Oesterreichische Nationalbank

Stability and Security.

Working Paper 109

Bankruptcy Law, Creditors' Rights and Contractual Exchange in Europe, 1808–1914

Jérôme Sgard

with comments by Yishay Yafeh

EUROSYSTEM

Statement of Purpose

The Working Paper series of the Oesterreichische Nationalbank is designed to disseminate and to provide a platform for discussion of either work of the staff of the OeNB economists or outside contributors on topics which are of special interest to the OeNB. To ensure the high quality of their content, the contributions are subjected to an international refereeing process. The opinions are strictly those of the authors and do in no way commit the OeNB.

Imprint: Responsibility according to Austrian media law: Guenther Thonabauer, Secretariat of the Board of Executive Directors, Oesterreichische Nationalbank
Published and printed by Oesterreichische Nationalbank, Wien.
The Working Papers are also available on our website (http://www.oenb.at) and they are indexed in RePEc (http://repec.org/).

Editorial

On the 30th of September and the 1st of October 2005 the first Economic History Panel: Past, Present, and Policy, co-sponsored and hosted by Oesterreichische Nationalbank was held in Vienna. The Economic History Panel is a project that is jointly sponsored by the Institut d'Etudes Politiques de Paris and the Center for Economic Policy Research in London. Its motivation is the considerable advances that Economic History has achieved in the past, and the growing recognition of its contribution to shape policy responses and to inspire new theoretical research.

The first meeting on the topic "International Financial Integration: The Role of Intermediaries" was jointly organized by Marc Flandreau (Sciences Po, Paris and CEPR) and Eduard Hochreiter (Oesterreichische Nationalbank). Academic economists and central bank researchers presented and discussed current research and tried to review and assess the historical role of financial intermediaries in shaping the patterns of financial globalization. A number of papers and the contributions by the discussants presented at this panel are being made available to a broader audience in the Working Paper series of the Oesterreichische Nationalbank. A selection of these papers will also be published in the *European Review of Economic History*. This volume contains the third of these papers. The first ones were issued as OeNB Working Papers No. 107 and 108. In addition to the paper by Jérôme Sgard the Working Paper also contains the contribution of the designated discussant Yishay Yafeh.

January 5, 2006

Bankruptcy Law, Creditors' Rights and Contractual Exchange in Europe, 1808-1914

Jérôme SGARD
CEPII and Université de Paris-Dauphine

Paper presented at the CEPR 'Past, Present, and Policy' panel
on 'International Financial Integration'
Vienna, 30 september – 1 october 2005

CEPII, Paris, October 2005

Email : sgard@cepii.fr

Abstract

Recent historical research on bankruptcy has been centred almost exclusively on Common law countries, especially the United States. The consequence is that the research agenda includes issues which may, or may not, have broader relevance. This paper is an attempt at including within a larger historical and comparative perspective the evolution observed in continental Europe, during the 19th century. A data set has thus been assembled which includes the main features of a total of 51 codes or statutes, in 15 countries of all legal traditions. An early conclusion is that all these laws defended strongly creditors' rights during bankruptcy, during the whole period under review. This goes against the thesis defended i.a. by La Porta et alii (1998) which state that "legal origins" have a strong, differentiated effect on property and creditors' rights, which would be permanent over history. Two dimensions are then analysed. First, the status of the failed debtor, and whether he was subjected to repression; second, the degree to which the law supported or not the attempts of the parties to negotiate a composition, or continuation arrangement. An early period witnessed repressive, highly regulated frameworks: the paradigm is the Napoleonic, 1808 *Code de commerce*, though its main features were still highly visible half a century latter, in almost all countries. Then emerged a liberal model, between 1865 and 1885 with again a fair degree of convergence: the personal and civic fate of the debtor became much more immune to commercial failure; and the parties get more autonomy to bargain, though a bifurcation emerged between a "menu approach" to re-negotiation in England and in the French law countries, and a "single-option" procedure in German law countries. Beyond, it is proposed that these broad trends reflect the growing capacity of the institutional environment to reduce risks of moral hazards, and more generally transaction costs. By the end of the century, bargaining on bankruptcy had become easier and safer, so that judicial guarantees could be eased.

1. Introduction

The history and the economics of bankruptcy laws have attracted increasing attention since the 1980's. This surely reflects the renewed importance of this institution in the real world, at a time when many economies were becoming more market-oriented, with agents being put under tougher solvency constraints. But how these laws were designed, and how they evolved over time, has also attracted a lot academic interest for their own sake. From a marginal, almost bizarre research topic, bankruptcy laws have achieved a degree of centrality in many different research programmes.

At one end of the spectrum are various trends in cultural history, who often centre on the "moral economy" of debt and default. They would especially insist on the social representations of bankruptcy, within a long term process of securalisation of economic life[1] - an approach which counts Max Weber among its forerunners. Closer to the institution per se, others have focussed on its actual working, how social actors have invested it, and what impact it had during specific economic episodes: for instance, the short life of the second American federal law (1841-42),[2] the role of the third federal law (1867-1878) on the economic reconstruction of the South[3], or the political economic history of the last-to-date, 1978 law[4].

Beyond are more general studies, which have tried to provide a broader view of bankruptcy laws. Long-term social histories of failure and bankrupt debtors (rather than bankruptcy laws) have been especially abundant in the case of the English economy.[5] In the case of the United States, some early works have been mostly descriptive, though they contributed to opening the field and identifying the issues at stake.[6] A classic example is how the debate on bankruptcy reforms in the United States was shaped, after the Civil War, by the opposition between the rural West and the financial centres of the North-East, polarised by the issue of land exemption. This research trend has seen a recent series of publications by Howard Rosenthal and his colleagues, who have provided new insights into the determinants of bankruptcy reforms in the United States, and to some extent in Europe as well. Typically, they argue, reform attempts emerged after economic crisis or severe downturns, under conservative majority at Congress, and generally in an ideologically charged climate[7]. This approach has been extended by David Skeel to 20th century trends, with a rather close analytical language[8]. The storyline here is that of a century-long cycle : first was an era of stabilisation, helped by a build-up of special interest groups around the 1898 statute, followed i.a. by decline under ill-intentioned New Deal reforms, and eventual resurrection after 1978.

Finally, the last years have witnessed a new interaction between historical and present-day research, under the impact of the "Law and Finance" paradigm. The series of articles published since 1997 by Rafael La Porta, Florencio Lopes-de-Silanes, Andrei Shleifer and Robert Vishny (hereafter LLSV)

---

[1] See for instance Finn (2003), Anderson (2004), Kessler (2004) also Mann (2003) on the late 18th century American experience.
[2] Balleisen (2001).
[3] Thomson (2004).
[4] Posner (1978), Carruthers and Halliday (1998).
[5] See Duffy (1985), Hoppit (1987), Lester (1995), see also Marriner (1980).
[6] Warren (1935), Coleman (1974)
[7] Berglöf and Rosenthal (2000 and 2004), Nunez and Rosenthal (2002). Domowitz and Tamer (1997), defend, on the other hand, that bankrutpcy reforms are anti-cyclical, over the 1790-1994 period. See Berglöf, Rosenthal and von Thadden (2001) for a paper including Europe.
[8] Skeel (2001)

indeed illustrate an original use of history[9]. On the one hand they clearly write under the influence of the Northian paradigm, which insists on the role of institutions in supporting property and contractual rights;[10] but on the other hand, they propose a profoundly a-historical view of how institutions interact with economic development. Critically, they argue, the "legal origin" of each country – whether it belongs to the Common Law or to various continental traditions – would have a major, long term impact on the other institutions, and *then* on growth. Other authors then further developed the thesis of a specific, higher flexibility of Common law, which would make it more adequate to the development of market economie.[11] In the case of the Common law vs. French law, it has then be argued, a discrete bifurcation at the end of the Middle-Age would have injected the respective countries on two almost idiosyncratic historical trajectories, which they would have then bequeathed to their respective colonies[12]. This argument is of special relevance here, as LLSV present bankruptcy as a representative example of how the law bears on financial and economic development.

When these various research directions are considered jointly, some striking common features come to the fore. First, almost as a rule, bankruptcy laws are considered as "a bit more than just an institution", in spite of their relatively self-contained dimension; in other words they are expected to tell something on how capitalism developed, how the competition between interest groups bear on it, or how this institution should now support growth, eg in developing countries. Second, the notion of an optimal bankruptcy law is hardly on the horizon : most authors would rather underline the large variety of law and, often, their instability over time; the most adventurous, theoretically-inclined, would only defend that an optimum would be at best contingent on the state of the overall institutional environment – which is to say that bankruptcy laws are endogenous to other institutions, a statement which may have substantial policy consequences[13]. Finally, as should be already evident, historical research on bankruptcy is massively centred on Common law countries, especially the United States. Indeed, interest in Civil law countries is minimal.

This article is an attempt to enlarge the geographical horizon of this literature to continental Europe, while keeping a rather long-term view – the whole 19th century. In so doing, a first aim is to revisit a series of issues on which recent (mostly anglo-saxon) research has insisted, thus including French, German and Scandinavian traditions. With this view, a data set of 51 laws or statutes has been collected, on a total of 15 European countries. They extend from the 1808 *Code de commerce,* enacted by Napoleon, to a large array of laws at work in 1914. Of course, broader historical and economic concerns are present, but this is not a social, or a political economic history of bankruptcy : it is first and foremost a formalistic, comparative history of the legal texts. Second, though a wealth of variants and local experiments are observed, the main thrust of the paper is on cross-country, long-term trends during a period where bankruptcy laws have probably seen more changes than during either the 18th or the 20th centuries. This article thus rather contradicts the common emphasis on diversity and volatility, and actually ends up proposing two polar models, which dominated respectively the first half of the period, and the three latter decades under review. Differentiation among countries and legal traditions come out as second rank feature.

The second section of this article presents the data set on European bankruptcy laws and the following discusses the LLSV thesis in its light. Section four analyses how the status of the failed debtor evolved over the century, and insists on the disappearance of the repressive element in bankruptcy. Section five addresses the problem of composition, or continuation agreements, and how they were supported or not by the institution. Before concluding, section seven proposes an analytical hypothesis in order to account for the various evidences collected here.

---

[9] La Porta R. et alii (1997 and 1998)
[10] North and Weingast (1989), Milgrom, North and Weingast B. (1990).
[11] Beck and Levine (2003), Beck, Demirgüc-Kunt and Levine (2002, 2004).
[12] Glaeser and Shleifer (2001).
[13] Berkovitch and Israël (1999), Ayotte and Hayong (2004).

