable laws, institutions and regulations, as well as by capacity and resources'. Instead of harmonized practices, the Bank points to the 'importance of adopting modern practices that accommodate international business' (World Bank, 2001*a*, *b*, pp. 2–3).

Principles 2005 articulate 33 principles in 5 areas. There is no hierarchy of norms, no statutory language and no reference to individual countries. The mid-level principles are expressed as universals. There is a several page didactic articulation of the theory that drove development and propagation of the *Principles*.

3.5.2 External warrants In 2001 the Bank positioned itself decisively as the heir to the G-22's call for a coordinated global response to financial crisis in 1997. *Principles 2001* sets out nine 'key objectives and policies' which are nearly identical to the eight 'key principles and features of effective insolvency regimes' that the G-22 had articulated 2 years earlier. More broadly, *Principles 2001* asserts at the outset a very detailed description of deliberations that implied it stood incrementally on the shoulders of IOs and private professional groups.[4] In this comprehensive acknowledgement, the Bank managed to

[4]In *Principles (2001)* it announces that the draft had been prepared by World Bank staff working in collaboration with staff from the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, International Finance Corporation, International Monetary Fund, Organisation for Economic Co-operation and Development, United Nations Commission on International Trade Law, INSOL International, and Subcommittee J of the International Bar Association.

suggest, rather ingenuously, that it had orchestrated 'a coalition of international partners'—a global convergence of states, multi-lateral institutions from across the world and international governance organizations.[5] While assertions of a broad-based consensus were questionable at best, the Bank nonetheless strove to manufacture a halo effect that gave every appearance that a consensus existed.

In *Principles 2001* the Bank repeatedly invokes external validation by the practices of nation-states for its recommendations. Sometimes, these are expressed as trends, such as where the document avers that the march of history supports a recommendation. Sometimes, the Bank obtains justification by placing it within the mainstream of legal families. The strongest case occurs when a principle can be shown to be present in both common law and civil law systems. The notion of modernity is invoked from time to time. For instance, the Bank contends that 'modern' market practices drive the similarities between civil and common law rules and justify the recommendations. In several instances, the *Principles 2001* uses major economies as positive exemplars of a norm. For instance, on whether insolvency systems should allow an easy switch from a reorganization to liquidation proceedings, Paragraph 65, relating to Principle 8, notes that 'some countries adopt a unitary approach (e.g. France, Germany) that establishes an interim period for review of the business prospects before deciding on whether to liquidate or rehabilitate the business' (World Bank, 2001*a*, *b*, p. 30). Occasionally, the commentary draws on scholarly comparative studies.

Principles 2005 offers an additional legitimation warrant: principles 'have been revised to take into account the lessons and experience based on a series of national assessments (Reports on Observance of Standards and Codes, or ROSC assessments), and based on feedback and dialogue with the World Bank's international partner organizations and the international community' (World Bank, 2005, p. i). The ROSC assessments refer to intensive country evaluations undertaken by Bank lawyers on whether national laws and practices conform to Bank standards. Hence, there is a systematic diagnostic basis for its judgments that parallels in some respects those earlier reports of the regional IFIs.

3.5.3 Internal organizational warrants The Bank texts strive energetically to underline their extensive reliance on experts and, in its most ambitious compensatory move, to construe its contributors as essentially representative of the world's regions and the technical experts represented by international associations of lawyers and insolvency practitioners. For instance, *Principles 2001* pointed to 'a Task Force and 10 Working Groups, comprised of leading international authorities on insolvency and creditor rights from developed/developing and common/civil law countries'. It indicated that it had conducted 'an

[5]World Bank Draft February 9, 2001.

international dialogue in all regions of the globe through workshops that encompassed at least 700 public and private sector specialists from over 75 countries, at least 60 of which were developing/emerging market economies'. It implied that the expertise of the OECD and of the two leading insolvency international associations (Committee J of the International Bar Association and INSOL) had been placed at its disposal (World Bank 2001*a*, *b*, p. 30).

