DYNAMIC EQUILIBRIUM AND INSTITUTIONAL COORDINATION IN CHINESE BANKRUPTCY LAW: A REVIEW OF GAO SIMIN'S BANKRUPTCY LAW IN THE MIRROR: A DYNAMIC EQUILIBRIUM BETWEEN EFFICIENCY AND FAIRNESS PRINCIPLES

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Abstract:

In Bankruptcy Law in the Mirror: A Dynamic Equilibrium Between Efficiency and Fairness Principles, Professor Gao Simin develops a framework of dynamic equilibrium to explain how efficiency and fairness are jointly constituted within Chinese bankruptcy law. The book's central contribution is its reconceptualization of efficiency and fairness as mutually interdependent dimensions of insolvency governance, whose salience varies across procedural contexts. Building on this analytical framework, this review assesses the monograph's theoretical innovation, practical significance, and methodological implications for ongoing bankruptcy reform in China. It further examines the framework's internal limitations and tensions between insolvency law and external economic regulatory regimes, alongside its applicability boundaries for digital platform insolvency.

Keywords: *bankruptcy law; efficiency and fairness principles; dynamic equilibrium; insolvency proceedings; Chinese bankruptcy reform*

I. INTRODUCTION

China's bankruptcy system is currently undergoing an important period of institutional transformation. With the ongoing revision of the Enterprise Bankruptcy Law of the People's Republic of China, the expansion of pre-reorganization practice, and the gradual emergence of personal bankruptcy pilot programs, bankruptcy law has become an increasingly important component of China's broader market reform and business-environment modernization efforts. Against this background, Professor Gao Simin's *Bankruptcy Law in the Mirror: A*

Dynamic Equilibrium Between Efficiency and Fairness Principles[1] reconceptualizes a range of seemingly disconnected reform debates—including delayed filing, pre-reorganization, cramdown, and information disclosure—as manifestations of a common problem of collective coordination under conditions of financial distress.

The book is neither a conventional doctrinal textbook nor a collection of loosely connected essays. Rather, it is a carefully structured academic monograph that seeks to develop a coherent jurisprudential account of modern bankruptcy law. Integrating insights from civil law theory, commercial law, law and economics, and comparative insolvency scholarship, Professor Gao argues that bankruptcy law should be understood as a legal system that continuously recalibrates the relationship between efficiency and fairness in response to changing procedural circumstances and stakeholder interests.[2]

The book is organized into an Introduction and ten substantive chapters addressing bankruptcy filing authority, delayed bankruptcy filings, personal bankruptcy, execution-to-bankruptcy conversion, pre-reorganization[3], cramdown rules,[4] debtor self-management,[5] information disclosure, bankruptcy-efficiency evaluation, and financial derivatives safe harbor rules. Although each chapter focuses on a distinct doctrinal or institutional issue, the work is unified by a coherent analytical framework centered on the dynamic equilibrium between efficiency and fairness principles. This structure allows Professor Gao to maintain theoretical continuity across otherwise fragmented doctrinal issues.

Rather than approaching bankruptcy law as a collection of isolated procedural rules, Professor Gao seeks to articulate a bankruptcy regime

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1 GAO SIMIN (高丝敏), JINGXIANG ZHONG DE POCAN FA: XIAOLÜ YU GONGPING YUANZE DE DONGTAI PINGHENG (镜像中的破产法: 效率与公平原则的动态平衡) [BANKRUPTCY LAW IN THE MIRROR: THE DYNAMIC BALANCE OF EFFICIENCY AND FAIRNESS PRINCIPLES] (2026).

2 Gao, *supra* note 1, at 338–47.

3 Elizabeth Tashjian, Ronald C. Lease & John J. McConnell, *Prepacks: An Empirical Analysis of Prepackaged Bankruptcies*, 40 J. FIN. ECON. 135 (1996).

4 H. Nimmer, *Negotiated Bankruptcy Reorganization Plans: Absolute Priority and New Value Contributions*, 36 EMORY L.J. 1009 (1987).

