



**Book Review: 'Personal Insolvency in the 21<sup>st</sup> Century: A comparative analysis of the US and Europe'** by Iain Ramsay –Oxford and Portland: Hart Publishing 2017 (ISBN: 9781849468091)

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Iain Ramsay, in his most recent book, *Personal Insolvency in the 21<sup>st</sup> Century – A Comparative Analysis of the US and Europe*, seeks to analyse further and examine the political and institutional development of personal insolvency law and policy in different legal systems since 1979 which have “witnessed a remarkable cycle of reform.”<sup>1</sup> In the aftermath of the Great Recession of 2008 and the subsequent euro-zone financial crisis, which accelerated insolvency law reform within Europe, legal responses to the problem of consumer over-indebtedness gained huge momentum and have varied significantly from jurisdiction to jurisdiction. Many differences exist regarding “access criteria, institutional frameworks, financing and discharge conditions.”<sup>2</sup>

In recent decades there has also been a growing interest among bankruptcy scholars in comparative analysis of consumer insolvency regimes. Ramsay's approach is interdisciplinary drawing on economic and socio-legal perspectives. His expertise in comparative insolvency law is again clearly evident here as it is in all his works. He has been involved in much empirical research in this area<sup>3</sup> together with being co-author of a World Bank Report on the Treatment of the Insolvency of Natural Persons<sup>4</sup> which forms the foundation for future policy in this area. Therefore, this book is a most valuable read for all those interested in the development of personal insolvency legal regimes who will find it both insightful and inspiring from an academic, legal or policy-makers' perception and also to those interested more generally in banking and finance law.

The book is primarily devoted to a comparative overview of consumer insolvency regimes in different legal systems including the United States (Chapter 2) and Europe, concentrating in particular on case studies of the individual bankruptcy law in England and Wales (Chapter 3), France (Chapter 4) and Sweden (Chapter 5). It assesses the relationship between the different

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<sup>1</sup> I. Ramsay, *'Personal Insolvency in the 21<sup>st</sup> Century: a Comparative Analysis of the US and Europe'* (Oxford: Hart Publishing, 2017) 7.

<sup>2</sup> Ramsay (n1) 6.

<sup>3</sup> Ramsay has conducted ground breaking empirical research on personal insolvency in Canada and was also a member of the Canadian Insolvency Task Force (2000-2002).

<sup>4</sup> J Kilborn, J Garrido, C Booth, J Neimi and I Ramsay, 'World Bank Report on the Treatment of Insolvency of Natural Persons' World Bank, Insolvency and Creditor/Debtor Regimes Task Force, 2014.

legal approaches to consumer indebtedness, bankruptcy and their economic, social and political context. Interestingly, common threads do appear across the different legal systems.

Ramsay has chosen these countries for various reasons, first stating "the US credit and bankruptcy system often serves as an international mode to be either emulated or avoided"<sup>5</sup> although he reiterates "the US system is a continuing point of reference" for European policymakers.<sup>6</sup> Secondly, he discusses England and Wales which, although sharing similar legal origins regarding discharge of debt as the US, followed a different trajectory from the US in personal insolvency law.<sup>7</sup> Thirdly, France, as it has "developed a unique system to manage over-indebtedness as a model for developing countries."<sup>8</sup> Finally, Sweden which represents a personal insolvency system within a "Scandinavian model of capitalism and social welfare."<sup>9</sup> The book draws on insights from historical institutionalism to illustrate the role of timing, path dependency and unintended consequences in the development of individual bankruptcy law.

The structure of the book is as follows; **Chapter 1:** The book begins with an introductory chapter which examines the rise of personal insolvency law, influenced in particular by factors such as the massive change in the role of household debt in the economy, the increasing influence of neo-liberalism which led on to a period of massive credit and capital liberalisation. In the aftermath of the Great Recession of 2008 and the euro-zone crisis the 'troika' (EU Commission, IMF and European Central Bank) recommended the introduction and revision of both corporate and individual insolvency laws in many European countries. As there was no international standard in place for personal insolvency law and very little empirical study of consumer insolvency schemes in Europe, significant differences began to exist within the European systems and also with the US system. Ramsay offers many explanations of the development of personal insolvency law including functionalism, legal changes responding to the needs of society,<sup>10</sup> interest group analyses, national cultural values and legal origins. His analysis would also suggest that the legal regimes and policy making have mainly been reactionary and experimental with international agencies often requiring policy modifications as they went along.<sup>11</sup>

**Chapter 2:** This chapter discusses the US swift fresh start and entrepreneurialism which attract and influence European policymakers. The US is a market-orientated society which provides a swift discharge, by apportioning market risks to creditors in order to ensure the re-entry of debtors to the credit market.<sup>12</sup> Creditors have, however, influenced both 'law in the books' and 'law in action'. The history of the development of the law has had conflicting narratives about debtors and the terms of discharge of debts that would be allowed.<sup>13</sup> There have also been many variations of the law by judges and practitioners which at times have been adopted into legislation. The author describes the US bankruptcy history as the

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<sup>5</sup> Ramsay (n1) 6.