Principles 2005 places even greater emphasis on the Bank's representativeness. The Bank amplifies the warrant of representativeness by noting that drafts 'were vetted in a series of five regional conferences', 'were placed on the World Bank website for public comment' and 'were used to assess country systems under the ROSC and Financial Sector Assessment Program (FSAP) in some 24 countries in all regions of the world'. The Introduction also indicates that, in 2003, it convened a Global Forum on Insolvency Risk Management involving 'over 200 experts from 31 countries' (World Bank, 2005).

These claims imply that the Bank had adopted a consultative procedure that was open and responsive to diverse audiences across the world. It does not comment on how those consultations actually affected drafting within the Bank. Nor does it seek to validate this particular product by reference to any others that had been produced by the Bank's Legal Department.

3.6 UNCITRAL: legislative guide[6]

Much of the World Bank's effort to legitimate its *Principles* by recourse to regional representation and expert authority was a response to a powerful competitor that thrust itself into the forefront of the international arena. UNCITRAL, whose primary function is to produce global norms for private international law, had already shown itself in 1997 to be effective in developing a Model Law on Cross-Border Insolvency, an area of international trade regulation that had long alerted private groups and the European Union, among others. In 1999, the UNCITRAL Working Group on Insolvency discussed an Australian proposal to build on its initial procedural success by taking on a much tougher challenge—design of bankruptcy systems for the world's enormously divergent legal systems and markets. With the endorsement of the Commission, between 2000 and 2004 the Working Group laboured to produce a *Legislative Guide*, some 384 pages of commentary and recommendations, that was adopted by consensus by the Commission in June, 2004, and obtained assent by the General Assembly of the UN in a resolution that recommended all states consider the *Guide* when amending their law (Guide, 2004, p. 292).

[6]This section draws heavily on (Block-Lieb and Halliday, 2006; Block-Lieb and Halliday, 2007a; Halliday *et al.*, 2009).

3.6.1 Formal properties The *Legislative Guide* describes itself as a reference work 'to be used by national authorities and legislative bodies when preparing new laws and regulations or reviewing the adequacy of existing laws and regulations' (UNCITRAL, 2004, p. 1). The principal weight of UNCITRAL's rhetorical legitimation in the *Guide* rested on its formal structure (Block-Lieb and Halliday, 2006, 2007*a*). In its overall design, the *Guide* adopted a systematic hierarchy of abstractness or specificity which undergirded its claims to universality. At the highest level, the *Guide* sets out nine 'key objectives' which every country should achieve to maximize: 'Although country approaches vary, there is broad agreement that effective and efficient insolvency regimes should aim to achieve the key objectives identified below' (UNCITRAL, 2004, p.10). Yet the *Guide* immediately emphasizes that a variety of designs might satisfy the key objectives, thereby disarming reflex criticisms that this set of norms aimed at universal acceptance seeks to impose rigid standards on widely varying societies and economies.

At the next level, the *Guide* unfolds in a set of chapters that anticipate sections of a statute. Each chapter justifies its importance, follows with a commentary and concludes with a combination of purposes for legislative provisions and explicit recommendations. The purposes function as higher order objectives within a substantive area. The commentary has both pedagogic and political purpose. It raises an issue integral to a topic and establishes its importance. Frequently, it explains aspects of an issue in a didactic exposition. The commentary also offers a space to weigh differing national approaches to the issue. It presents each approach, comments on its merits or problems and proceeds from the comparative analysis to a conclusion. This approach effectively signals to audiences a procedural even-handedness that acknowledges UNCITRAL's sensitivity to cross-national variations, while, at the same time, justifying the decision in the *Guide* to authorize or permit one or more of those variations which are held to be consistent with the key objectives for the entire law and the goals for this particular section of the law. Drafters of the *Guide* explicitly acknowledge where there was major disagreement, they signal to 'losing' parties that their views were heard and openly debated, yet justify why a decision was made not to support a national practice.