2. A Data-base on European Bankruptcy laws, 1808-1914.

In order to analyse the evolution of national bankruptcy laws over the 19th century, 51 legal acts, statutes and codes have been collected for 15 European countries, between the enactment of the 1808 *Code de commerce* and World War I[14]. Some countries of course did not exist at the beginning of the period, such as Belgium, the German Reich and Italy, though Prussia and the Kingdom of Piedmont are included in the data set. Furthermore, some countries did not have a unified bankruptcy law before mid-century, as Norway, Finland, and a large part of the Northern German Confederation (outside Prussia). The distribution over time of reforms first shows a minor cycle during the 1840s', then a much larger one, centred on the 1870's and 1880s' (graph 1).

Sources are first the primary legal texts, when accessible (often as a translation); and, as a second-best, a substantial number of 19th century legal treaties, collections of commentaries and textbooks.[15] A serious difficulty is that bankruptcy laws *per se* do not, as a rule, include all elements of economic interest - even when they have been codified. Typically, for instance, the impact of the opening judgements on the commercial and civic rights of the debtor *do not* appear in those texts, but are scattered for instance in the electoral code or in the regulations of the stock exchange; another example is that of mortgages and liens which are ruled by specific, well-developed bodies of law.

From an analytical point of view, 23 main line-items have been documented, with some texts providing more precise information on sub-issues. The emphasis has been put, first, on the core institutional elements, such as the voluntary or non-voluntary character of the law, its extension to non-traders, decision rules, etc. Then are the outcomes of the process such as imprisonment for debt, judicial discretion, the residual rights of execution of creditors, etc. Finally a lot of attention has been given to the various forms of possible accords between the parties, whether they take place within the bankruptcy procedure or in alternate, non-bankruptcy, judicial framework.[16]

On the other hand, less attention was given to the respective rights of the institutional players *within* the process (commissioners, trustees, *syndics*, representatives of creditors, bankruptcy judges, etc), or on the balance between officially-driven and privately-driven models. As regard the pro-creditor vs pro-debtor bias in the *outcome* of the various laws, more elements are of course available. However, no attempt has been made to propose an index, or even an overall judgement in this respect : a formalistic approach like this is not sufficient to reach such aggregate, comparative conclusions - if ever feasible. The same view is defended as regard the economic efficiency of the laws, a concept which is not within the horizon of this paper, though, on a case by case basis, more or less influential reforms can be identified.

3. On property rights, LLSV, and European legal history

[14] Austria, Belgium, Denmark, England, France, Finland, Prussia/ Germany, Hungary, Italy, The Netherlands, Norway, Portugal, Russia, Spain and Sweden. Greece, Malta and Switzerland are mentioned occasionally but are not included in the data set.

[15] A further feature of this literature is the extent of serial quotations between authors over time (generally non-referenced). The most telling example is probably the etymology of the word "bankruptcy": generations of authors, over centuries, have traced it to the Italian "banco rotto" which would echo the usage, in the Middle-Ages, to brake the banker's wooden bank after he had defaulted or fled away. But not a single author has founded his affirmation on a single primary reference. See Denisart (1771), Laurens (1806), Blackstone (1811), Renouard (1857), Noel (1919), Hilaire (1986). On the other hand, the French "banque" and "route", while possibly more suggesting in literary terms, are definitely less popular.

[16] 'Arrangement' is used here as a generic term which designs all sorts of agreements with the creditors, which allows the debtor to regain control over the assets and restart commercial operations, after his debt had been either rescheduled or reduced. It thus corresponds to the various compositions, *compromisos, concordats* and *contrats d'atermoiement*, mentioned in the various legal texts.

In their attempt to measure and compare how national laws protect creditor's rights during bankruptcy, LLSV (1998) single out four overriding criteria, namely:

- the impossibility for the incumbent management to reorganize the firm during the procedure
- the obligation for any reorganisation plan to be agreed by the creditors
- the capacity to repossess collateral's
- the first priority of senior creditors in the distribution of dividends

On that basis, authors propose a simple, additive index which measures the protection of creditors' rights, from 0 (minimum) to 4 (maximum). They then identify a statistical link between differences observed among countries and their respective legal origin: creditors' rights are better protected, other things equal, in Common law countries, than under the German or Scandinavian traditions, and finally under French law. Gleaser and Shleifer (2001) then further reinforce the historical argument and suggest that the original divergence between legal traditions would be as old as the latter Middle-Age, at least as regard the canonical French vs. Common law opposition. Since then, the respective traditions would have given different priority to the defence of property and creditors' rights.

The data presented here do not confirm this latter argument. The provisions of the collected statutes reflect an overwhelmingly strong defence of creditors' rights, during the whole 19th century, whatever the legal family of each country, its degree of development, religion, etc. Some uncertainty vis-à-vis LLSV's conclusions surely stem from the differences in the economic and institutional contexts. Most strikingly, 19th century bankruptcy laws addressed primarily the case of personal firms – traders, small manufacturers, shopkeepers, etc. – while these authors consider the case of corporations which clearly raise much more complex problem in terms of balance sheets structure, governance and issues of going concern.[17] But even when a degree of adjustment in the criteria is added, it is hard to see how any of these 19th century statutes could qualify for less than a 3 mark, on the 4-mark LLSV scale[18]. Here are more detailed elements, linked to the respective criteria (see as well Table 1).

LLSV criteria for a paradigmatic bankruptcy law.
A universal rule in Europe, during the whole 19th century, is that the failed trader would lose the control over, and often the legal property of his assets (personal and commercial) on the day his bankruptcy was declared. Indeed, creditors turned to this institution because they wanted his goods and books seized, his house sealed and correspondence opened. Moreover, on the day bankruptcy was declared, he would also lose the legal capacity to trade – i.e. to sell and buy, pay and borrow, etc.. Even a fresh start would not be possible, unless he would be rehabilitated (often a hard act), or he would obtain a composition agreement, from a qualified majority of creditors, subject to confirmation by the judge. The further some (mainly Civil law) statutes would go in limiting this estrangement was to allow the receivers to call for the debtor's advice while managing his estate – which often meant asking him to help out in the liquidation[19]; in some case this would earn him some revenue.

In other words, the opposition between "manager-driven" and "manager-displacing" bankruptcy law does not work during the 19th century.[20] A significant element is indeed the very limited attention given to the management of assets during the procedure. Under the early statutes, the receivers were in fact safe-keepers, which would only sell perishable goods. The concern for continuing business activity, as for protecting the going concern value of the estate emerged rather late, mostly in countries under the influence of either the 1808 Code or the German tradition. After mid-century, some texts also included provisions on possible new debts incurred during bankruptcy, as a consequence of trading - again in French and German-influenced areas.

[17] A corollary is that the development on limited liability companies has apparently had only a minimum impact on bankruptcy law : the very concept of such capital structure was of course much older, but the large scale expansion of publicly listed companies came latter.
[18] This confirm the conclusion of ia Bergöf, Rosenthal and von Thadden (2001)
[19] This clause is observed in mostly French law countries such as Belgium, France, the Netherlands and Spain.
[20] Skeel (1998), Armour, Cheffins and Skeel (2002).

Legal texts were as well very clear and homogeneous as regard arrangements and compositions. As a rule, the initiative came from the debtor though, as mentioned, qualified majority voting and judicial confirmation were required. Typically, the vote would be counted both in terms of number of creditors and sums of claims, with majority thresholds of three quarters and two thirds respectively. Of course, the bankrupt and its senior creditors would have no voice, and in most countries debt titles had to be certified beforehand by a court official. Beyond, no statute provided the judge with the right to impose an agreement on creditors, if they failed to converge (as with the 'cram down' provision of the present US Chapter 11). That is, the default option was always liquidation. On the other hand, in many countries, the judge could oppose a voted agreement, if he considered it non-viable or against the interest of the creditors.

Orthodox conclusions are reached finally on the matter of secured creditors: 19th century laws fully and explicitly protected those rights during bankruptcy, with the collateral provision that senior creditors would not vote on any composition (unless seniority was renounced). The sole limit was that foreclosures were generally stayed when bankruptcy was declared, generally until liquidation was decided. But senior interest payments were generally not stayed. In three countries, however, England, Würtemberg and Malta, the debtor would receive a percentage on the proceed of liquidation, depending upon its overall return; this incentive varied within a (5-10%), (5-8,3%) and (5-10%) bracket respectively[21]. This represented an explicit though limited violation of the principle of absolute priority between investors, though it took the form of cash payment to the debtor, rather than a right to new equity.

A more contentious and un-clear issue is that of the privileged (i.e. statutory, non-contractual) claims of third-parties on the bankrupt's estate: i.e. claims owned by the Treasury and churches, workers and servants, doctors and pharmacists, inkeepers and undertakers. In some cases, these rights may have infringed upon the interests of secured debtors, especially non-mortgage ones, as they were often classified in the same class or in a class superior to them. The problem is the difficulty of collecting and interpreting the underlying data, which make any overall assessment or comparison quite difficult. The strong impression however is that privileges during the 19th century were not used, on a large scale, as in the 20th century, as instruments to funnel extra-contractual interests into the distributive machine that is bankruptcy. Typically, these were not major policy issues, and the provisions they defined, for instance for wage, rents and tax arrears, would be limited to a year or eighteen months relief, plus a ceiling on the amount being reimbursed.[22] Finally, no indication has been found of widespread exemptions from bankruptcy, as is traditionally the case in the United States[23].

From the finality of bankruptcy to its operation

Taken together, this indicates that all European laws during the 19th century were in fact much closer to LLSV's ideal model than the late 20th century statutes they studied. Yet, as they focus on creditors' rights, these authors (and others) only explore the finality of this institution: its being a non-market mechanism that reallocates property rights and rewrites debt contracts, so that market transactions can start again after a default. At least as important however is how this aim was reached, at a time when the overall institutional environment of market economies was very weak, and when problem of information were magnified by the geographical extension of markets. The historical sources indeed tell that, when confronted to private defaults, with much wealth at stake, the demand of traders and entrepreneurs were quite clear: they wanted maximum guarantees in terms of equity and transparency, which in practical terms implied debtor control, access to information, verification of claim titles, decision making rules, binding agreements, etc. These pressing and complex demands explain why

[21] The reference in the case of Malta is an 1815 ordnance on civil procedure; not enough elements were available in order to include it in the data set.

[22] An hypothesis would be that the main problems in this respect, including on the cost of procedures (reaching people, verifying their claims, settling contestations, etc), may have rather derived from residual feudal or Ancien Regime rights, rather than modern redistributive issues.

[23] Warren (1935), Posner E. (1978).

bankruptcies have taken a judicial dimension since at least the Middle-Ages. Since then courts are typically the place where private defaults end up.[24] The problem, however, is that this apparently banal character – bankruptcy being a judicial procedure – has generally had large, unexpected, and highly disruptive microeconomic consequences. The formal complexity of the process, its mix of incentives and threats, the suspension of many contractual rights, the informational challenges to be addressed, the management of the estate: all these in-build features have been, more often than not, the source of large disappointments, even for benevolent lawmakers. Exiting markets was and remains a most complex and dangerous transition, for all parties.

