



Working Paper Series

on

Institutional Competition between Common Law and Civil Law

2009/7

Contract modification as a *rebus sic stantibus* solution to the sub-prime crisis

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October 2009

Joint Working Paper Series of the Centre de Recherche Droit, Economie et Société (CRIDES), the Institut de recherche économique et social (IRES) and the Centre d'Études sur les conflits et crises internationales (CECRI) of the Université catholique de Louvain

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Contract modification as a *rebus sic stantibus* solution to the sub-prime crisis

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Abstract:

Invalidating conjectures of financial engineering by supervening events, the sub-prime crisis calls for critical rationalism. Contract modification based on *rebus sic stantibus* would be its perfect legal translation. Contrary to “legal origins” theory, judicial relief and legislation can interact functionally. Their slow process and America’s recording system impede rapid crisis resolution, however. To avoid a global version of Japan’s “lost decade”, we suggest banks apply *rebus sic stantibus* notionally. Negotiated contract modification and balance sheet adjustment, linked by a feedback loop, would mitigate losses, reduce new capital needs and rapidly restore Hayekian “spontaneous order” in the financial sector’s own best interest

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