In contrast to the ADB and EBRD, however, the *Guide* carefully avoids reference to any positive or negative national exemplars. This cautious effort at neutrality begins with the Glossary of key terms in the *Guide.* To anticipate any appearance of excessively close adherence to the concepts of any particular delegation or legal family or bankruptcy system, the *Guide* adopts terms that are terminological universals; it rejects terms that are too closely associated with a particular legal system; it invents new terms not used in any language so as to embrace a variety of nation-specific labels (e.g. 'insolvency representative'

rather than 'insolvency practitioner' or 'bankruptcy lawyer') and it launders some terms by substituting a euphemism (e.g. 'protection of value') for a term known the world over to be identified with one country (e.g. 'adequate protection' in U.S. bankruptcy law). A similar logic of neutrality occurs within the commentary. Nowhere does the text name countries. It chooses rather to review the law 'in some countries' in comparison to the law 'in other countries'.

At the level of greatest specificity, the *Guide* presents an elaborate variety of rule-types (Block-Lieb and Halliday, 2007*b*) These, too, rise and fall in their level of abstractness and specificity, directness and flexibility, depending on the degree of consensus among the norm-makers. For instance, imperative rule-types express a global consensus that presumes all nations should follow a specified rule. More permissive rule-types demonstrate UNCITRAL's refusal to lock all countries into a normative straitjacket and thus provide intrinsic evidence that the *Guide* is far from a coercive instrument or a mechanism by powerful IOs or sovereign states to impose a 'one-size-fits-all' solution on a world that manifestly resists such undiscriminating impositions.

3.6.2 External warrants The *Guide* reveals a kind of reverse logic of rhetorical legitimation. Of all the IOs in the norm-making for corporate insolvency reforms, it could claim the strongest auspices for standing on the shoulders of giants and, indeed, in its internal working documents it repeatedly acknowledges by name its reliance on the previous products of international financial institutions. This 'pyramidal incrementalism', however, gets cursory mention in the text itself. In two paragraphs it establishes that it organized an international colloquium with INSOL and the International Bar Association to set the agenda, but it singles out no other organizations and makes no reference to prior texts. Even the rehearsal of master principles for the *Guide* makes no mention of the fact that they closely conform to those expressed by the G-22 some 6 years earlier and essentially adopted by the World Bank.

Within the text itself, extensive use is made of rhetorical devices that we have observed in other IO products. Again and again the *Guide* signals that a recommendation reflects universal consensus or at least a heavy preponderance of practice. It is said, for instance, that exceptions for banking and insurance companies from coverage by insolvency laws are 'widely reflected in insolvency laws . . . ', or that insolvency laws 'generally permit' an application for liquidation to be made by debtors, creditors and government agencies (UNCITRAL, 2004, pp. 40–41, 49). Often the Guide relies on a quantitative criterion—that, for instance, 'many insolvency laws identify the minimum threshold of support required from creditors', that a standard is 'used extensively' or that the 'most common approach' to application of the stay is that it begins at commencement of proceedings (UNCITRAL, 2004, pp. 223, 45, 90). And where possible the *Guide* invokes the occurrence of a

trend. On the highly contentious issue of whether secured property should be included in a bankruptcy estate, for instance, the world divides, probably with a preponderance of countries in favour of its exclusion. Although the Guide takes the minority view, it seeks to persuade by stating that this view is 'increasingly recognized' and that inclusion has economic advantages over exclusion.

3.6.3 Internal organizational warrants Arguably UNCITRAL's strongest claims to legitimation inhere in its well-institutionalized structure and the extensive efforts of the Working Group on Insolvency to ensure representation of states and experts. The *Guide* records this claim in decidedly minimalist fashion by stating only that 'in addition to representatives of the 36 member States of the Commission, representatives of many other States and a number of IOs, both inter-governmental and non-governmental, participated actively in the preparatory work' (UNCITRAL, 2004, p. iii). UNCITRAL's auspices may be taken as so well established that textual amplification is unnecessary. As a UN entity, the plurality and representativeness of its proceedings can be taken-for-granted. So, too, can its procedural protections. UNCITRAL's website made available working documents that repeatedly stated which nations and expert groups participated in each set of proceedings. Furthermore, for ministries of justice or finance who were or had been delegates to UNCITRAL's Commission, UNCITRAL's prior track record in producing both a Model Law on Cross-Border Insolvency and large numbers of international lawmaking products enabled it to stand on its own accomplishments without need for reliance on external validation.

