

REVIEW

Gregory Makoff, *Default: The Landmark Court Battle over Argentina's \$100 Billion Debt Restructuring*

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Gregory Makoff's *Default* offers an engrossing play-by-play account of the protracted battle to restructure Argentine foreign debt from 2001 to 2016. The book starts with the 2001 default and the first restructuring in 2005, accepted by 76 per cent of the country's debtors (Chapters 1–3). The 'deal was marketed without the support of the IMF and under attack from creditor activists' (p. 3). Some lenders not only rejected the Argentine government's exchange offer, but sued the sovereign debtor for full repayment in the United States. Thus starts the book's careful discussion of its main subject: the legal saga of Argentina and some of its creditors in US courts.

By way of background, Makoff explains relatively rare previous episodes of creditors' legal disputes against sovereign debtors (Chapter 4). Particularly intriguing is the case in which the same New York District Court Judge who would ultimately rule in favour of Argentine creditors against the sovereign debtor had ruled *for* Costa Rica against its holdout creditor (Allied Bank) in 1984. Yet that ruling was reversed by the US Court of Appeals for the Second Circuit, making it clear that 'sovereign debt was unambiguously enforceable in the United States' (p. 96). In the mid-1990s, some of the same creditors (Elliott Associates) who sued Argentina in the 2000s went after Peru in the United States and Belgium. Elliott's legal victory was the result of a particular interpretation of the meaning of a common clause in foreign sovereign bonds: the *pari passu* clause. Although it is widely thought to mean 'equal ranking' of creditors' claims, it was argued by Elliott's lawyers and accepted by the Belgian court to mean 'equal payment'. In this scenario, the debtor could not pay the majority of its creditors who accepted a previous debt restructuring without also paying the litigating holdout. This same legal challenge would be levelled against Argentina in the United States almost ten years later (p. 173).

The US-based litigation over the *pari passu* clause in the bonds defaulted by Argentina in 2001 is at the heart of Makoff's compelling book (Chapters 5 and 7–11). Intended to reach a broad audience, the book offers no theoretical treatment of the debt issue. Nonetheless, its empirical granularity is a sound contribution to studies of sovereign debt restructurings. Throughout his account of legal battles between creditors and debtors, Makoff manages to translate the technical parlance of legal proceedings into clear accounts of iterated strategic action by the main players involved. Key parts of in-court exchanges between the Judge and the lawyers for Argentina and for the holdout

creditor, Elliott, are transcribed in the text, giving the reader a clear sense of the tense game at play. In these exchanges, the growing exasperation of Judge Griesa (in charge of almost all litigation against Argentina in the United States) with the debtor is made evident. It would become an important element determining the outcome of this unusual legal saga. Indeed, one of Makoff's contributions is the explanation of a switch in the Judge's stance towards Argentina: while at first sympathetic, Judge Griesa grew ever more frustrated with the debtor country as the years went on. He ruled in favour of Elliott in its challenge over the *pari passu* clause in 2011, but Argentina refused to pay. In Buenos Aires, then-President Cristina Fernández de Kirchner politicised the battle against Elliott and vowed not to allow her country 'to be extorted by those who speculated and profited from misery' (p. 233). Makoff explains that Judge Griesa was initially hesitant to issue an injunction that would make it practically impossible for Argentina to repay its current bondholders (some of whom had accepted the 2005 or 2010 restructuring deals) without also repaying its holdout creditors. Yet, since he saw no possibility that Argentina would 'honestly honor its obligations without some unusual mechanism' (p. 193), in February 2012 the Judge imposed the injunction, which ultimately led to Argentina's technical default in 2014.

Not all of the developments recounted in the book are restricted to court battles between Argentina and Elliott: 'other fights were taking place in the US federal courts outside of New York and in courts in Europe and in Africa as well as in the court of public opinion' (p. 209). Some of those are recounted in Chapter 6.

The book is revealing of dynamics that even close observers of the Argentine ordeal may have missed. For instance, 'Elliott's worldwide debt war was extended well beyond conventional methods ... [used in litigation] and even included a political influence campaign against Argentina with a scope and character rarely seen in the history of sovereign finance' (p. 225). Makoff explains how groups sponsored by Argentina's holdout creditors 'funneled \$27 million to Washington insiders' between 2013 and 2015, with the intention of 'undermin[ing] Argentina's position in the United States, Europe, and elsewhere' (p. 226). Furthermore, Makoff reveals tensions within the IMF's Executive Board where Italy, Germany and Japan 'appear to have tried to use their board seats ... to help their countries' retail bondholders obtain a better deal' than what Argentina offered in 2005 (p. 285). Finally, the reader gets to know more about the role played by the court-appointed mediator in the final settlement between Argentina and Elliott (Chapters 10 and 11) than media reports revealed in the period from 2014 to 2016.

Despite its many peculiarities, the salience of the Argentine case cannot be underestimated. Makoff's account makes clear why the case is a crucial outlier in multidisciplinary studies of sovereign debt. The author argues that 'because of all the misery in Judge Griesa's courtroom' necessary contractual changes in foreign bonds – advocated by the US Treasury and the IMF, along with some private entities – were set in motion. These, in turn, have since changed the landscape of sovereign debt restructurings by reducing the scope of legal damage minority holdouts can inflict on the debtor (p. 249). The paradox of deviance is hence at play: the outlier case may be so singular as to be irreplicable, yet it is a game-changer in such fundamental ways that one can hardly afford to ignore it at present and into the future. Undoubtedly the history of the outcome of Argentina's 2001 default will be revisited often. Makoff has offered an enthralling guide through it.