5 George G. Triantis, *A Theory of the Regulation of Debtor-in-Possession Financing*, 46 VAND. L. REV. 901 (1993).

that simultaneously promotes efficient asset allocation and protects the equitable satisfaction of creditors' claims, thereby unifying the internal logic of bankruptcy proceedings with the broader objectives of bankruptcy legislation. Consequently, this review evaluates the monograph through three interconnected dimensions: its theoretical originality in reconceptualizing the relationship between efficiency and fairness; its practical reform value in addressing institutional bottlenecks confronting contemporary Chinese insolvency reform; and its methodological adaptation of comparative insolvency theories to China's distinctive legal and judicial environment. Beyond restating Professor Gao's argument, this review also considers several questions left open by the book, including alternative ways of understanding the efficiency–fairness relationship and the challenges posed by newer forms of insolvency such as digital-platform failures.

II. THE PRIMARY INSIGHTS IN THE BOOK

A. Bankruptcy Law "in the Mirror"

The theoretical foundation of the book rests upon Professor Gao's metaphor of bankruptcy law as a "mirror." Bankruptcy law, in this account, should not be understood as an isolated or exceptional regime detached from ordinary civil and commercial law. [6] Rather, insolvency proceedings render visible the underlying structure of market relations under conditions of financial distress, exposing the distributive choices and coordination problems embedded within doctrines that appear neutral in ordinary times, such as contractual autonomy, limited liability, and shareholder control.[7]

Building on Thomas H. Jackson's creditors' bargain theory[8], the book conceptualizes bankruptcy law as a hypothetical ex ante agreement that rational creditors would have reached under conditions of full coordination. Because such coordination is infeasible once insolvency occurs, bankruptcy law supplies a mandatory collective mechanism designed to approximate that hypothetical agreement in practice.

Importantly, however, the book emphasizes that this hypothetical bargain does not displace the substantive entitlements created under

6 Gao, *supra* note 1, at 3–4.
7 Gao, *supra* note 1, at 5–7.
8 Thomas H. Jackson, *Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain*, 91 YALE L.J. 857 (1982).

non-bankruptcy law. Drawing on Butner v. United States,[9] it contends that rights defined outside bankruptcy should generally remain effective within insolvency proceedings unless deviation is justified by explicit bankruptcy rules or the functional necessities of collective debt resolution.

In this sense, bankruptcy law performs both a preservative and a coordinative function: it preserves the stability of non-bankruptcy entitlements while enabling limited institutional adjustments where fragmented creditor action prevents efficient coordination. The tension between these two functions—respect for pre-bankruptcy entitlements and the need for collective reorganization—provides the conceptual foundation for understanding bankruptcy law not as a static rule system, but as a procedural framework in which competing normative concerns must be continuously recalibrated. This duality also lays the groundwork for the book's broader framework of a dynamic equilibrium between efficiency-oriented coordination and fairness-based constraints.[10]

B. The Dynamic Equilibrium Between Efficiency and Fairness Principles

Building upon this theoretical foundation, the book develops its central normative framework: the dynamic equilibrium between efficiency and fairness principles.[11] Under this framework, efficiency primarily refers to collective resource allocation, procedural coordination, and the reduction of transaction costs,[12] while fairness concerns the protection of legitimate expectations, equitable participation in collective proceedings, and safeguards against opportunistic behavior.[13] Neither value is self-sufficient: procedural efficiency derives legitimacy from its contribution to substantively acceptable outcomes, while fairness depends on institutional mechanisms capable of producing workable collective decisions.[14]

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9 Butner v. United States, 440 U.S. 448 (1979).
10 Gao, *supra* note 1, at 13.
11 Gao, *supra* note 1, at 14–17.
12 Douglas G. Baird, A *World Without Bankruptcy*, 50 LAW & CONTEMP. PROBS. 173 (1987).
13 Nimmer, *supra* note 4.
14 Rizwaan J. Mokal, *On Fairness and Efficiency*, 66 MOD. L. REV. 452 (2003).