4. Logics of rhetorical legitimation

We have shown that of five global norm-makers, each uses rhetorical devices to legitimate the normative texts they produced. Nonetheless, the organizations that produced them did not confront identical legitimation problems, the scripts themselves varied in form and content, and the scripts were published at different times. It is therefore necessary to consider whether there are logics that connect varieties of rhetorical legitimation to types of IOs, to their relationships with each other and to their temporal emergence.

We hypothesized that IOs will develop different configurations of rhetorical devices as their contexts and audiences vary. Table 1 captures variations in rhetorical configurations. These vary over time and in response to the politics of inter-dependency.

4.1 Temporality and rhetorical configurations

The normative scripts on corporate bankruptcy law emerged at different temporal moments. That timing, we argue, affects differences in rhetorical repertoires.

The regional IFIs (EBRD, ADB) entered a field of insolvency lawmaking in response to regional crises and with regional authority. They had no global competitors and no precedents to draw upon. They did have extensive experience with countries in their region, whether across areas of economic regulation and market institution-building, for the EBRD, and across regulatory domains and historically, for the ADB. Their legal departments had limited experience in lawmaking since they served primarily as in-house counsel for IFI lending, investing and technical assistance programs.

The form of their texts reflected both their immediacy of contact with member countries and constraints on their capacity to draft complex norms. Neither IO attempted to formulate broad theoretical justifications for its work. The respective crises in their regions provided their own justifications. Each used diagnostic instruments, but only the ADB published the mid-level standards used as normative criteria for the country evaluations. Neither had the resources to produce a multi-layered framework that included statutory language, in no little part because lawmaking was relatively marginal to both IFIs.

Since neither regional IFI could stand on the shoulders of other institutions, they relied on external warrants to assert their norms were based on 'modern' and 'advanced' practices. What both could manage, in close detail, was to deploy country-by-country evaluations to compare and contrast country's bankruptcy systems, to find positive and negative national exemplars of norms, to apply peer pressure and to shame countries into reform efforts. Since their internal organizational norm-making had no semblance of representative deliberation, they could not record it, although the ADB notes in passing its consultative colloquiums. They do not convene panels of regional experts, but proceed principally on their own authority.

The context for global IFIs was quite different, a difference reflected in their scripts. Global IFIs had a universal jurisdiction. Their charge came explicitly from the G-7 and G-22, clubs of nations responding to the threat of global financial crisis that might have been triggered by the Asian Financial Crisis. They confronted the full variation of all national markets and legal systems. Yet, the Fund and World Bank were not primarily dedicated to law reform and their legal departments had limited scope to match the magnitude of the norm-making task with their institutional capacities. Compounding their difficulties were the legitimation deficits both faced as global norm-makers insofar as their reputation for use of economic coercion eroded their authority and engendered resistance by nationalistic policy-makers.

Both the Fund and the World Bank responded to the G-7 imperatives, originally with somewhat homologous forms: a theoretical justification for the importance of bankruptcy regimes for financial stability and economic growth; an outline of core areas of a bankruptcy system; commentary that justified a

point of view and conclusions or principles that nations were urged to follow. Neither could manage nor attempted a multi-layered normative structure for their texts; nor did they offer statutory language, a particularly demanding task for organizations whose primary function was not lawmaking.

In contrast to the regional IFIs, which could boast extensive data from their country-by-country diagnostic studies, the global IFIs relied extensively on external warrants of IO consensus (especially the World Bank), claims to universality and preponderance of best practices and assertions that their norms were adopted by the most advanced countries with modern bankruptcy systems.

However, the rhetorical construction of both their texts sought to record and magnify, so far as possible, internal warrants of organizational legitimacy—despite the manifest absence of each. The Bank went farthest in this direction, seeking to manufacture a quasi-representativeness, but both IFIs emphasized their reliance on experts, although they proceeded differently in their mobilization. Neither had other successful products to which they could refer.