The corollary is that each bankruptcy statute defines a trade-off between two competing demands: first the primary call for redistributive equity, then the attempt to limit the microeconomic disruptions for the agents as for the markets. The more judicialised the process, it seems, the higher the risks of microeconomic distortions. Historically, variations in this trade-off are indeed quite visible. Well into the 18th century, for instance, bankruptcy laws were shaped as last-resort instruments: creditors would "opt-in" when unable to agree unanimously on a solution, or if they fully mistrust the debtor; but the norm between honest and well-meaning traders was to settle defaults out of court, with as little publicity as possible. Later started the slow evolution towards entrusting judicial institutions with a *de facto* legal monopoly over private defaults, with all possible options being decided from within the court. The Napoleonic 1808 *Code de commerce* comes out at this point as the main paradigm, which dominated the continent until the 1860s'. It was then substituted by a more liberal model, which was much less constraining and threatening for the parties, though without becoming less protective as regards creditor's rights. How the operation of bankruptcy laws evolved over time, rather than their finality, is indeed the core of this history.

4. The debtor's status : prison and "la mort civile".

The repression of debtors has long been a defining pattern of bankruptcy statutes, which in their earliest expressions defined them as outright criminals – « publicos ladrones y verdaderos robadores »[25]. But even after the procedure had become as well a mechanism for settling private defaults, suspicion and threats remained overly present. Hence the endless attempts by lawmakers, judges and traders to identify and protect the "honest but unlucky" trader: for centuries, disentangling outright fraud from moral hazard, and bad luck would remain a defining dilemma and the source of recurring dissatisfaction with successive reforms. But repression generally remained the priority : still in 1808, the *Code* put all failed debtors into jail, at least for a short exemplary period. This, it is known, was explicitly requested by the Emperor, on his return from Austerlitz. But France, or Civil law countries, were no exceptions in this respect : in all European countries, as in America, lots of debtors ended up in jail. And remarkably prison for debt was not at that time a penal issue, but only an instrument for the creditors or the court to pressurise or control the debtor. It was thought out as a mean to protect private rights rather than public order, and had no necessary link to any possible, post-bankruptcy penal conviction.[26]

This de facto, early convergence between countries was then followed, within a relatively short period of time, by a shift to alternate, more liberal model, which main elements are as well observed in most countries. Whereas in 1865 no country had yet suppressed prison for debt, ten years latter 13 of them, including the most developed ones, had taken this step. Prison had apparently became less needed in

---

[24] An early XIX° French lawyer noticed that bankruptcies were mainly a problem to be settled by the parties, and that the intervention of the judiciary was most often the consequence of conflicts between creditors, i.e. conflicts on who had which rights in the sharing of assets (Laurens, 1806).

[25] Spanish act of 1502, in *Novissima recopilacion de la leyes de Espana* (1831).

[26] One of the enigma of the history of bankruptcy law during the 19th century is indeed the utter instability of banktruptcy statutes in England and, even more so, in the US (see Coleman 1999). This trend was already commented at the time with irony by continental jurists (see Lyon Caen, 1881), and was de facto much less visible outside the Common Law tradition.

order to ensure cooperative behaviour and control moral hazard. Moreover, comparable evolutions are observed as regard other forms of repression, centred on the commercial and civic rights of the bankrupt.

In order to further assess these long-term trends, a simple, additive four variable index has been calculated, which focuses on prison for debt and the conditions for rehabilitation (see Box 1). Its average evolution indeed reflects the liberalisation of the debtor's status, from the mid-century onwards (Graph 2). This evolution was however not unanimous across countries : when differentiated by legal families or religion, evolutions are quite diverse, though in 1914 a fair degree of convergence is observed beyond for-runners and laggards (Graph 3a & b) :

- Common law countries – both England and the US – already had a tradition and reputation for allowing bankruptcies to have limited social costs (at least for entrepreneurs), so that fresh-start would be easier; as a rule however commercial rights were easier to recover than civic or political ones, which were still affected at the end of the 19th century, in England[27].
- The landmark German 1877 law then provided a continental model for a bankruptcy law without any repressive feature, modelled as an almost pure procedural, problem-solving instrument. Its belonging to a continental legal tradition, as well as its large influence in neighbouring countries, made it, in the eyes of many commentators, the actual successor of the 1808 French code.
- France had more difficulty distancing itself from its Napoleonic repressive legislation's: it adopted only in 1888 a new status for lawful debtors, which limited professional costs, though political stigma was still present until the early 20th century[28]. More generally, French and Scandinavian statutes remained comparatively more repressive till the end of the century.

5. Arrangements and the autonomy of private actors.

In a world of perfect information, the failure to raise new debt, followed by default, would reflect insolvency without delay and uncertainty - bankruptcy would only signal the real economic event. Assets would as well cover exactly debts and liquidation costs, and if ever the going concern had more value than the sum of its parts, an investor would surely buy out individual creditors - capital markets allowing. These propositions have two corollaries as regard the real-life economics of arrangements and bankruptcy, in a world where information problems abound: some firms will always fail which should have survived; and liquidation can be very costly, especially if the markets for capital goods or land are illiquid. In other terms, when the debt and money markets function poorly, there will always be a strong interest for debtors and creditors to be able to agree smoothly on continuation plans. A reliable institution should substitute failing, or under-developed capital markets.

Historically, the older, pre-*Code* model of arrangement is well-represented by the *contrat d'atermoiement* in *Ancien Régime* France, which was partly imported from Italy via the Lyons fairs. It was rather supported than restricted by the 1673 Ordnance prepared by Colbert, which open-ended framework as regard the bankruptcy process was not very different from that designed in Amsterdam (1659), Bilbao (1737) or Hamburg (1753)[29]. On that basis, a process of State-judicialisation unfold which, in a remarkable Tocquevillian way, ended up in the 1808 text. Critically, arrangements between the debtor and the creditors, which until then had been mainly private affairs, subjected to light supervision, were then wholly transferred within a minute judicial process, which stated most exactly when, where and under which conditions the parties could speak up. At the time, however, this was not perceived as an attempt to repress private enterprise and contractual autonomy, but as the best

[27] This however applies only to traders, merchants, entrepreneurs, etc.. Small debtors, which today would rather belong to consumer bankrutpcy, have traditionnaly suffered a much harder fate in England ; thousands of them were still imprisoned on the eve of the First World War (Lester 1995).
[28] Percerou (1935).
[29] Ricard (1722), Savary (1770), *Ordenanzas de la ilustre Universidad* (1794), Saint-Joseph (1844).

possible guarantee offered to creditors against fraud, dissimulation and corruption – which were perceived as the hallmarks of financial work-out techniques under the Ancien Régime.

The striking point, over the following decades, is the extent to which most countries did *not* attempt to inject more flexibility into their respective bankruptcy laws, so as to free the parties from the strictures of judges and officials. The sole object of reforms, in a limited number of countries such as Belgium and Portugal, was the introduction of a *judicial stay* : it would help addressing short-term liquidity problems, provided the solvency of the debtor had been checked and a qualified majority of creditors had acquiesced. New concepts emerged only during the last quarter of the century, which allowed for more complex and comprehensive restructuring agreements, which would i.a. allow bargaining to extend to the asset side of the balance sheet, rather than only liabilities.

This trend is reflected in an index of creditors' autonomy, which adds six variables (Box 2) : it reflects the degree to which the parties were offered one or more options; and then the extent to which the judge had some discretion when confirming the arrangement. A pattern of liberalisation comes out indeed after 1870, which seems even 'steeper' than with the debtor's rights (Graph 3). Brake-down along the religious line then shows Catholic countries being more liberal than Protestant, though this counter-intuitive proposition is then put into perspective by the "legal family" variable (Graph 4a & b): whereas the two leading innovators – England and Germany – had neatly converged in relaxing the costs of bankruptcy for the debtor, they have apparently taken opposite roads as regard contractual bargaining.

England being here an innovator is indeed surprising, considering it had not succeeded, or attempted, before the mid-19th century to offer judicial guarantees to arrangements[30]. Until that time, apparently, creditors could only choose between unanimity accords under private seal and bankruptcy, which would exclusively lead to liquidation with the only option of granting the debtor a discharge on her residual debt[31]. Still in 1825 and 1849, two partial reforms had proved failures: the majority threshold was too high (9/10 in sums in the former case), and the debtor had to relinquish most of his goods, whereas the aim of an arrangement is to avoid undue liquidation.

The breakthrough came in 1861, when these restrictions were abandoned and bankruptcy became *also* an instrument for restructuring balance sheets. The question, at that point, was whether such accord should be negotiated within or outside bankruptcy per se. In other terms, lawmakers apparently tested the trade-off between judicial guarantees and microeconomic disruptions. After some trial and errors, creditors were then left *de facto* in 1883 with three options:

- a full bankruptcy procedure leading to liquidation, with the possibility for the judge to grant a discharge – a kind of augmented Roman *cessio*;
- a continuation or self-liquidation plan, decided outside formal bankruptcy, with limited personal costs to the debtor, but still under tight judicial oversight (the debtor lost the control over assets, he was publicly interrogated, the judge had substantial power to reject the voted plan, etc);
- finally, a high-majority, low oversight formula was close to the past, unanimity *deeds of arrangements*, and appeared to be the favourite option of private agents, as became clear once registration and some publicity rules were introduced in 1887.

Basically, the German (1877) and also the Belgian (1883) reformers then proposed alternate, continental answers to the very same dilemma, formulated on the basis of their respective legal

[30] This point will be checked with Forsyth (1854); this anti-arrangement feature is however also apparent in the United States, where they were only introduced in the third federal law on bankruptcy, in 1867.

[31] For this reason, the debt discharge introduced in 1705, however important in English legal history, does not come out as a major historical innovation, as is often suggested (McCoid, 1986). At that time, the rule was well established on the continent, but it took place within arrangements which where then subjected to more or less stringent clauses for confirmation; this pattern remained until the early 20th century within more or less rigid *concordats*. The true, revolutionary English innovation was in fact to transfer the responsibility of debt discharge from a qualified majority of creditors to the discretion of the judge, in 1843.

traditions, institutions and special interests. As mentioned, the 1877 German reform established an integrated framework, with no intended personal costs to the debtor. Lawmakers then concluded that all forms of arrangements could actually take place within this modern and economical procedure, together with outright liquidation. Belgian reformers however took the opposite direction and opted, with England, for a two-track approach : they invented the *Concordat préventif*, which was to have a large following, especially in French and Scandinavian law countries. The distressed debtor could thus ask to negotiate an arrangement under some judicial oversight, though without entering bankruptcy. For instance, he would not loose control over his assets and his obligations in terms of provision of information were more limited. But if he failed to obtain qualified support to his proposal, he would then be shifted to bankruptcy per se.