The framework further implies that insolvency institutions must adjust their emphasis depending on procedural context. Simplified procedures may prioritize cost reduction in straightforward cases, whereas complex restructurings require enhanced disclosure, supervision, and professional involvement to ensure the integrity of collective decision-making. In this sense, the significance of the framework lies not in proposing a static balance, but in explaining how institutional priorities shift across different insolvency settings.[15]

C. Institutional Reconstruction Across the Bankruptcy Lifecycle

The book approaches bankruptcy law as a sequence of institutional problems arising at different stages of the insolvency process. Because the challenges confronting the system vary across the commencement, operation, and conclusion of proceedings, the relationship between efficiency and fairness cannot remain fixed. Instead, Professor Gao argues that the appropriate balance between the two principles must be recalibrated throughout the bankruptcy lifecycle.[16]

At the commencement stage, concerns over delay and asset dissipation make efficiency considerations structurally dominant. Once a financially distressed firm remains outside collective proceedings, asset values may deteriorate, individual creditors may race to enforce their claims, and restructuring opportunities may disappear altogether. Mechanisms such as director-controlled filing decisions and pre-reorganization are therefore justified as means of preserving value and bringing parties into a collective process at an earlier stage. Fairness remains relevant, but mainly as a constraint on opportunistic or abusive use of insolvency procedures.[17]

During the operation of the proceedings, neither principle can easily dominate the other. The operational phase is characterized by a persistent tension between speed-oriented restructuring and the need to preserve procedural legitimacy through information

15 Gao, *supra* note 1, at 15–17.
16 Gao, *supra* note 1, at 15–17.
17 Gao, *supra* note 1, at 40–55.

disclosure and judicial oversight. [18]The book therefore emphasizes disclosure, fiduciary duties, and administrator supervision as institutional devices that seek to preserve restructuring efficiency while limiting the risks created by informational asymmetries and conflicts of interest.[19]

At the conclusion stage, fairness assumes a more prominent role because the process has shifted from preserving value to distributing losses. Where bargaining power is uneven, negotiated outcomes may systematically disadvantage weaker parties even when they are efficient. [20] Professor Gao accordingly defends mechanisms such as liquidation-floor protections and cramdown rules as safeguards against distributive injustice, ensuring that collective decision-making remains consistent with the normative objectives of bankruptcy law. [21] This concern with distributive legitimacy also informs his discussion of financial-derivatives safe-harbor rules and bankruptcy efficiency metrics.[22]

III. CRITICAL EVALUATION OF THE BOOK

A. Theoretical Originality:Beyond the Efficiency-Fairness Dichotomy

Much bankruptcy scholarship proceeds on the assumption that efficiency and fairness are competing objectives. Law and economics accounts generally prioritize value maximization and transaction cost reduction, [23] while fairness-based approaches emphasize equitable treatment and distributive justice. [24] This prevailing dichotomy structures much of the normative debate in insolvency theory, but it also tends to obscure how these values are

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18 Raymond T. Nimmer & Richard B. Feinberg, *Chapter 11 Business Governance: Fiduciary Duties, Business Judgment, Trustees, and Exclusivity*, 6 BANKR. DEV. J. 30 (1989).
19 Gao, *supra* note 1, at 285–98.
20 Douglas G. Baird & Randal C. Picker, *A Simple Noncooperative Bargaining Model of Corporate Reorganizations*, 20 J. LEGAL STUD. 311 (1991).
21 Gao, *supra* note 1, at 350–82.
22 WORLD BANK, DOING BUSINESS 2020 (2020).
23 Robert K. Rasmussen, *The Efficiency of Chapter 11*, 8 BANKR. DEV. J. 319 (1991).
24 Elizabeth Warren, *Bankruptcy Policy*, 54 U. CHI. L. REV. 775 (1987).

operationalized within procedural settings. Rather than treating efficiency and fairness as rival principles, Professor Gao advances scholarship by reconciling insights drawn from these two separate strands into a unified explanatory model of insolvency governance. Efficiency and fairness are treated as co-constitutive elements of insolvency governance rather than independent objectives to be traded off. Their interaction is shaped by procedural context: different stages of bankruptcy proceedings activate different institutional constraints and normative priorities. This shift redirects the analysis toward an inquiry into how insolvency procedures generate the conditions under which each becomes more or less salient.