UNCITRAL entered the field of norm-making for corporate bankruptcy systems a year or two later than the Fund and Bank. It did not do so as an IO undertaking norm-making as a secondary or marginal activity, but as a specialist IO in the field of private international lawmaking, an entity of the United Nations specifically charged with harmonization and later modernization of trade law. It also did so climactically—as the one global IO that could muster a powerful range of legitimation warrants, while avoiding the various legitimation deficits it observed in all its predecessors. Its temporal emergence enabled it simultaneously to stand 'on the shoulders of giants', which were drawn into its deliberations, while claiming the mantle of a global standard-maker, given the deficiencies apparent in prior efforts.

4.2 The politics of inter-dependency

The variety of scripts that emerged from the early 1990s through 2005 arose out of a changing politics of organizational inter-dependency. When the regional IFIs began their work, they entered an undefined field of norm-making. Without precedents, they could not build on prior norms. Without competitors, they had no need to position themselves vis-à-vis other IOs. With paramount authority as IFIs in their own regions, their legitimation warrants were strong; without reliance on coercive techniques to induce reforms, those legitimation deficits were limited. Their texts, therefore, were immanent to the region, making much use of surveys, national exemplars and persuasive techniques reflected on the presentation of reports that reflected regional sensibilities conducive to reforms. Here a geographical division of labour forestalled conflict.

When the global IOs entered the norm-making arena, they confronted different circumstances—and each other. The prize for a global IO, said one

norm-maker, was to be the 'gold standard' in the corporate bankruptcy arena. Incipient competition for that primacy of status required that IOs strategize over inter-organizational alternatives. Would they seek to dominate by eliminating competing IOs? Would they cooperate? Would they compromise in a division of labour?

The IMF and, particularly, the World Bank built incrementally on the authority of the G-22. The IMF produced quickly an in-house document, informed by a few distinguished experts, and thereby swiftly got its text into the public domain as a completed document and into the potential competitive field of IOs as a *fait accompli*. We have seen that its universal jurisdiction required it to maintain universal neutrality as to national exemplars; and the sheer diversity of national legal systems led to relatively abstract conclusions that could be adapted to divergent circumstances. It simply did not try to compete with any other IO on the powerful warrant of representativeness.

The World Bank legal group, however, took a more competitive stance vis-à-vis UNCITRAL. Through 2003 and 2004, the World Bank norm-makers staked a claim for its *Principles* to be the normative gold standard. Since its principal competitor was UNCITRAL, whose hallmark was representativeness of nations and experts, versions of the *Principles* made extensive claims for regional, numerical and organizational consultations, forums and colloquia. The *Principles* conveyed the message that the Bank had obtained representativeness of nations, experts and interest groups by another means.

UNCITRAL entered a populated field of potential competition in 1999 as a specialist IO in drafting legal norms for international trade. UNCITRAL expected to prevail, not only because of its history and international mandate, but also because its process was manifestly representative of all nations and experts. Unlike the ad hoc modes of involving states, experts, consultants and interest groups that were employed by other IOs, its consensus emerged from a long-institutionalized process of formal, parliamentary-like deliberations in which all the other IOs (EBRD, ADB, IMF, World Bank) and interested parties, including expert professional associations, were incorporated. Since the identity of participants was quite manifest in all its publicly available working documents, the *Guide* did not identify them. In part this may have been a defensive move because it attenuated the relationship between organizations such as the IMF and World Bank that were subject to widespread criticism among potential adopters of UNCITRAL norms. Rather UNCITRAL rested upon the UN 'brand', content to allow national law-makers to assume that the quasi-legislative character of universal representation in the UN General Assembly also prevailed in this small, technical unit of the world organization.