<sup>6</sup> Ramsay (n1) 7.

<sup>7</sup> Ramsay (n1) 7.

<sup>8</sup> Ramsay (n1) 34.

<sup>9</sup> Ramsay (n1) 7.

<sup>10</sup> I. Ramsay, 'Functionalism and Political Economy in the comparative Study of Consumer Insolvency: An Unfinished Story from England and Wales' (2006) 7, *Theoretical Inquiries in Law* 625-666.

<sup>11</sup> Ramsay (n1) 6.

<sup>12</sup> J Neimi, 'Collective or individual? Construction of Debtors and Creditors in Consumer Bankruptcy' in J Neimi, I Ramsay and W Whitford (eds), *Consumer Bankruptcy in Global Perspective* (Oxford, Hart Publishing, 2003) 41-60.

<sup>13</sup> Ramsay (n1) 34.

“unintended consequences and the limits of institutional design”.<sup>14</sup> Many justifications for liberal discharge have been argued such as entrepreneurialism, preserving consumer spending and providing a social safety net. However, the regime developed into a complex law which Ramsay describes as ‘an adaptive evolutionary process’.<sup>15</sup>

**Chapter 3:** This chapter moves on to analyse how England and Wales adjusted its personal insolvency law to the growth of the consumer debtor. Ramsay describes the process of judicial drifting, layering and conversion whereby private professionals converted a statutory remedy designed for businesses into a mass produced partial remedy for consumers which evolution he describes “as pragmatic adjustment, celebrating the ability of the law to meet the needs of a changing society”.<sup>16</sup> The concept of the fresh start in England and Wales was influenced in particular by the Enterprise Act 2002 which was originally designed to stimulate entrepreneurialism rather than provide a safety net for consumers.<sup>17</sup> The author questions if this solution continues to serve the public interest, suggesting that although the government appears willing to review corporate insolvency,<sup>18</sup> it demonstrates little interest in a comprehensive review of the complex personal insolvency law landscape presently in place in England and Wales.

**Chapter 4:** The author describes how in “France over-indebtedness has become a field of law with its own distinct actors, institutions and constructions of debtors and creditors”<sup>19</sup>. There have been many phases of reform during this period, from debt repayment to debt discharge.<sup>20</sup> However, overall in France the treatment of over-indebtedness is part of the overall regulation of the French credit market. Ramsay emphasises the unique and continuing role taken by the Bank of France as manager of the process which was originally described from the outset as ‘experimental’.<sup>21</sup> This role has been criticised by the *Cour Des Comptes* (National Audit office) who has argued that this is not a proper role for a central Bank. This critique has fallen on deaf ears. Ramsay also highlights the further important characteristic of French policy making which is the State management of narratives about debtors and over-indebtedness.

**Chapter 5:** Sweden is described by the author as “a relatively strict creditor-orientated system”<sup>22</sup> with high entry barriers leading to a relatively low rate of applications *per capita* for debt resolutions as compared with other European countries. Ramsay states “debt relief is not conceptualised as a benefit that is available to a broad cross section of the population”<sup>23</sup> suggesting household debt restructuring does not fit neatly into a welfare state model of

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<sup>14</sup> Ramsay (n1) 34.

<sup>15</sup> Ramsay (n1) 67.

<sup>16</sup> Ramsay (n1) 104.

<sup>17</sup> See further discussion Iain Ramsay ‘*Individual Bankruptcy: Preliminary Findings of a Socio Legal Analysis*’, 37 *Osgood Hall Law Journal*, 15, 17-18 (1999) & Ian Ramsay, ‘*Comparative Consumer Bankruptcy*’ *University of Illinois Law Review*, 7, 241-274 (2006).

<sup>18</sup> See ‘Summary of Responses: A Review of the Corporate Insolvency Framework September, 2016 The Insolvency Service [https://www.gov.uk/uploads/system/uploads/attachment\\_data/file/525523/A](https://www.gov.uk/uploads/system/uploads/attachment_data/file/525523/A) accessed 18 July 2018.