This perspective also has implications beyond the internal structure of bankruptcy law. It suggests that the relationship between bankruptcy law and adjacent legal regimes should be understood not as a choice between competing values, but as a process of continuous recalibration between them. Likewise, the success of insolvency institutions should not be assessed through isolated efficiency metrics or distributive outcomes alone, but through their capacity to coordinate both objectives within a coherent procedural framework.[25]

B. Practical Reform Value: Coordinating Chinese Insolvency Institutions

Contemporary Chinese insolvency reform is often discussed through discrete policy objectives, such as improving restructuring success rates, reducing enforcement backlogs, or expanding access to debt relief. Professor Gao's analysis demonstrates that these reforms invariably involve trade-offs between efficiency and fairness. The significance of the dynamic-equilibrium framework is therefore not that it resolves these trade-offs in advance, but that it provides a structured way of identifying and evaluating them.

This contribution is particularly evident in the book's discussions of pre-reorganization and execution-to-bankruptcy conversion.[26] Both mechanisms are frequently defended on efficiency grounds: pre-reorganization may preserve going-

25 Gao, *supra* note 1, at 14.

26 Philipp Josternadt & Zacharias Sautner, *Out-of-Court Restructuring versus Formal Bankruptcy in a Non-Interventionist Bankruptcy Setting*, 14 REV. FIN. 623 (2010).

concern value by facilitating earlier negotiations, while execution-to-bankruptcy conversion may reduce duplicative proceedings and channel creditors into a collective process. Yet Professor Gao emphasizes that neither reform can be assessed solely by reference to efficiency gains. Questions concerning creditor participation, procedural safeguards, and the risk of strategic behavior remain equally important. By placing these competing considerations within a common analytical framework, the book shifts attention from whether such reforms should be adopted to how they should be designed.

The same approach is visible in the book's treatment of debtor self-management and restructuring governance.[27] Rather than presenting conflicts between debtors, creditors, administrators, and courts as isolated doctrinal disputes, Professor Gao highlights how different allocations of decision-making authority generate different balances between efficiency and fairness. This perspective is particularly relevant to current Chinese practice, where many disputes arise not from the absence of legal rules but from uncertainty over the allocation of authority among participants in the restructuring process.

Across these reforms, the recurring challenge is how to coordinate participants whose interests only partially align. Professor Gao directs attention to their capacity to facilitate collective coordination under conditions of financial distress. This perspective encourages policymakers and courts to focus on how procedural arrangements shape the interactions among creditors, debtors, administrators, and judges throughout the insolvency process. The result is a mode of analysis that evaluates reforms by how they structure collective coordination,[28] rather than by whether they maximize a single objective.

C. Methodological Adaptation: Comparative Insights and Institutional Context

Methodologically, the book treats comparative law as a tool for institutional evaluation rather than a source of ready-made solutions. Much earlier Chinese bankruptcy scholarship drew

27 Kenneth M. Ayotte & Edward R. Morrison, *Creditor Control and Conflict in Chapter 11*, 1 J. LEGAL ANAL. 512 (2009).
28 Robert E. Scott, *Through Bankruptcy with the Creditors' Bargain Heuristic*, 53 U. CHI. L. REV. 690 (1986).

heavily on foreign models, particularly U.S. bankruptcy law, often assuming that successful institutions could be transplanted with relatively minor adjustments. Professor Gao adopts a more cautious approach. Comparative materials are used not to identify what China should copy, but to examine the conditions under which particular institutions function and whether those conditions are present in the Chinese context.[29]

In the case of personal bankruptcy, for example, comparative experience is used not as a blueprint for transplantation but as a reference point for designing a phased administrative pre-screening mechanism suited to China's institutional development.[30] Likewise, the book's support for a limited safe-harbor regime is shaped by the need to preserve the collective structure of bankruptcy proceedings while accommodating concerns about financial stability.