The logic of the Belgian and English innovations was in fact to bring bankruptcy back to its (Roman) origin, as a pure liquidation device, with compositions being transferred to an alternate framework; Italy indeed took this logic to its ultimate conclusion, in 1903, when it adopted the Belgian model and completely dropped the old-style *concordat* from its law. Here bankruptcy was still perceived as a disruptive, costly event in spite of being less socially repressive: contrary to what the Germans had concluded, liquidation and continuation did not warrant the same cost/ benefit trade-off.

Two possible reasons for this evolution can be proposed : the growth of industrial corporate firms, with large going concern values, which had to operate during financial restructuring, unless large costs would be suffered by the creditors, then the expansion of large, though often volatile, security markets which in many countries were to play an increasing role in the valuation of assets and the restructuring of liabilities. Both phenomena would indeed call for minimising the legal and contractual consequences of entering a restructuring procedure, even after all repressive features had been shed. These innovations should be compared to the extension of equity receiverhip in the United States, especially in the case of railways companies[32]. Only case by case monographs would tell whether these variables were indeed perceived by the late 19th century reformers; they may also tell whether the German option reflected specific patterns of economic development in this country, or other factors. By 1914 however, the outcome of the competition between legal innovators was rather clear: 10 countries had adopted a twin-track, Anglo-Belgian approach, and only five remained with an integral, German model[33].

6. Conclusion.

A data-set of 51 European laws and statutes has documented the evolution of bankruptcy procedures between 1808 and 1914. Some topical issues in the existing, mostly American literature surfaced as well from European experiences, such as the long debate on imprisonment for debt or the fate of the "honest but unlucky trader". On the other hand, the struggle around voluntary bankruptcy had no equivalent on the Continent. Another issue is the English debt discharge which looks, with hindsight, much less original than is often assumed, though it underlines an indeed remarkable pattern : the long resistance to, or the lack of demand in England for an *ex post* confirmation of private arrangements by the judicial power. This apparently reflects a very specific relation between contractual exchange and judicial institutions.

Beyond, a key conclusion is that the protection of creditors' rights was at the very core of these statutes, during the whole century, in all countries. The differentiated, permanent relationship defended by LLSV between legal traditions and the rights of owners and creditors did not come out. There are surely strong elements of continuity in the law *per se*, in its founding concepts, in how the judicial institutions work, or in the professions which inhabit them. But there is no such thing as an "essence" of legal traditions, which would travel untouched through centuries, like a silent meteor, and

[32] see Martin, 1974 and Skeel, 2002.
[33] See table 4, the different variants of *Concordat Préventif* adopted in European countries.

always shape property and creditor's rights in the same, a-historical way.[34] The relation with actual rights and market interactions is also contingent upon the historical context and economic conditions – including microeconomic ones. Traditions, as historians have known for long, survive and evolve over time, as they are reinvented by agents, confronted to new problems and opportunities.

A good example is provided here by the Common law experience : its originality comes out strongly over the period under review, though its opposition to Civil law statutes was not the same in 1808 as in 1914. Within this larger grouping some countries also innovated (such as Belgium), while others were followers (The Netherlands during the whole century, France over its second half). Some were as well more flexible as regard relaxing the bankrupt's status, while others had a keener eye for contractual autonomy. Moreover, the case of arrangement and compositions presented the case of a bifurcation between countries, which emerged within a few years and had then lasting effects, some of them still visible today : by the end of the century, English law and to lesser extent French legal tradition offered a differentiated menu of options, whereas German lawmakers opted for a one-entry framework, that is less contractual flexibility[35]. Law, in other words, is definitely a serious question for economists and economic historians : this article tried to illustrate how legal history could find its way in their research. But this conclusion is much less clear for legal traditions: correlations are visible between countries, but we do not really know why these traditions may matter, and we may even not know how to interpret them in economic terms.

Rather than a questionable "origin", the evolution of bankruptcy laws reflects that of a defining trade off, between two competing demands: one for guarantees of information and inter-creditor equity, which calls for judicialisation; the other for less microeconomic disruptions, which rather demand less interventions into the legal and contractual rights of the parties, as into their rules of interaction. A working hypothesis would propose that this trade-off is determined by the broader economic and institutional environment : property rights generally speaking, capital markets, the banking and payment systems, information channels or instruments of social controls.[36] In other words, negotiating on private defaults should be considered as just a specific case of contractual exchange, subjected to standard transaction costs : problems of information, moral hazards, commitments and incentives, etc.

The two successive paradigms which have been identified here would then reflect the changing conditions under which this trade-off was made. The first, highly constraining Napoleonic model, which dominated until the 1860s', would reflect an environment where controlling moral hazards and enforcing contractual commitments was still difficult and often unpredictable. Heavy-handed intrusion into personal and contractual rights would have been the ultimate instruments to satisfy that elementary rule of capitalist economies – the protection of creditors' rights. Then, between 1865 and 1885, the emerging liberal model would correspond to en economic and institutional environment where market discipline had become much stronger and where, possibly, the demand for less microeconomic disruptions had also increased.

Critically, it can be hypothesised, reduced informational problems and less volatile liquidity, at the individual and aggregate levels, had two consequences for the operation of bankruptcy : the risk of undue failure became more limited (the institution was better at screening exits); and the potential for tactical defaults, evasion, and more generally moral hazards became correspondingly smaller. Non-market civic threats on the debtor could thus be shed and more discretion to negotiate could be given to the parties, though without apparently economising on their judicial guarantees. In other words, the cost/ benefit trade-off of judicialisation had become more advantageous : contracting on property rights had become safer and less costly – including outside markets.

---

[34] Musacchio (2005) reach a similar conclusion in the case investors' and creditor's right in Brazil, which appear to have fluctuated widely over time.

[35] See also on this Lamoreaux and Rosenthal (2005).

[36] This broadly converge with Ayotte and Hayong (2004), who argue that the lower contract enforcement and the quality of information, the more bankruptcy are to be pro-creditor.

BIBLIOGRAPHY

Primary legal texts

Aström A., Hambro E., Kallenberg E. (1911). *Droit commercial et droit de la faillite de la Suède*. Paris, Librairie Générale de Droit et de Jurisprudence, coll. 'Lois commerciales de l'univers', tome 23. 171 pages, traduction par L. Beauchet (éd. bilingue).

Aström A., Hambro E., Kallenberg E. (1911). *Le droit commercial et le droit de la faillite de la Norvège*. Paris, Librairie Générale de Droit et de Jurisprudence, collection 'Lois commerciales de l'univers', tome 23. 206 pages, traduction par L. Beauchet (éd. bilingue).

Benito L. (1914). *Espagne, droit commercial, code de commerce, lois complémentaires*. Paris, Librairie Générale de Droit et de Jurisprudence, collection 'Lois commerciales de l'univers', tome 37. 351 pages, traduction par H. Prudhomme (éd. bilingue).

Code de commerce (1807), *Bulletin des lois*, n°164, pp. 161-284, Paris, Imprimerie impériale,

Code de commerce du royaume d'Italie, traduit, annoté et commenté par H. Marcy (1883), Nice, Cauvin-Empereur libraire-éditeur, 422 pages.

Code de commerce et loi de procédure du Royaume d'Espagne. Traduit par M. V. Foucher. Blin et Joubert, Paris et Rennes. 1838. 580 pages.

Code de commerce hongrois promulgué le 19 mai 1875, suivi des lois hongroises sur le change et les faillites, traduit, annoté et introduit par R. de la Grasserie. Paris, Durand et Pedone-Lauriel, 1894, xii-376 p. Collection des codes étrangers.

Code de commerce portugais de 1888, traduit et annoté par Ernest Lehr (1889), Paris, Imprimerie Nationale, xlv-264 pages, collection des Codes étranger du Comité de législation étrangère.

Code de commerce pour les Etats de S.M. le roi de Sardaigne. Turin, Imprimerie Royale, 1842, 236 pages.

Code du commerce du Royaume de Hollande. Traduit par M. W. Wintgens. Paris, Rennes, La Haye. 1839.

Codigo Commercial Portuguez approvado por decreto de 1833, com um appendice contendo a legislação que modificou, alterou ou completou o mesmo codigo (1890), Imprensa da universidade, Coimbra, l-280 p.

Hahn, C. (1869), *Die Preussische Konkurs-Ordnung und das Anfechtungesetz vom 9.Mai 1855*. Kern Verlag, Breslau, 292 p.

Janisch, F. (1903), *Die österreichisches Konkursordnung, gesetz von Dezember 1868*. Künfter, Leipa, 170 pages.

Josephus II, Romanorum Emperator (1781), *Allgemeine Gerichts und Konkursordnung fûr Böheim, Mähren, Schlessien, Östermarkt, Kärnten, Krain, …* . Ignaz Kleinmayer, Klagenfurt, 199 pages.

Klibanski H.O., (1913). *Les lois commerciales de la Finlande, y compris les lois sur la lettre de change, sur la faillite et les lois maritimes*. Paris, Librairie Générale de Droit et de Jurisprudence, collection 'Lois commerciales de l'univers', tome 35. 388 pages, traduit du russe par F. Mallieux et J. Rapoport (éd. bilingue).

Klibanski H.O., Pergamante O. IA., Zavadskiy (1912). *Droit commercial russe, lettre de change – faillite – droit maritime*. Paris, Librairie Générale de Droit et de Jurisprudence, collection 'Lois commerciales de l'univers', tome 35. 388 pages, traduction par F. Mallieux (éd. bilingue).

Législation commerciale de l'Allemagne. Code de commerce, entré en vigueur en 1900, loi sur le change, loi sur la faillite (refondue). Edité par P.Carpentier, Paris, Chavalier-Maresq, Paris, xxiii-576 pages.

Les codes suédois de 1734 (civil, pénal, commercial), (1895) Paris, Pedone-Lauriel, traduits, annotés et introduits par R. de la Grasserie, collection des codes étrangers.

Namur, P. (1876), *Le code de commerce belge révisé*. Bruxelles, Bruylants et Cie, 1876, trois tomes

Novissima recopilacion de la leyes de Espana, tome 3, Rosa et Libero, Madrid/ Paris, 1831.

Ordenanzas de la ilustre Universidad y casa de contratacion de la villa de Bilbao (1737), (1794). Madrid, de Sancha, 405 pages.

Ricard, J.-P. (1722), *Le négoce d'Amsterdam*. Rouen, chez Machuel et all., 773 pages.

Société de Législation Comparée. *Annuaire de Législation étrangère*. Paris, Cotillon et Fils. Annual edition between 1871 and 1914.

Tybjerg E.. (1911). *Le droit commercial et le droit de la faillite du Danemark*. Paris, Librairie Générale de Droit et de Jurisprudence, collection 'Lois commerciales de l'univers', tome 24. 186 pages, traduction par L. Beauchet (éd. bilingue).