<sup>19</sup> Ramsay (n1) 106.

<sup>20</sup> See further discussion Iain Ramsay ‘*A tale of two debtors: Responding to the shock of over-indebtedness in France and England – A Story from the Trente Piteuses*’ (2012) 75, 212-248.

<sup>21</sup> Ramsay (n1) 111.

<sup>22</sup> Ramsay (n1) 8.

<sup>23</sup> Ramsay (n1) 150.

redistribution.<sup>24</sup> He also emphasises an important recurring theme appears to be maintaining the reputation of Sweden as having "a good payment culture".

**Chapter 6:** This chapter questions whether consumer insolvency regimes are actually moving towards a common approach. Ramsay believes that an international 'common sense' in personal insolvency law is emerging with the likelihood of greater convergence on an EU individual bankruptcy paradigm.<sup>25</sup> The EU has proposed harmonisation of aspects of individual insolvency as part of a strategy of promoting entrepreneurialism within a single market. This draft EU Directive on Insolvency<sup>26</sup> will require jurisdictions to reduce barriers to access to insolvency for entrepreneurs as part of a European strategy of promoting entrepreneurialism.<sup>27</sup> He also suggests that this emerging European paradigm of individual insolvency includes the primacy of a repayment plan where possible with perhaps the possibility in law or practice of a swift discharge for no-income no-asset debtors.<sup>28</sup> However, Ramsay also highlights continuing uncertainties in the paradigm including the scope of separating entrepreneurs which creates potential for further reform.<sup>29</sup>

**Chapter 7:** This chapter concludes by posing the question: does the development of personal insolvency law since the early 1980's represent a progressive step forward? It also discusses the future of personal insolvency in 21<sup>st</sup> Century with the author suggesting that a liberal insolvency discharge can actually add to, and continue to sustain, a debt economy.

This book comes highly recommended. The text is produced to an outstanding standard and is a major contribution to scholarship, representing an excellent commentary and a much needed analysis with a most informative account of recent reforms in personal insolvency law. The author also includes throughout the book many illustrative and informative tables providing relevant information which is very helpful to the reader. He concentrates on the four jurisdictions as outlined but has in sections referred to many other jurisdictions, for example, the German system which has been heavily criticised<sup>30</sup> and also recent Scottish reforms which he states claim to have developed a class insolvency system.<sup>31</sup> He also mentions the recent Irish reforms which he describes as "a fussy and complex Irish statute"<sup>32</sup> even though it has been suggested elsewhere that the 2012 Irish legislation<sup>33</sup> (together with subsequent amendments<sup>34</sup>) has led to enormous progress.<sup>35</sup> I really look forward to Ramsay extending his

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<sup>24</sup> Ramsay (n1) 150.

<sup>25</sup> See further discussion I Ramsay, 'Towards an International Paradigm of Personal Insolvency Law? A Critical view' QUT Law Review 2017, 17(1) 15-39.

<sup>26</sup> See Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU COM (2016) 723 22.11.2016).

<sup>27</sup> Ramsay (n1) 149.

<sup>28</sup> Ramsay (n1) 185.

<sup>29</sup> See further discussion I. Ramsay 'Towards an international paradigm of personal insolvency Law? A critical view' QUT Law Review (2017) 17 (1), 15-39.

<sup>30</sup> See further J Kilborn 'Reflections of the World Bank's Report on the Treatment of Insolvency of Natural Persons in the Newest Consumer Bankruptcy Laws: Colombia, Italy, Ireland' Pace International Law Review 2014, 26(3).

<sup>31</sup> Ramsay (n1) 153.

<sup>32</sup> See further discussion J. Spooner, 'Long Overdue What the Belated Reform of Irish Personal Insolvency Law Tells us about Comparative Consumer Bankruptcy' (2012) 86 American Bankruptcy Law Journal 243; J. Spooner, 'Sympathy for the Debtor? The Modernization of Irish Personal Insolvency Law' Insolvency Intelligence 97, 2012, 25 (7).

<sup>33</sup> Personal Insolvency Act 2012.

<sup>34</sup> Personal Insolvency (Amendment) Act 2015.

<sup>35</sup> See further discussion K. O'Brien, 'Overview of the Irish Personal Insolvency Regime in 2018' (2018) 25 (4) Commercial Law Practitioner 94-99.

extensive knowledge and experience for further analysis of these jurisdictions and others in further publications in the near future.

