

Joseph Spooner

Book review: comparative perspectives of consumer over-indebtedness - a view from the UK, Germany, Greece, and Italy, editor: Federico Feretti.

**Article (Accepted version)
(Refereed)**

Original citation:

Spooner, Joseph (2016) Book review: comparative perspectives of consumer over-indebtedness - a view from the UK, Germany, Greece, and Italy, editor: Federico Feretti. *International Insolvency Review*, 25 (3). pp. 241-244. ISSN 1099-1107

DOI: [10.1002/iir.1261](https://doi.org/10.1002/iir.1261)

© 2016 INSOL International and John Wiley & Sons, Ltd

This version available at: <http://eprints.lse.ac.uk/68518/>

Available in LSE Research Online: December 2016

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's final accepted version of the journal article. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

Comparative Perspectives of Consumer
Over-Indebtedness - A View from the UK,
Germany, Greece, and Italy,
Editor: Federico Feretti. (The Hague,
Eleven International Publishing, 2016), 390
pp.
Price £78.50. ISBN 978-94-6236-673-2

Joseph Spooner*

Assistant Professor, Law Department, London School of Economics

This timely edited volume of twenty-one chapters emanates from a European Commission Civil Justice Programme project- “Consumer Over-indebtedness, Responsible Lending and the Insolvency of Natural Persons: the need for a Comprehensive Reform to Protect Consumers in Financial Difficulty” - featuring collaboration among academics in the UK, Germany, Greece and Italy. The papers themselves derive from presentations delivered by academics and other expert stakeholders at workshops organised by the research project’s leaders.¹ These origins mean that this is a particularly solidly structured volume on household over-indebtedness and legal and regulatory responses to this problem. The book first outlines the position of EU law in relation to consumer (and mortgage) credit regulation, cross-border insolvency, and unfair contract terms (with a particularly interesting discussion of the “Spanish mortgage saga” CJEU case law). It divides subsequently into symmetrical sections composed of chapters discussing similar issues in respect of each of the four countries studied. The sections thus consider three primary themes:

- empirical conditions of household over-indebtedness
- *ex ante* consumer protection regulation of household lending (including contract law provisions)
- *ex post* treatment of household over-indebtedness through personal insolvency law

This approach means that the focus of the book lies firmly on the social and economic phenomenon of over-indebtedness, with contract law, consumer protection legislation, credit regulatory norms and personal insolvency law treated as policy responses to this problem,

* Email: j.t.spooner@lse.ac.uk

¹ In the interests of full disclosure, I note that I provided a presentation at one such workshop, though I did not contribute to the edited volume.

more so than as topics in their own right. Though undoubtedly informative in relation to the law, readers seeking a detailed account of personal insolvency legislation and doctrine may look elsewhere. Those following the comparative consumer bankruptcy tradition² of exploring household finance policy in context will find much of interest, however.

Within this core structure, chapters approach similar issues from different perspectives in respect of each jurisdiction, while authors adopt a range of methods and styles. Some chapters provide primarily descriptive accounts of contemporary empirical conditions and legal positions. This material provides valuable information for policymakers and scholars, particularly those wishing to update their knowledge of new personal insolvency systems created in post-crisis Greece and Italy. It also exhibits difficulties inherent to a work written by a diverse range of international contributors, however, and depending on background knowledge readers occasionally may face a steep learning curve on encountering unfamiliar language and legal concepts. Other authors adopt more analytical and evaluative approaches, pinpointing criticisms of national legal regimes (Tribe, Chapter 7; Rott, Chapter 10; Sutschet, Chapter 11; Mouzouraki, Chapter 13; Comparato, Chapter 21) or testing hypotheses regarding the causes of over-indebtedness (Kempson, Chapter 4; Anderloni and Vandone, Chapter 17). This material offers greatest insight in illustrating key points relevant to household debt policymaking, highlighting for example the frequent disjuncture between empirical realities of household over-indebtedness and policymakers' assumptions when enacting legislation.

The book's systematic structure allows the reader to engage in direct comparison of empirical conditions and legal regimes in each country (though this task falls on the reader, since most contributions focus primarily on a single country). Accounts from all countries tell broadly similar stories of an expansion of household debt following deregulation and financialisation in recent decades, albeit an expansion that has moved at varying rates in different countries (Gibbons, Chapter 5; Wruuck, Chapter 9; Comparato, Chapter 21). This trend has coincided with the emergence over time of the problem of mass household over-indebtedness, and has spurred reforms to regulatory regimes and personal insolvency laws, which the book documents comprehensively. More recently, the widespread acceptance of the regulatory principle of responsible lending (covered in Chapters 2, 6, 10, and 14), coupled with banking crises and credit crunch, are attributed with stemming the flow of bank debt to households in all countries. Chapters discussing the UK and Germany illustrate how this has led to novel household debt

² See e.g. Iain Ramsay and others, *Consumer Bankruptcy In Global Perspective* (Hart Publishing 2003); Johanna Niemi and others, *Consumer Credit, Debt And Bankruptcy: Comparative And International Perspectives* (Hart Publishing 2009); Wolfram Backert and others, *Contemporary Issues In Consumer Bankruptcy* (1 edition, Peter Lang GmbH 2013)

problems, where past excesses of bank credit have been replaced by “deficit budget” over-indebtedness in the form of arrears in respect of essential expenses such as utility bills, rent and payments owed to the austerity-oriented State (Elsom, Chapter 3; Rott, Chapter 10). These common problems highlight the need for law to respond to constantly changing circumstances of household debt, while also cautioning of the limited capability of the law to address debt problems in the face of wider conditions of declining living standards (Gibbons, Chapter 5; Anderloni and Vandone, Chapter 17).