Van Regteren-Altena M. (1911). *Législation commerciale des Pays-Bas*. Paris, Librairie Générale de Droit et de Jurisprudence, collection 'Lois commerciales de l'univers', tome 28. 167 pages, traduit par F. De Hoon H., De Pelsemaeker F. et P.Carpentier (éd. bilingue).

Other historical sources

Blackstone, Sir W. (1811), *Commentaries on the Laws of England*, London, William Reed, new edition with the analyses of J.F. Archbold.

Denisart, J.B. (1771). *Collection de décisions nouvelles et de notions relatives à la jurisprudence actuelle*. Septième édition, 4 tomes. Chez Veuve Desaint, Paris, rue Saint Jacques.

Dupin, A. (1900). *De la faillite civile, nécessité de son organisation, étude de droit comparé et de législation*. Grenoble, imprimerie Villard, 238 pages.

Füger, J., Wessely (1841), *Füger's Gerichtliches Verfahren in Streitsachen nach der österreichisches allgemeine Gerichts- un Konkursordnung vom 1. Mai 1781*. Vierte Auflage. Wien, Braumüller und Seidel, three tomes, 250 p., 252p. et 335p.

Goldschmidt, Levin (1875), *Handbuch des Handelsrecht.* Stuttgart, Verlag Ferdinand Entze, 690 pages.

Journal du droit international privé. Paris, chez Cosse, Marchal et Billard, libraires de la Cour de cassation. Bimestriel.

Lambrechts H. et alii (date ?), *Dictionnaire pratique de droit comparé*, Paris, Chevalier-Marescq et Cie, 550 pages, collection en X fascicules

Laurens, J.-L. (1806), *Traité des faillites et banqueroutes dans l'ordre judiciaire*. Chomel, Paris, 402 pages.

Lecomte, M. (1879). Etude comparée des principales législations européennes en matière de faillite. Paris, Durand et Pedone-Lauriel, 118 pages.

Lyon-Caen, Ch. (1881). *Tableau des lois commerciales en vigueur dans les principaux états de l'Europe et de l'Amérique*. Paris, Cotillon et Cie, fascicule, 43 pages.

Lyon-Caen, Ch. (1888). *Loi anglaise sur la faillite du 25 Août 1883*. Paris, Imprimerie Nationale, lxvii-212p.

Noel R. (1919), *A History of the Bankruptcy Law*; William s Hein & Co, (2002 reprint).

Percerou J. (1935), *Faillites, banqueroutes et liquidations judiciaires*. Paris, Rousseau et Cie, 3 tomes, 1070p., 1048p. and 524p.,

Renouard, A.-Ch. (1857). *Traité des faillites et banqueroutes*. Paris, Guillaumin et Cie, 3ème édition, deux tomes, 574 et 560 pages.

Sacré A., Oudin L. (1874), *Manuel de droit commercial français et étranger, suivant les lois, les coutumes et la jurisprudence*. Paris, A. Marescq, 816 pages.

Saint-Joseph, A. de. *Concordance entre les codes de commerce étrangers et le code de commerce français*. Paris, 1844, Videcoq et Delamotte, xlvi-417 pages.

Savary, J. (1770), *Le parfait négociant*. Paris, les frères Estienne, two volumes.

Silvian, M. (1915). *Le concordat préventif en droit comparé*, Paris, Giard et Brière, xx-250 p..

Paschoud, F. (1905), *Le concordat préventif de la faillite*. Lausanne, Imprimerie Charles Pache, 256 pages.
Thaller, E. (1887), *Des faillites en droit comparé, avec une étude sur le règlement des faillites en droit international*. Paris, A. Rousseau, deux tomes.
Zimmerl, J. (1822), *Handbuch für Richter, Addvokaten und Justizbeamte,* Wien, Gehlen, deux tomes, 567 et 445 pages.

Recent publications

Alston, L.J. (1984), “Farm Foreclosure Moratorium Legislation: A Lesson from the Past”, *American Economic Review*, 74, pp. 445-457.
Anderson, E. (2004), « Ethical Assumptions in Economic Theory: Some Lessons from the History of Credit and Bankruptcy », *Ethical Theory and Moral Practice*, 7-4, pp. 347-360.
Armour J., Cheffins B., Skeel D. (2002), “Corporate Ownership Structure and the Evolution of Bankruptcy Law: Lessons from the United Kingdom”, *Vanderbilt Law Review*, 55, pp. 1669-1785.
Athreya, K. (2004), “Shame As It Ever Was: Stigma and Personal Bankruptcy”, *Federal Reserve Bank Of Richmond Economic Quarterly*, 90-2, pp. 1-19.
Ayotte, K and Hayong Y. (2004), « Matching Bankruptcy Laws to Legal Environment », Columbia Business School, miméo.
Balleisen E. J. (2001), *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America*, Univ of North Carolina Pr., 344 pages
Bebchuk A., Fried J. (1996), “The Uneasy Case for the Priority of Secured Claims in Bankruptcy”, *Yale Law Journal*, 105-857.
Beck T., Levine R. (2003), « Legal Institutions and Financial Development », NBER Working Paper, 10126.
Beck T., Demirgüc-Kunt A., Levine R. (2002), « Law and Finance : Why Does Legal Origin Matter ? », miméo.
Beck T., Demirgüc-Kunt A., Levine R. (2002), « Law and Firms’ Access to Finance », BNER Working Paper 10687.
Berglöf E., Rosenthal H. (2000), “The Political Economy of American Bankruptcy: The Evidence from Roll Call Voting, 1800-1978”, Princeton University, miméo, avril, 69p..
Berglöf E., Rosenthal H. (2004), “Power Rejected: Congress and Bankrutpcy in the Early Reform”, mimeo.
Berglöf E., Rosenthal H., von Thadder E.-L. (2001), “The Formation of Legal Institutions for Bankrutpcy: A Comparative Study of the Legislative History”, miméo.
Berkovitch E., Israël R. (1999), “Optimal Bankrutpcy Law Across Different Economic Systems”, *The Review of Financial Studies*, 12-2, pp. 347-377.
Bolton P., Rosenthal H. (2002), “The Political Economy of Debt Moratoria, Bailouts and Bankruptcy”, in: *Defusing Default: Incentives and Institutions*, edited by Marco Pagano, Chapter 3, pp. 77-115, 2001.
Block-Lieb, S. (1991), “Why Creditors File So Few Involuntary Petitions and Why the Number is Not Too Small”, *Brooklyn Law Review*, 57-803.
Carruther B.G., Halliday T.C. (1998), *Rescuing Business : The Making of Corporate Bankruptcy Law in England and the United States*, Clarendon Press, Oxford, 582p.
Claessens, S., Klapper L. (2002), “Bankruptcy Around the World : Explanations of its Relative Use”, World Bank, WB Policy Research Paper 2685, july, 34p.
Cole, R., J. McKenzie and L. White (1995), “Deregulation gone awry: moral hazard in the savings and loan industry” in The Causes and Consequences of Depository Institutions Failures, eds. A. Cottrell, M. Lawlor and J. Wood, Kluwer Academic Publishers, Boston
Coleman P. J. (1974), *Debtors and Creditors in America – Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900*, BeardBooks, Washington D.C., 1999 reprint, 302 pages.
Dalhuisen, J. H. (1968), *Compositions in bankruptcy*. Leiden, Sijthoff, 158p.

Domowitz I., Tamer E. (1997), “Two Hundred Years of Bankrutpcy: A Tale of Legislation and Economic Fluctuation”, Institute for Policy Research at Northwestern University, IPR Working Paper, 97-25.
Duffy I. P.H. (1985), *Bankruptcy and Insolvency in London During the Industrial Revolution (British Economic History)*, Garland Pub.
« Fallimento », in : Mortati C., Pugliatti S. eds., (1967), *Enciclopedia del diritto*. Guffrè Editore, Varese.
Finn, M. (2003), *The Character of Credit : Personal Debt in English Culture, 1740-1914*, Cambridge University Press (Cambridge Social and Cultural Histories), 374 p.
Glaeser E., Shleifer A. (2001), Legal Origins, miméo, Harvard University, december.
Hart, O. (2000), “Different Approaches to Bankruptcy”, NBER Working Paper 7921, Camridge.
Hilaire J. (1986), *Introduction historique au droit commercial*, Paris, PUF, 355p.
Hilaire, J. (1995), *Le Droit, Les Affaires et l’Histoire*, Paris, Economica, 370 p..
Holdsworth, W. (1925), *A History of English Law*. London, Sweet and Maxwell, second edition, 1992 reprint. 15 volumes.
Hoppit J. (1987), *Risk and Failure in English Business 1700-1800*, Cambridge University Press;
Jackson Th H. (1982), « Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors’ Bargain. 91 *Yale Law Journal*, 91-857.
Jackson Th. H. (1986), *The Logic and Limits of Bankruptcy Law*, Cambridge, Harvard University Press, 287 p.
Jones, W.J. (1979), “The Foundation of English Bankrutpcy: Statutes and Commissions in the Early Modern Period”, *Transactions of the American Philosophical Society*, 69/3.
Kane, E. (1989), *The S&L insurance crisis: How it happen?*, Washington, Urban Institute Press.
Kessler, A. (2004), “Enforcing virtue: Social norms and Self-Interest in an Eighteenth Century Merchant Court”, Law and History Review, 22-1, pp. 71-118.
Lamoreaux N., Rosenthal J.-L. (2005), “Legal Regime and Contractual Flexibility: A Comparison of Business’s Organizational Choices in France and the United States during the Era of Industrialization”, *American Law and Economics Review*, 7(1).
La Porta R., Lopes-de-Silanes F., Shleifer A., Vishny R. (1997). “Legal Determinants of External Finance”, *The Journal of Finance*, 52-3, pp. 1131-1150
La Porta R., Lopes-de-Silanes F., Shleifer A., Vishny R. (1998). “Law and Finance”, *Journal of Political Economy*, 106-6, pp. 1113-1115
La Porta R., Lopes-de-Silanes F., Shleifer A., Vishny R. (2000). “Investor Protection and Corporate Governance”, *Journal of Financial Economics*, 58-1, 1-25.
Lester V.M. (1995), *Victorian Insolvency, Bankruptcy, Imprisonment for Debt, and Company Winding-Up in Nineteenth-Century England*, Oxford, Clarendon Press, 354p..
Levinthal, Louis (1918), « The Early History of Bankruptcy Law », 66, U. Pa. L. Rev 223.
Mann B. H. (2003), *Republic of Debtors: Bankruptcy in the Age of American Independence*, Harvard Univ Pr, 320 pages
Marco, L. (1989), *La montée des faillites en France, XIX°-XX° siècle*. Paris, L’Harmattan, 191p.
Marriner, S. (1980), “English Bankruptcy Records and Statistics before 1850”, *Economic History Review*, 33-3, pp. 351-366.
Martin, A. (1974), “Railraods and the Equity Receivership: An Essay on Institutional Change”, *The Journal of Economic History*, 34-3, pp. 685-709.
McCoid, J. (1987), “The Occasion for Involuntary Bankruptcy”, *American Bankruptcy Law Journal*, 61-195.
McCoid, J. (1988), “The Origins of Voluntary Bankruptcy”, *Bankruptcy Development Journal*, 361.
McCoid, J. (1996), “Discharge: The Most Important Development in Bankruptcy History”, *American Bankruptcy Law Journal*, 70-163.
Milgrom P., North D., Weingast B. (1990), «The Role of Institutions in the. Revival of Trade», *Economics and Politics*, 2-1, pp. 1-23.
Mueller R. C., Chapin F. (1997), *The Venetian Money Market: Banks, Panics, and the Public Debt, 1200-1500 (Money and Banking in Medieval and Renaissance Venice*, vol 2, Johns Hopkins Univ Pr; 568 pages.