The value of this methodology lies in its attention to institutional compatibility. By evaluating foreign models against domestic legal and market conditions rather than against an abstract benchmark, the book avoids both mechanical transplantation and claims of Chinese exceptionalism. Comparative law thus becomes a means of identifying the conditions under which reforms are likely to succeed, rather than a source of models to be adopted wholesale.

D. Remaining Questions and Institutional Tensions

While the dynamic-equilibrium framework offers a persuasive account of how bankruptcy law mediates between efficiency and fairness, it leaves open important questions about the limits of context-sensitive balancing.

A first concern arises from an internal tension within the framework between procedural flexibility and the need for legal certainty. Scholars associated with the creditors' bargain tradition and market-based approaches to insolvency have long emphasized the importance of stable entitlements and predictable priority rules

29 Ralf Michaels, *Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law*, 57 AM. J. COMP. L. 765 (2009).
30 Gao, *supra* note 1, at 130–31.

in facilitating credit transactions. [31] Although Professor Gao convincingly demonstrates that insolvency proceedings often require coordination mechanisms that cannot be reduced to rigid rules, the framework offers less guidance on the point at which contextual balancing should give way to rule-based certainty. Credit markets depend not only on fair outcomes but also on predictable expectations concerning priority, enforcement, and loss allocation. The unresolved issue is therefore not whether judicial coordination has value, but how much flexibility can be accommodated before legal uncertainty begins to undermine commercial planning.

A second set of tensions emerges from the relationship between insolvency law and external regimes of economic governance. Professor Gao argues that broad exemptions from bankruptcy law may erode the collective structure of insolvency proceedings and therefore supports a more limited regime. This position reflects one side of a longstanding debate in insolvency scholarship. Critics of expansive safe harbors have argued that such exemptions undermine the collective process by allowing certain counterparties to exit ahead of other creditors and thereby weaken the distributive logic of bankruptcy.[32]At the same time, scholars such as Mark Roe have emphasized that close-out and netting protections may serve important financial-stability functions by reducing contagion risks during periods of market stress. [33] Restricting safe harbors may therefore strengthen collective distribution within bankruptcy while simultaneously increasing concerns about liquidity and systemic stability outside the bankruptcy process. The challenge in such cases is how insolvency-based distributive principles should be reconciled with regulatory objectives that operate on a different institutional logic.

These issues do not undermine the book's central insight. Rather, they identify the conditions under which the dynamic-equilibrium framework is most persuasive and the points at which further theoretical refinement may be required. The remaining

31 Douglas G. Baird, *Bankruptcy's Uncontested Axioms*, 108 YALE L.J. 573 (1998).

32 Frank Partnoy & David A. Skeel, Jr., *The Promise and Perils of Credit Derivatives*, 75 U. CIN. L. REV. 1019 (2007).

33 Mark J. Roe, *The Derivatives Market's Payment Priorities as Financial Crisis Accelerator*, 63 STAN. L. REV. 539 (2011).

challenge, therefore, is how to delineate the boundary between internal procedural coordination within insolvency law and external constraints arising from broader regimes of economic and financial governance.[34]

IV. QUESTIONS FOR FURTHER RESEARCH

The book's emphasis on dynamic equilibrium and collective coordination invites consideration of how the framework might operate in forms of insolvency that differ from the traditional industrial enterprise model. Digital platform insolvencies provide a particularly useful setting for this inquiry because many of the coordination problems examined throughout the book become more complex in platform-based business structures. Platform enterprises often involve multiple stakeholder groups—including users, merchants, gig workers, advertisers, and investors—whose interests are economically interconnected but only partially captured by conventional creditor–debtor relationships. In addition, a substantial portion of platform value may derive from user data, digital storefronts, algorithmic systems, and network effects, many of which occupy an uncertain position within existing legal frameworks. [35]

