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The process of refounding European insolvency framework

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Federico F. Pincione
PHD CANDIDATE

PROPOSITIONS – The process of refounding European insolvency frameworks –

1. The process to reform and actualize bankruptcy laws at local and regional level is ongoing and should be given high priority worldwide.
2. The process to reform European bankruptcy laws at local and regional level should be defined as a "refoundation" as it is based on principles which are distant, if not in conflict, with the ones that have been applied in the area for centuries.
3. Upon shaping the key principles of such "refoundation" of European insolvency regulations great care should be adopted in borrowing tools from the American system.
4. It is not correct to say that bankruptcy laws in the US have always been forgiving of debtors; European and American laws should be considered to have been originated by the same stigmatizing factors and share a common background.
5. Change in key principles of American bankruptcy laws derived from change in key policies and within the American society.
6. Europe should not try to obtain the same results reached within the American system and Economy through the modification, "from the top", of bankruptcy Regulations without first guiding change within European societies.
7. Easy discharges (and excessively forgiving statutes) can be as harmful for societies and economies as the application of excessively stigmatizing tools. Ample debt forgiveness incentivizes debtors to take advantage of the system and to be reckless.
8. Supporting zealously reckless debtors leads to "bankruptcy kintsugis" and causes high costs for societies and local economies.
9. It is not reasonable or useful to "stigmatize" the "stigma" on bankruptcy laws. Stigmatizing tools have served an important role within European societies and have been an invaluable protection to European economies. Change must be sought through a step by step approach over time.
10. The reforms and current structure of American Bankruptcy laws show how difficult it is to harmonize local frameworks.

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