Muldrew, C. (1993), “Credit and the courts: debt litigation in a seventeenth-century urban community”, *Economic History Review*, 1, pp. 23-38.
Musacchio, A. (2005), “Can Civil Law Countries Get It Right? Bankruptcy Law and Corporate Governance in historical perspective, Brazil, 1850-2001”, miméo, Harvard Business School.
North D., and Weingast B. (1989), “Constitutions and Commitment: Evolution of Institutions Governing Public Choice”, *Journal of Economic History*, 44, pp. 803-832.
Nunez S. and Rosenthal (2002), “Bankruptcy ‘Reform’ in Congress: Creditors, Committees, Ideology, and Floor Voting in the Legislative Process”, mimeo.
Picker R. C. (1992), “Voluntary Petitions and the Creditors’ Bargain”, *University of Cincinnati Law Review*, 61-519.
Posner E. (1978), « The Political Economy of the Bankrutpcy Reform Act of 1978 », *Michigan Law Review*, 96.
Rowat M., Astigarraga J. (1999), *Latin American Insolvency Systems, A Comparative Assesment*, Washington, Banque Mondiale, World Bank Technical Paper 433, 87p..
Schwartz A.. (1984), “The Continuing Puzzle of Secured Debt”, *Vanderbilt Law Review*, 37-1051.
Shapiro M. (1981), *Courts, a Comparative and Political Analysis*, Chicago, The University of Chicago Press.
Skeel, D.A. (1998), “An Evolutionnary Theory of Corporate Law and Corporate Bankruptcy”, *Vanderbilt Law Review*, 51, pp. 1325-1350.
Skeel, D. A. (2001), *Debt's Dominion: A History of Bankruptcy Law in America*.; Princeton Univ Pr; 272 pages.
Sonin, C., Zhuravskaya E. (2000), “Bankruptcies in Russia: Away From Creditor Proection and Restructuring”, *Russian Economic Trends*, 9:1, mars, pp.6-12.
Tabb Ch. (1991), “The Historical Evolution of the Bankruptcy Discharge”, *American Bankruptcy Law Journal*, 65-325
Tabb Ch. J. (1995), « The History of Bkcy Law in the United States », *Am Bankruptcy Institute Law Rev*., spring 1995, 3-1.
Tabb Ch. J. (2002), *Bankruptcy Anthology*, Anderson Publishing, 888 pp.
The Journal of Finance (1983), “The behavior of Firms in Financial Distress”, symposium, 38-2.
Thompson E. L. (2004), *The Reconstruction of Southern Debtors: Bankruptcy After the Civil War (Studies in the Legal History of the South)*, University of Georgia Press.
Warren C. (1935), *Bankruptcy in United States History*, Washington, BeardBooks, 190 p. (réédition 1999).
Weiss, B. (1986), *The hell of the English: Bankruptcy and the Victorian Reform*, Lewisburg Pa.,
White L. (1977), “Bankrutpcy as an economic intervention”, *Journal of Libertarian Studies*, 1-4, pp. 281-288.

Box 1 – The bankrupt's status, an index

- Is prison for debt a standard feature, or is it limited to open misconduct, bad faith behaviour, etc?
- Can the debtor be freed, once he has transferred all his wealth to his creditors?
- Is rehabilitation a normal outcome of bankruptcy closure?
- Do traders and non-traders follow the same basic procedure?

Box 2 – Contractual autonomy, an index

Are there pre-conditions to the confirmation of an arrangement, in terms of i.a. minimal return?

Does the law include an out-of-bankruptcy, judicial moratorium (or stay) for solvent but illiquid debtors?

Does the law allow broader, out-of-bankruptcy arrangements, with judicial oversight and confirmation ?

Does such arrangement require pre-conditions, in terms i.a. of minimal return?

Are there legal guarantees to extra-judicial arrangements?

Does the law allow the receivers to engage into active trading on behalf of the creditors?

Annex 1
Major bankruptcy laws adopted between 1814 and 1914 in Europe

Austria
1859, law on bankruptcy
1865, end of prison for debt
1869, reform of the law on bankruptcy
1885, new bankruptcy law

Belgium
1830, inherits the French 1808 Code
1851, reform of the bankruptcy law
1871, end of prison for debt
1883, introduction of the non-bankruptcy composition

Denmark
1842, law on bankruptcy
1872, law on bankruptcy, end of prison for debt
1887, reform of the law
1905, non-bankruptcy composition

England,
1814, reform of the bankrutcy law
1826, reform of the bankrutcy law
1831, reform of the bankrutcy law
1843, reform of the bankrutcy law
1849, reform of the bankrutcy law
1861, reform of the bankrutcy law
1869, reform of the bankrutcy law, end of prison for debt
1883, reform of the bankrutcy law

France
1808, Code de commerce
1838, new bankruptcy law
1866, end of prison for debt
1889, non-bankruptcy composition
1905, reform of the bankruptcy law

Finland
1868, law on bankruptcy

Germany/ Prussia
1855, Prussian bankruptcy law
1877, law on bankruptcy, end of prison for debt
1898, partial reform of the bankruptcy law

Hungary
1842, law on bankrutpcy
1881, law on bankruptcy

Italy
1842, commercial code (Kingdom of Piedmont & Sardinia)
1882, new commercial code, end of prison for debt
1903, non-bankruptcy composition

The Netherlands
1814, inherits the 1808 Code de commerce
1838, reform of the commercial code
1893, reform of the commercial code, end of prison for debt

Norway
1863, law on bankruptcy
1874, end of prison for debt
1899, non-bankruptcy composition

Portugal
1833, new commercial code
1888, new code oommerce,
1899, non-bankruptcy composition

Russia
1826, *Digest* of commercial law
1903, non-bankruptcy composition

Spain
1829, new commercial code
1885, new commercial code
1897, reform of the non-bankruptcy composition

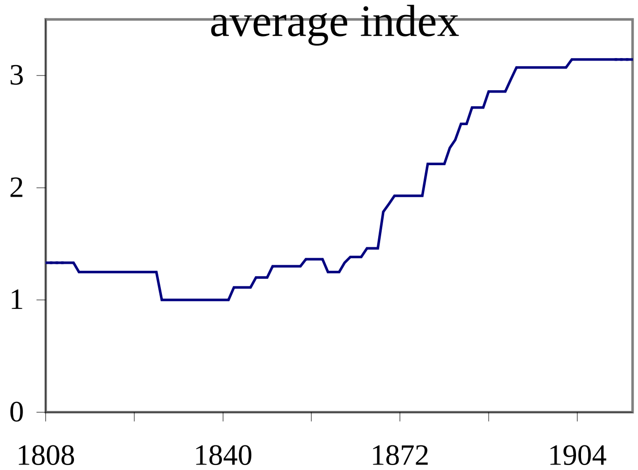
Sweden
1830, ordnance on bankruptcy
1862, new bankruptcy law

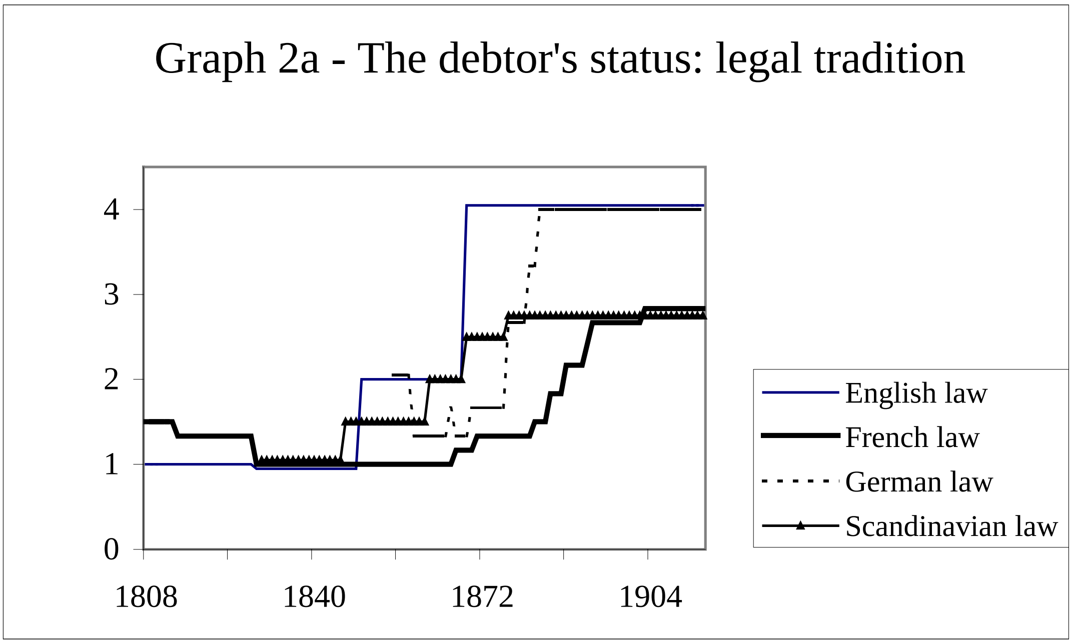
Switzerland
1874, end of prison for debt
1889, first federal law on bankruptcy