An ambition of the research project, raised in the book’s introduction, is to answer the question of “to what extent [is] an integrated but reformed EU personal insolvency regime... necessary?” This question is particularly salient as the European Commission works currently on its legislative proposal on substantive insolvency law. The book leans towards answering this question in the positive - at least in Federico Feretti’s introductory chapter - but declines to propose a direct answer. It nonetheless provides extensive evidence to weigh in evaluating whether EU consumer insolvency legislation is appropriate. To this reader, the proof presented in the book renders the argument for EU harmonisation somewhat unconvincing, in demonstrating tremendous challenges that any such project would face. The volume outlines significant differences in household debt conditions across countries (and even considerable difficulty in comparative measurement of the fluidly defined concept of over-indebtedness), while also illustrating how such conditions are shaped by a wide range of varying national policy responses outside of insolvency law. For example, two chapters point to unique mixtures of idiosyncratic national factors as both producing the “German exception” of relatively low over-indebtedness levels (Wruuck, Chapter 9), and keeping UK post-financial crisis arrears levels below those in crisis-hit Ireland and in line with those in crisis-immune Norway (Kempson, Chapter 5). A greater cause of concern is that a reader familiar with comparative consumer bankruptcy literature and recent decades’ development of European laws will shake her head on seeing Italian and Greek reforms repeat errors previously made in other jurisdictions (such as the establishment of costly and slow procedures and over-zealous safeguards against abuse). Accounts from these jurisdictions illustrate how predictable problems arose in the early operation of new regimes, necessitating further corrective amendments (Mouzouraki, Chapter 13; Comparato, Chapter 21). These discussions confirm trends observed in prior comparative consumer bankruptcy literature regarding tendencies for policymakers not to heed lessons from bankruptcy scholarship,³ and to adopt overly conservative approaches initially before subsequently accepting the necessity of more

³ See e.g. Margaret Howard, ‘Bankruptcy Empiricism: Lighthouse Still No Good’ (2000) 17 Bankruptcy Dev J 425

progressive reforms.⁴ This experience suggests the adoption of EU legislation risks abandoning hard-learned lessons at national level, in a context in which continent-wide empirical evidence capable of shaping the law remains limited. Furthermore, the complexity of enacting EU legislation means there may be only one chance to get things right, with limited scope for the tweaks and amendments possible at national level. This latter point also raises questions regarding the intricacy of law-making processes in the intensely politicised area of household debt law reform,⁵ a topic which the book could potentially have considered in more detail.

This volume neither draws final conclusions in relation to these concerns, nor offers radical solutions. Perhaps this is a task for the final conclusions of the research project of which this volume forms part. The informative and insightful book Ferretti and contributors have produced nonetheless contains plenty to fuel anticipation for such conclusions, and in the meantime provides thought-provoking material for a reader pondering these concerns and more. It is a fitting addition to existing comparative consumer bankruptcy literature and also adds a welcome focus on the consumer to contemporary policy discussions regarding debt's place in the economy.

⁴ See e.g. Jay Lawrence Westbrook, 'Local Legal Culture And The Fear Of Abuse' (1998) 6 *Am Bankruptcy Inst Law Rev* 25; Jason J Kilborn, 'Still Chasing Chimeras But Finally Slaying Some Dragons In The Quest For Consumer Bankruptcy Reform' (2012) 25 *Loyola Consum Law Rev* 1; Jason J Kilborn, 'Two Decades, Three Key Questions, And Evolving Answers' In *European Consumer Insolvency Law: Responsibility, Discretion, And Sacrifice* in Niemi et al (eds.) *Consumer Credit, Debt and Bankruptcy* (Hart Publishing 2009)

⁵ See e.g. Iain Ramsay, 'Interest Groups And The Politics Of Consumer Bankruptcy Reform In Canada' (2003) 53 *Univ Tor Law J* 379; Joseph Spooner, 'Long Overdue: What The Belated Reform Of Irish Personal Insolvency Law Tells Us About Comparative Consumer Bankruptcy' (2012) 86 *Am Bankruptcy Law J* 243; A Mechele Dickerson, 'Regulating Bankruptcy: Public Choice, Ideology, &(and) Beyond' (2006) 84 *Wash Univ Law Rev* 1861