Ultimately, the sharp competition between the World Bank and UNCITRAL was mitigated by the intervention of the US State Department (Halliday *et al.*, 2009), which was alarmed by the prospect that competing norms would sow

confusion among policy-makers across the world. It thereby led a three-way set of negotiations among the IMF, World Bank and UNCITRAL. The IMF had earlier decided to fold its efforts into the UNCITRAL process, principally because it thought UNCITRAL had more legitimacy than the Bank and its technical product would be superior. The Bank was much less inclined to yield. In a conflict that ultimately involved the Managing Director and General Counsel of the IMF, the President and Managing Director of the World Bank, the General Counsel of the UN, as well as the US Treasury and US Department of State, a settlement essentially led to a division of labour. UNCITRAL's text would remain unchanged and, ultimately, authoritative. The World Bank would remove all commentary from its *Principles* and publish the principles alone, with an introduction and executive summary. However, the World Bank's *Principles* would include topics not in the UNCITRAL *Guide*, particularly those to do with institutions and creditor rights. Further, the IMF and World Bank agreed that their diagnostic instruments (so-called ROSCS) would conform substantively to UNCITRAL's norms (Halliday *et al.*, 2009).

By 2005, therefore, the normative field had been stabilized. The EBRD deferred to the World Bank Principles and maintained its own regional surveys and reports. The ADB relied upon its standards in its region, informed but not wholly committed to UNCITRAL's *Guide*. The IMF effectively had folded its *Insolvency Procedures* into the UNCITRAL *Guide*. The Bank's legal department kept its *Principles*, but to all intents and purposes they deferred to the most authoritative text in field—UNCITRAL's *Legislative Guide*.

5. Conclusions

This article seeks to open up an agenda for research and theory on the role of texts in the legitimation politics of IOs. While our case focuses on corporate bankruptcy regimes, it generates conclusions that are salient to research and theory in other regulatory domains.

First, the normative products of IOs are inscribed in texts which offer rhetorical repertoires for IOs to promote their legitimacy. These repertoires function to record for diverse audiences the legitimation warrants of an IO, particularly when they are not well known; they can compensate for legitimate deficits in IOs, particularly when they are well known; and they embody their own self-validating devices inherent in the forms of the scripts themselves.

Second, the temporal contexts and relations of interdependency in a policy domain influence the rhetorical configurations and legitimation tasks for IO scripts. Early entries into the domain of international norm-making, especially when they are separated geographically, have the freedom to develop norms salient to their regional member countries, even more so if they do not face

other regional or global competitors. Later entries into a domain, especially if precipitated by a common crisis, confront organizational interdependencies that lead to strategies for competition or complementarity. In part the politics of interdependency are resolved (a) by deference of one script to another, (b) by the ascendancy of one over the other or (c) by a division of labour. The varieties of rhetorical configurations became one means by which these legitimation struggles are resolved.

Third, the greater the perceived legitimation deficits of an IO by its respective audiences, the more likely its textual products will use rhetorical devices to legitimate its norms. Efforts to create a *faux* representativeness, to rest on a foundation of expertise, to assert an historical trend towards modernity, economic development and advanced economies, to claim universality—all offer increments of legitimation in addition to those an IO can muster. Thus, the IMF and World Bank, both with legitimation deficits and both undertaking norm-making that is incidental to their principal organizational activities, used their texts to reclaim authority. In contrast, UNCITRAL, with powerful legitimation warrants and its established record as a global producer of norms for international trade, made very little effort to draw on those parts of the rhetorical repertoire that celebrated internal warrants of the IO itself. Instead, UNCITRAL allowed the formal properties of the text to embody its manifest intrinsic merits, confident that internal warrants were sufficiently well known.

Fourth, the substance and form of the texts themselves convey intrinsic value. They can incorporate a more or less persuasive theory of why these legal norms constructively affect markets; provide policy options and explain why some are considered preferable to others; convey norms at different levels of generality or specificity, and thereby be more adaptable to varieties of law, markets, and the circumstances that connect them and offer drafting language to compensate for the absence of expertise in national ministries and thus justify the norms by their usefulness for law-makers.

Fifth, texts will fail as mediums of reform if they cannot convince experts of their technical auspices and authority. These experts permeate all arenas of regulatory reforms: global norm-making; consultations with national policy-makers; and the implementation of law in practice. Hence, IOs which conventionally integrate technical authorities into their norm-making, such as UNCITRAL, may not need to rely on their normative products to signal such expertise. But IOs with less established technical credentials will be more likely to use rhetorical legitimation to buttress their expert credentials by acknowledgement of the experts they consulted.