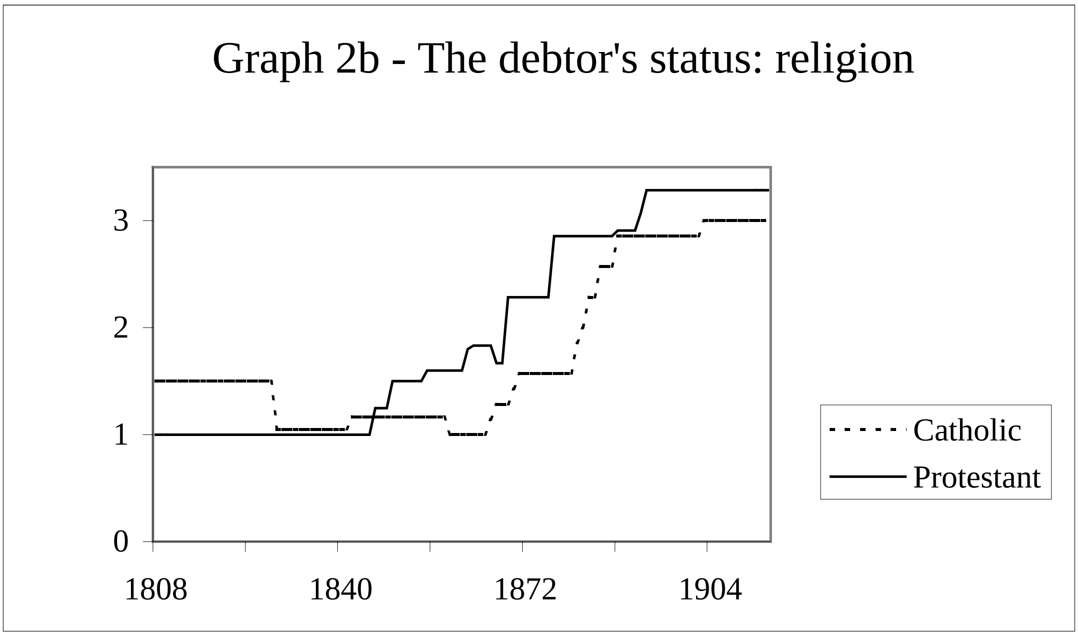
Table 1 - 1865-1885 : towards a new bankruptcy model

The decline of the Napoleonic model		Continuation and Reorganisation		
Traders and non traders joint procedure	**Official end of prison for debt**	**'Old-way' judicial stay**	**Extra-bankruptcy framework**	**Within-bankruptcy framework**
Denmark, 1846 Austria, 1866 Finland, 1868 England, 1869 Germany 1877 Hungary 1881 Netherlands 1893	Austria, 1866 France, 1866 England, 1869 Belgium, 1871 Germany, 1871 Ireland, 1872 Denmark, 1872 Norway, 1874 Switzerland, 1874 Sweden, 1877 Scotland, 1877 Italy, 1882 Netherlands, 1893 Greece, 1900	The Netherlands, 1814- Belgium, 1830- Portugal, 1833- France, 1848 and 1871 Prussia, 1855-1877 England, 1849-1861 Russia, 1826-1903	England, 1889-1883 Belgium, 1883 Spain, 1885-1897 France, 1889 Switzerland, 1889 Portugal 1899 Norway, 1899 Italy 1903 Russia 1903 Denmark, 1905	Austria Germany Hungary The Netherlands Sweden

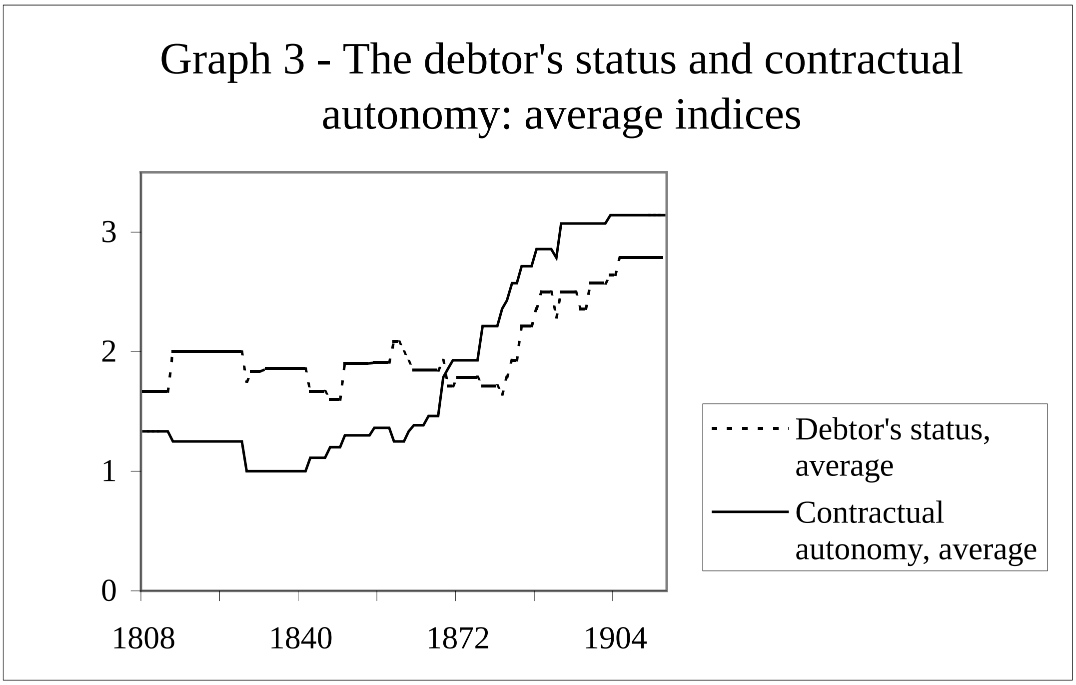
Graf 1 - The liberalisation of the debtor's status,
average index



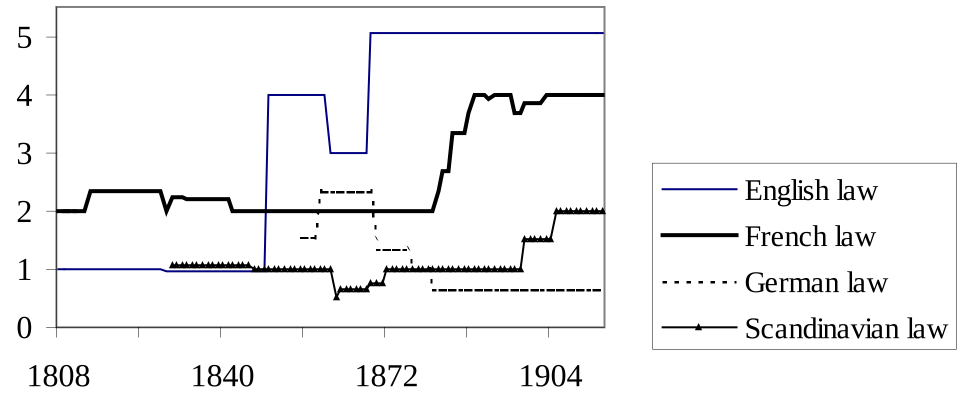

Graph 2a - The debtor's status: legal tradition
4
3
2
1
0
1808
1840
1872
1904
English law
French law
German law
Scandinavian law

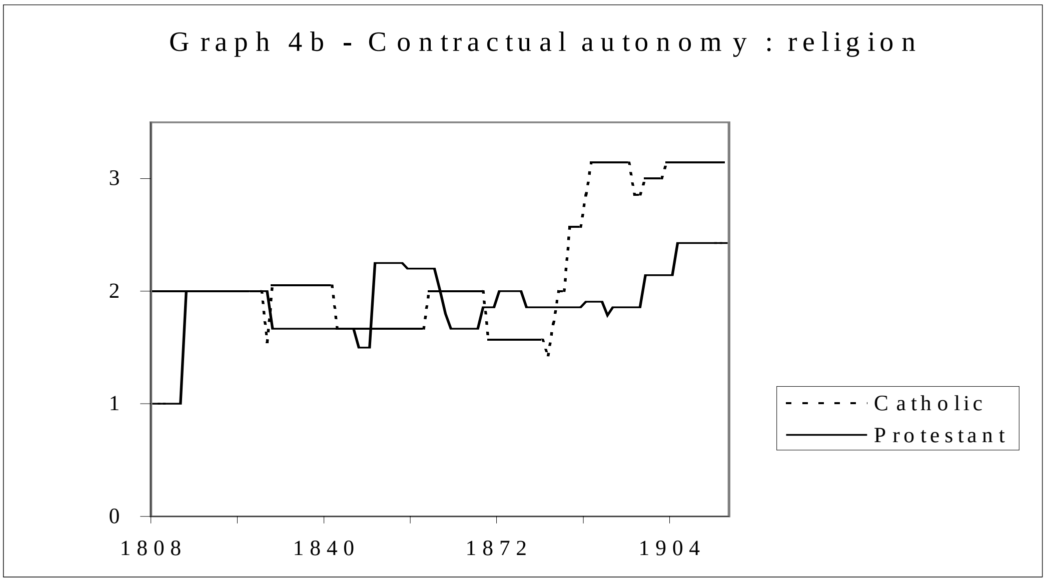


Graph 2b - The debtor's status: religion
3
2
1
0
1808
1840
1872
1904
Catholic
Protestant


Graph 3 - The debtor's status and contractual autonomy: average indices
3
2
1
0
1808
1840
1872
1904
Debtor's status, average
Contractual autonomy, average

Graph 4a - Contractual autonomy: legal tradition




Graph 4b - Contractual autonomy : religion
3
2
1
0
1808
1840
1872
1904
Catholic
Protestant

Discussion

Yishay Yafeh

The Hebrew University, CEPR, and ECGI

The paper compares the evolution of bankruptcy law across a large number of European countries. It offers a wider scope than most comparisons, and this is one of the great merits of this paper. The main finding is a striking similarity in the evolution bankruptcy laws in the 19th century across Europe, which appears to contradict the standard La Porta et al. (1997, 1998) view of the world (henceforth abbreviated to LLSV).

The main shortcoming of the paper is that, in its present form, it is not guided by clear, refutable hypotheses and does not “look” like most papers in economics. The focus of my discussion will therefore be on setting up a series of hypotheses that the (very nice) data in this paper can support or refute.

(1) Does the author think that bankruptcy laws TODAY differ substantially across countries? If the answer is YES, when and how did the differences emerge? Rajan and Zingales (2003) document “Great Reversals” in the extent of financial development across countries starting in the early 20th century. France or Japan, for example, used to have active stock markets, but political and other changes negatively affected them later on. The present paper can document changes in legislation and examine if those are correlated with the decline in financial markets in some countries, as the LLSV view of the world might suggest. If the author's answer is NO, that is, he disagrees with the common perception that investor protection in some (typically civil law) countries is weaker than in others, why did LLSV get the wrong impression? Is it

because of the measures they use in their empirical analysis of investor protection around the world?

(2) If bankruptcy laws were indeed similar in the past, were there important differences across countries in informal institutions upholding the rights of investors? The role of informal methods of investor protection has often been raised as a counter-argument to the legalistic focus of the LLSV view of the world: for example, work by Franks, Mayer and Rossi on informal corporate governance in the UK suggests that there may have been substitutes to formal legislation. See also work on the Corporation of Foreign Bondholder in new Mauro-Sussman-Yafeh OUP book.

(3) A related question: Is there systematic evidence on differences in the application of the law in different countries? Again, the LLSV-based literature emphasizes the extent of legal enforcement, not just the letter of the law as it appears in legal texts. Some parts of the present paper seem to imply that England, for example, was different from other countries in the sample in the way certain laws were interpreted and implemented.