Platform insolvencies challenge a common assumption of insolvency theory: that the relevant legal entitlements can be identified before collective proceedings begin, allowing bankruptcy institutions to focus primarily on coordinating competing claims. Disputes may arise not only over how interests should be coordinated, but also over how particular interests should be characterized in the first place. In this respect, platform insolvencies illustrate a broader problem of legal incompleteness: existing legal categories do not always provide clear answers regarding the control, transferability, priority, or ownership of data-driven and platform-based assets.[36]

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34 Douglas G. Baird & Robert K. Rasmussen, *Antibankruptcy*, 119 YALE L.J. 648 (2010);
35 Lina M. Khan, *Sources of Tech Platform Power*, 2 GEO. L. TECH. REV. 325 (2018).
36 Katharina Pistor & Chenggang Xu, *Incomplete Law*, 35 N.Y.U. J. INT'L L. & POL. 931 (2003).

At the same time, they also intensify the interaction between insolvency governance and external regulatory objectives, as issues such as data governance, platform regulation, and financial stability concerns increasingly shape the background conditions against which insolvency proceedings operate.

This feature has important implications for Professor Gao's framework. Throughout the book, coordination problems generally emerge after the relevant stakeholders and legal positions have been identified. Platform insolvencies suggest a different sequence. The process of defining legal entitlements may become intertwined with the process of coordinating them. Where legal categories remain incomplete, insolvency proceedings may themselves become a site in which those entitlements are clarified. Courts may therefore confront disputes in which the legal baseline against which efficiency and fairness are assessed remains uncertain. They may need to determine which interests should be recognized within the collective process and on what legal basis before those interests can be coordinated.

Viewed in this way, platform insolvencies highlight an area in which the framework may be developed further along two dimensions: the indeterminacy of legal entitlements and the increasing entanglement of insolvency law with external regulatory regimes. Future research may examine how collective-coordination mechanisms operate when the relevant legal entitlements remain unsettled throughout the insolvency process, and when insolvency decision-making must simultaneously respond to overlapping regulatory objectives. Such questions are likely to become increasingly important as bankruptcy law interacts more closely with evolving rules governing data governance, digital assets, and platform-based economic relationships. In these settings, the effectiveness of insolvency institutions may depend not only on how competing interests are coordinated, but also on how those interests are legally defined.[37]

V. CONCLUSION

In conclusion, *Bankruptcy Law in the Mirror: A Dynamic Equilibrium Between Efficiency and Fairness Principles* makes a

37 Juliet M. Moringiello & Christopher K. Odinet, *The Property Law of Tokens*, 82 OHIO ST. L.J. 805 (2021).

distinctive contribution to Chinese bankruptcy scholarship. Moving beyond narrow doctrinal analysis, Professor Gao Simin develops a coherent framework centered on the dynamic equilibrium between efficiency and fairness, and translates this theoretical idea into concrete institutional arrangements covering pre-reorganization, debtor self-management, cramdown, information disclosure and safe harbor rules. Rooted in China's ongoing insolvency reform process and its evolving judicial and market environment, the book does not treat efficiency and fairness as abstract opposites, but as values mediated through procedural design across different stages of bankruptcy proceedings. This approach helps clarify how a range of reform measures can be understood within a shared logic of collective coordination under financial distress. Several questions concerning judicial discretion, institutional limits, and emerging forms of insolvency—particularly in digital platform contexts—remain open for further research. Nevertheless, by integrating doctrinal analysis with institutional design in the Chinese context, the book offers a clear lens for understanding how bankruptcy law operates in practice and how it is likely to evolve alongside ongoing institutional reform.