Sixth, all rhetorical warrants are not equal. Several are 'cheap' and thus widely used, such as those that lay claim to 'modernity' and being 'advanced' or reflecting the 'trend' of market regulation. Our research indicates that three are critical:

expertise, representation and enactability. Regional expertise appeared to be taken for granted by the regional IFIs; global IOs and especially the World Bank emphasized reliance on technical authorities; UNCITRAL did not, content to rely on its long established reputation for integrating experts in its global lawmaking. Ultimately, it was representativeness—of nations and non-state actors—and the enactable form in which the text was crafted that led to the triumph of UNCITRAL's *Legislative Guide*. At once, the *Guide* offered specific legislative language where domestic policy-makers concurred with its recommendations; and, at the same time, higher level goals and principles so local lawmakers could adapt principles suitable to the specificity of their national situations.

The problem of rhetorical legitimation opens up broader questions for investigation than can be canvassed here. One concerns the variety of legal technologies or rhetorical products available to IOs in general and any IO in particular. No systematic work exists on the varieties of normative genre that offer a higher level repertoire of choices for IOs. What determines which genres are available to a given IO? And how does it choose which of its variety of genre is appropriate for a given set of norms? And within genre, how much variation in the rhetorical repertoire is possible?

A more difficult problem concerns the impact of texts *per se*. Much debated among global norm-makers is the relative value of different types of norms, especially for the most critical audience of domestic policy-makers. Can countries with higher levels of domestic expertise and institutional development make do with higher level principles, since they have the capacity to fill in the details? In contrast, must countries with limited domestic technical expertise rely on more discursive discussion of policy options, and precise statutory drafting to be of practical value? Research must show how matching occurs in practice between the global and local expression of norms.

Elsewhere we have shown that global norm-making and national lawmaking follows a recursive dynamic (Halliday and Carruthers, 2007, 2009). Neither global norms nor national laws spring fully formed into existence. Recursive cycles of norm-making and lawmaking, lawmaking and implementation of law, persist until legal change settles (Halliday, 2009). Future work on global norm-making must disentangle two types of recursive cycles: the first proceeds endogenously, as it were, from reactions by one IO to the scripts of another before much enactment occurs; the second proceeds exogenously, as changes occur in global markets and evolution of the law in powerful and developing countries alike. From the standpoint of legitimacy, the first is particularly interesting because new script-writing cycles unfold in response not to the actuality of enactment but a perception of probable reactions of domestic policy-makers to an IO and its product.

Finally, because these scripts and their embedded technologies are instruments of IO action, they also bear complex relationships to other forms of power that are wielded by IOs. Scripts might bear a greater legitimation burden when the IOs that crafted them have few other forms of leverage to exercise over potential constituencies. In this line of argument, the IMF, World Bank, ADB and EBRD did not need to rely heavily on rhetorical legitimation, because their financial inducements and pressures did much of that work for them. Conversely, UNCITRAL, without any financial leverage over prospective constituencies, crafted its extensive script with brief allusion to its singular tripartite basis of legitimacy, yet wove throughout the *Guide* a complex tapestry of rhetorical and formal constructions. Hence, the contingencies that explain variations between IO organizational attributes and IO textual productions remain to be explicated.

Funding

This work was supported by the National Science Foundation (SES-0214301) and the American Bar Foundation.

Acknowledgements

We express our appreciation to Sigrid Quack and the referees of this journal, other organizers of the Conference on Law and Legitimacy in the Governance of Transnational Economic Relations, Max Planck Institute for the Study of Societies, and participants for their constructive comments on a prior draft.

References

Asian Development Bank (ADB) (2000) *Insolvency Law Reforms in the Asian and Pacific Region*, Manila, Asian Development Bank.

Babb, S. L. and Carruthers, B. G. (2008) 'Conditionality: Forms, Function and History', *Annual Review of Law and Social Science*, **4**, 1–17.

Barnett, M. (1997) 'Bringing in the New World Order: Liberalism, Legitimacy, and the United Nations', *World Politics*, **49**, 526–551.

Block-Lieb, S. and Halliday, T. C. (2006) *Legitimacy and Global Lawmaking*, Social Science Research Network, Fordham Law Legal Studies Research Paper No. 952492, accessed at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=952492 on October 20, 2009.