(4) And an unrelated question: do we know anything on shareholder protection, if there was any? Did it develop in tandem with the development of creditor protection documented in this study? Shareholder protection could be very important for the development of financial markets – again, see LLSV (1997 and 1998).

(5) If creditors were equally protected across Europe, what might explain variations in the development of debt instruments and markets, if there were any? The LLSV view of the world regards investor protection as a primary determinant of the development of financial markets. Was this really the case? If not, can differences in the extent of (perhaps informal) investor protection across countries be related to different degrees of financial development?

(6) And a political economy question: what triggered the new legislation in France in the early 19th century (and elsewhere)? Perhaps the existing informal institutions were no longer adequate? A growing recent literature has emphasized the political economy of financial markets and investor protection (e.g. Pagano and Volpin, 2005). Are the observed changes in the historical data consistent with modern arguments on the extent of investor protection as an outcome of some political processes?

In sum, this is a potentially very interesting paper, which is not yet set up to make the most of the fantastic data collected. It would be great if the author could propose tests and answers to some "big" questions in the law and finance literature using the material gathered.

References

La Porta, R., F. Lopez-de-Silanes, A. Shleifer, and R. Vishny (1997), "Legal Determinants of External Finance," *Journal of Finance*, Vol. 52, pp. 1131-1150.

La Porta, R., F. Lopez-de-Silanes, A. Shleifer, and R. Vishny (1998), "Law and Finance," *Journal of Political Economy*, Vol. 106, pp. 1113-1155.

Mauro, P., N. Sussman, and Y. Yafeh (2006), "Emerging Markets and Financial Globalization: Sovereign Bond Spreads in 1870-1913 and Today," forthcoming, Oxford University Press.

Mayer, C., J. Franks, and S. Rossi (2004), "Ownership: Evolution and Regulation," working paper, Oxford University.

Pagano, M. and P. Volpin (2005), "The Political Economy of Corporate Governance," *American Economic Review* Vol. 95, pp. 1005-1030.

Rajan, R. and L. Zingales (2003), "The Great Reversals: The Politics of Financial Development in the Twentieth Century," *Journal of Financial Economics*, Vol. 69, pp. 5-50.

Index of Working Papers:

January 2, 2002	Sylvia Kaufmann	56	Asymmetries in Bank Lending Behaviour. Austria During the 1990s
January 7, 2002	Martin Summer	57	Banking Regulation and Systemic Risk
January 28, 2002	Maria Valderrama	58	Credit Channel and Investment Behavior in Austria: A Micro-Econometric Approach
February 18, 2002	Gabriela de Raaij and Burkhard Raunig	59	Evaluating Density Forecasts with an Application to Stock Market Returns
February 25, 2002	Ben R. Craig and Joachim G. Keller	60	The Empirical Performance of Option Based Densities of Foreign Exchange
February 28, 2002	Peter Backé, Jarko Fidrmuc, Thomas Reininger and Franz Schardax	61	Price Dynamics in Central and Eastern European EU Accession Countries
April 8, 2002	Jesús Crespo-Cuaresma, Maria Antoinette Dimitz and Doris Ritzberger-Grünwald	62	Growth, Convergence and EU Membership
May 29, 2002	Markus Knell	63	Wage Formation in Open Economies and the Role of Monetary and Wage-Setting Institutions
June 19, 2002	Sylvester C.W. Eijffinger (comments by: José Luis Malo de Molina and by Franz Seitz)	64	The Federal Design of a Central Bank in a Monetary Union: The Case of the European System of Central Banks
July 1, 2002	Sebastian Edwards and I. Igal Magendzo (comments by Luis Adalberto Aquino Cardona and by Hans Genberg)	65	Dollarization and Economic Performance: What Do We Really Know?

July 10, 2002	David Begg (comment by Peter Bofinger)	66	Growth, Integration, and Macroeconomic Policy Design: Some Lessons for Latin America
July 15, 2002	Andrew Berg, Eduardo Borensztein, and Paolo Mauro (comment by Sven Arndt)	67	An Evaluation of Monetary Regime Options for Latin America
July 22, 2002	Eduard Hochreiter, Klaus Schmidt-Hebbel and Georg Winckler (comments by Lars Jonung and George Tavlas)	68	Monetary Union: European Lessons, Latin American Prospects
July 29, 2002	Michael J. Artis (comment by David Archer)	69	Reflections on the Optimal Currency Area (OCA) criteria in the light of EMU
August 5, 2002	Jürgen von Hagen, Susanne Mundschenk (comments by Thorsten Polleit, Gernot Doppelhofer and Roland Vaubel)	70	Fiscal and Monetary Policy Coordination in EMU
August 12, 2002	Dimitri Boreiko (comment by Ryszard Kokoszczyński)	71	EMU and Accession Countries: Fuzzy Cluster Analysis of Membership
August 19, 2002	Ansgar Belke and Daniel Gros (comments by Luís de Campos e Cunha, Nuno Alves and Eduardo Levy-Yeyati)	72	Monetary Integration in the Southern Cone: Mercosur Is Not Like the EU?
August 26, 2002	Friedrich Fritzer, Gabriel Moser and Johann Scharler	73	Forecasting Austrian HICP and its Components using VAR and ARIMA Models
September 30, 2002	Sebastian Edwards	74	The Great Exchange Rate Debate after Argentina
October 3, 2002	George Kopits (comments by Zsolt Darvas and Gerhard Illing)	75	Central European EU Accession and Latin American Integration: Mutual Lessons in Macroeconomic Policy Design

October 10, 2002	Eduard Hochreiter, Anton Korinek and Pierre L. Siklos (comments by Jeannine Bailliu and Thorvaldur Gylfason)	76	The Potential Consequences of Alternative Exchange Rate Regimes: A Study of Three Candidate Regions
October 14, 2002	Peter Brandner, Harald Grech	77	Why Did Central Banks Intervene in the EMS? The Post 1993 Experience
October 21, 2002	Alfred Stiglbauer, Florian Stahl, Rudolf Winter-Ebmer, Josef Zweimüller	78	Job Creation and Job Destruction in a Regulated Labor Market: The Case of Austria
October 28, 2002	Elsinger, Alfred Lehar and Martin Summer	79	Risk Assessment for Banking Systems
November 4, 2002	Helmut Stix	80	Does Central Bank Intervention Influence the Probability of a Speculative Attack? Evidence from the EMS
June 30, 2003	Markus Knell, Helmut Stix	81	How Robust are Money Demand Estimations? A Meta-Analytic Approach
July 7, 2003	Helmut Stix	82	How Do Debit Cards Affect Cash Demand? Survey Data Evidence
July 14, 2003	Sylvia Kaufmann	83	The business cycle of European countries. Bayesian clustering of country-individual IP growth series.
July 21, 2003	Jesus Crespo Cuaresma, Ernest Gnan, Doris Ritzberger-Gruenwald	84	Searching for the Natural Rate of Interest: a Euro-Area Perspective
July 28, 2003	Sylvia Frühwirth-Schnatter, Sylvia Kaufmann	85	Investigating asymmetries in the bank lending channel. An analysis using Austrian banks' balance sheet data
September 22, 2003	Burkhard Raunig	86	Testing for Longer Horizon Predictability of Return Volatility with an Application to the German DAX
May 3, 2004	Juergen Eichberger, Martin Summer	87	Bank Capital, Liquidity and Systemic Risk

June 7, 2004	Markus Knell, Helmut Stix	88	Three Decades of Money Demand Studies. Some Differences and Remarkable Similarities
August 27, 2004	Martin Schneider, Martin Spitzer	89	Forecasting Austrian GDP using the generalized dynamic factor model
September 20, 2004	Sylvia Kaufmann, Maria Teresa Valderrama	90	Modeling Credit Aggregates
Oktober 4, 2004	Gabriel Moser, Fabio Rumler, Johann Scharler	91	Forecasting Austrian Inflation
November 3, 2004	Michael D. Bordo, Josef Christl, Harold James, Christian Just	92	Exchange Rate Regimes Past, Present and Future
December 29, 2004	Johann Scharler	93	Understanding the Stock Market's Response to Monetary Policy Shocks
Decembert 31, 2004	Harald Grech	94	What Do German Short-Term Interest Rates Tell Us About Future Inflation?
February 7, 2005	Markus Knell	95	On the Design of Sustainable and Fair PAYG - Pension Systems When Cohort Sizes Change.
March 4, 2005	Stefania P. S. Rossi, Markus Schwaiger, Gerhard Winkler	96	Managerial Behavior and Cost/Profit Efficiency in the Banking Sectors of Central and Eastern European Countries
April 4, 2005	Ester Faia	97	Financial Differences and Business Cycle Co-Movements in A Currency Area
May 12, 2005	Federico Ravenna	98	The European Monetary Union as a Committment Device for New EU Member States
May 23, 2005	Philipp Engler, Terhi Jokipii, Christian Merkl, Pablo Rovira Kalt-wasser, Lúcio Vinhas de Souza	99	The Effect of Capital Requirement Regulation on the Transmission of Monetary Policy: Evidence from Austria
July 11, 2005	Claudia Kwapil, Josef Baumgartner, Johann Scharler	100	The Price-Setting Behavior of Austrian Firms: Some Survey Evidence

July 25, 2005	Josef Baumgartner, Ernst Glatzer, Fabio Rumler, Alfred Stiglbauer	101	How Frequently Do Consumer Prices Change in Austria? Evidence from Micro CPI Data
August 8, 2005	Fabio Rumler	102	Estimates of the Open Economy New Keynesian Phillips Curve for Euro Area Countries
September 19, 2005	Peter Kugler, Sylvia Kaufmann	103	Does Money Matter for Inflation in the Euro Area?
September 28, 2005	Gerhard Fenz, Martin Spitzer	104	AQM – The Austrian Quarterly Model of the Oesterreichische Nationalbank
October 25, 2005	Matthieu Bussière, Jarko Fidrmuc, Bernd Schnatz	105	Trade Integration of Central and Eastern European Countries: Lessons from a Gravity Model
November 15, 2005	Balázs Égert, László Halpern, Ronald MacDonald	106	Equilibrium Exchange Rates in Transition Economies: Taking Stock of the Issues
January 2, 2006	Michael D. Bordo, Peter L. Rousseau (comments by Thorvaldur Gylfason and Pierre Siklos)	107	Legal-Political Factors and the Historical Evolution of the Finance-Growth Link
January 4, 2006	Ignacio Briones, André Villela (comments by Forrest Capie and Patrick Honohan)	108	European Banks and their Impact on the Banking Industry in Chile and Brazil: 1862 - 1913
January 5, 2006	Jérôme Sgard (comment by Yishay Yafeh)	109	Bankruptcy Law, Creditors' Rights and Contractual Exchange in Europe, 1808-1914