Block-Lieb, S. and Halliday, T. C. (2007a) 'Harmonization and Modernization in Uncitral's Global Legislative Guide on Insolvency Law', *Texas International Law Journal*, **42**, 481–514.

Block-Lieb, S. and Halliday, T. C. (2007b) 'Incrementalisms in Global Lawmaking', *Brooklyn Journal of International Law*, **XXXII**, 851–903.

Cronin, B. and Hurd, I. (2008) 'Introduction'. In Cronin, B. and Hurd, I. (eds) *The United Nations Security Council and the Politics of International Authority*, New York, Routledge, pp. 3–22.

European Bank for Reconstruction and Development (EBRD) (1999) 'Transition Report 1999: Ten Years of Transition', London, EBRD.

European Bank for Reconstruction and Development (EBRD) (2000) 'Focus on Insolvency Law', *Law in Transition*, Spring 2000, 25–75.

Franck, T. M. (2006) 'The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilbrium', *American Journal of International Law*, **100**, 88–106.

G-22 (1998) Report of the Working Group on International Financial Crises, Washington, DC, World Bank.

Halliday, T. (2009) 'Recursivity of Global Normmaking: A Sociolegal Agenda', *Annual Review of Law and Social Science*, **5**, 263–289.

Halliday, T. C. (2007) 'Legitimacy, Technology, and Leverage: The Building Blocks of Insolvency Architecture in the Decade Past and the Decade Ahead', *Brooklyn Journal of International Law*, **XXXII**, 1081–1102.

Halliday, T. C. and Carruthers, B. G. (2007) 'The Recursivity of Law: Global Normmaking and National Lawmaking in the Globalization of Bankruptcy Regimes', *American Journal of Sociology*, **112**, 1135–1202.

Halliday, T. C. and Carruthers, B. G. (2009) *Bankrupt: Global Lawmaking and Systemic Financial Crisis*, Palo Alto, Stanford University Press.

Halliday, T. C., Block-Lieb, S. and Carruthers, B. G. (2009) 'Attaining the Global Standard'. In Halliday, T. C. and Carruthers, B. G. (eds) *Bankrupt: Global Lawmaking and Systemic Financial Crisis*, Palo Alto, Stanford University Press, pp. 122–165.

Hurd, I. (2002) 'Legitimacy, Power, and the Symbolic Life of the UN Security Council', *Global Governance*, **8**, 35–51.

Hurd, I. (2007) *After Anarchy: Legitimacy and Power in the United Nations Security Council*, Princeton, Princeton University Press.

International Monetary Fund (IMF) (1999) *Orderly and Effective Insolvency Procedures: Key Issues*, Washington, DC, International Monetary Fund.

Meyer, J., Boli, J., Thomas, G. and Ramirez, F. (1997) 'World Society and the Nation-State', *American Journal of Sociology*, **103**, 144–181.

Stiglitz, J. E. (2002) *Globalization and Its Discontents*, New York, Norton.

Suchman, M. C. (1995) 'Managing Legitimacy: Strategic and Institutional Approaches', *Academy of Management Review*, **20**, 571–610.

Suddaby, R. and Greenwood, R. (2005) 'Rhetorical Strategies of Legitimacy', *Administrative Science Quarterly*, **50**, 35–67.

Tyler, T. (2001) 'A Psychological Perspective on the Legitimacy of Institutions and Authorities'. In Major, J. T. J. A. B. (ed) *The Psychology of Legitimacy: Emerging*

Perspectives on Ideology, Justice, and Intergroup Relations, Cambridge, Cambridge University Press.

United Nations Commission on International Trade Law (UNCITRAL) (2004) *UNCITRAL Legislative Guide on Insolvency*, New York, United Nations.

World Bank (2001a) *Key Principles and Features of Effective Insolvency Regimes*, Washington, DC, World Bank.

World Bank (2001b) *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems*, Washington, DC, World Bank.

World Bank (2005) *Principles for Effective Insolvency and Creditor Rights Systems*, Washington, DC, World Bank.