Bankruptcy and Creditors' Rights in Early Modern England

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September 2009

Preliminary Draft
Not for Quotation

Introduction

Failure to meet one's debt obligations implies some level of insolvency. This could have occurred as a result of a systemic breakdown due to a financial crisis, 'credit crunch' or stock market collapse. In some cases the disruption might be mainly on the monetary side of the economy affecting people's wealth or aggregate balance sheets. In other cases, the disruption might also spread to the real side of the economy with the consequent collapse of small and large businesses, disruption of trading networks, contraction of lending and credit facilities and the subsequent impacts on employment and family finance.

Insolvency, of course, could also be idiosyncratic to a particular firm. It could be the result of a temporal imbalance with the flow of funds from one's own debtors no longer matching the timing of the flow of funds to one's creditors. Insolvency could reflect a more serious structural issue where the asset base of the firm can no longer maintain the liabilities owing by the firm. Again this could be a short run situation that, with time, could be ameliorated; but it could also be that time will not change the situation and that the firm or person will never be able to meet his or her debt obligations. The firm or the person is bankrupt.

Bankruptcy and insolvency have the same general meaning - insufficient assets to cover debts. Someone who is bankrupt is insolvent but someone who is insolvent is not necessarily a bankrupt. Although often used interchangeably in common parlance, bankruptcy has a precise legal connotation. It has specific meaning and obligations under the law. However, this meaning is not static, rather it has and probably will continue to change over time. In England, bankruptcy was a matter of statute law. Until the middle of the nineteenth century in England, a person or firm could not voluntarily declare him or herself or itself bankrupt. One had to be declared bankrupt by another person and even then, there were specific conditions to be met before a writ of bankruptcy could be issued. This paper explores the changing nature of bankruptcy law in England during the early modern period. It focusses, in particular, on the generation of creditor and debtor property rights from the sixteenth to the nineteenth century and explores the shift in English bankruptcy laws from extremely punitive towards the debtor to rehabilitative. The extent to which the law was creditor versus debtor friendly, or the extent to which it was punitive versus rehabilitative has implications for the growth of the mercantile economy. Indeed, this is the very same time period where we see a shift from personal to more impersonal finance use by individuals.

Literature Review

The development of bankruptcy law in England has not been ignored by scholars. Jones (1979) provides a discussion of English bankruptcy code during the eighteenth century. In his overview of bankruptcy in the late medieval world, Schick (2006) has a final section on the English situation.[1] The economic implications of bankruptcy has been explored most extensively by Julian Hoppit (1987) in his book *Risk and Failure in English business 1700 - 1800* and in subsequent papers on aspects of the same subject. Hoppit's interest in the question of bankruptcy revolves around trying to understand the nature of business failure. He argues for a focus on business failure as an antidote to a literature that he sees as almost exclusively focussing on the success of British business and which, he argues, implies that the path to growth and development in England was one of almost unalloyed success. As Hoppit correctly notes businesses fail and they fail for a variety of reasons. Indeed, there is considerable churning in the market for firms.[2] Most new firms do not succeed and the probability of being in business for a second year is very low. Obviously, the longer lived is a firm, the lower the probability of failure in the coming year.

Failure, however, does not mean that a firm, whether in the form of a person or a legally constituted entity, had reached the point of either insolvency or bankruptcy. Some businesses disappear with the death of the owner. Other owners might have seen that the enterprise was unlikely to succeed and closed the business. Some might have moved their assets into other activities that they deemed more profitable. But some would have been forced to close because they were unable to meet their debt obligations. According to Hoppit, these persons and firms constitute the bottom of the failure ladder. He, however, is not interested in the development of the bankruptcy code. Rather, in *Risk and Failure,* he uses the bankruptcy records to examines the distribution of bankruptcy across firm types and geographical locations for the whole of the eighteenth century. London looms large in the bankruptcy statistics as do those counties with a strong connection to overseas trade. Hoppit also notes the large increase in the numbers of a bankruptcies in the last few decades of the eighteenth century when the economy was just beginning to experience the beginnings of the Industrial Revolution. But his is also an examination of bankruptcy under a given set of rules.[3] Hoppit does not look at the evolution of the rules over time.

A bankrupt firm is one that has failed. But, but at the same time, we need to be very careful how we understand the meaning of failure. Failure could suggest vibrancy within the mercantile community. An economy with no business failures might not necessarily be one experiencing economic growth. Yet, bankruptcy is not just something to be studied in relation to an individual firm's success or failure. Indeed, the very creation of a firm is, in part, endogenously determined by the bankruptcy rules themselves.   They are an integral part of the rules of the game under which firms and agents operate, and they also affect the cost of capital for individuals and firms.

In a now influential paper, la Porta, Lopez-de-Silanes, Shleifer and Vishny (1998) in a cross-country study examine the extent to which legal systems affect economic growth. Their results argue that common-law countries generally have the strongest protections for investors and the French civil-law system the weakest. These different levels of protect, they argue, translates into firm structure, the rights of investors, and the types of contracts written. Building on this work, Glaeser and Shleifer (2002) make the point that the difference between the common law versus a civil law tradition shows up most clearly in the development of financial markets. They write that "on just about any measure, common law countries are more financially developed than civil law countries." [4]   The source of this difference they argue lies in the security of property rights within the two systems.

Following on the work of Hart (1995), we now recognize that a defining feature of a financial instrument is the rights that it carries with it. Equity give the owner the right to a dividend stream or to potential capital gains, while a debt instrument entitles the owner to a stream of interest payments. But these instruments also have embedded within them rights to control managers' conduct in the event that managers or directors of a company decide to operate in their own best interest and not that of the owners. In such circumstances, the equity holders could vote directors out of office, while the debt holders could repossess collateral if the company ceases to make promised payments. These rights therefore circumscribe the behavior of agents. At the same time, how debt and equity owners can exercise their rights depends on the legal rules and the jurisdictions in which the securities were issued. Thus as La Porta et al state "law and the quality of its enforcement are potentially important determinants of what rights security holders have and how well these rights are protected."[5]

The legal system is one determinant of the transactions costs of doing business. Under what circumstances would an individual be willing to lend money or invest in a project? Clearly the nature of the project matters and its rate of return. While a study of investment might rank opportunities by their internal rates of return, the legal context also affects the cost of capital. Under what circumstances would an individual be willing to borrow money or another to lend money. The legal context and the rules regarding bankruptcy define the residual rights of the creditors and, in fact, determines whether the equity holder will be able to vote a self-seeking management out of office or whether a debt holder can repossess collateral. The legal rules also define whether an insolvent debtor will be treated in a punitive fashion or whether the system allows some measure of accommodation. Depending on the jurisdictions, these rules are more creditor or more debtor friendly.

Conceptual Framework

Creditor (lender)/debtor(borrower) relationships must confront and deal with principal agent issues. First, there are problems of asymmetric information where the creditor might not know all there is to know either about the investment or about the unobserved characteristics of the borrower. Second, there are problems of moral hazard in that the behavior of the debtor/borrower might change after the contract is signed. Third, there are problems of adverse selection in terms of who is most likely to be borrowing money. In most circumstances, the contract can never be complete and verifiable. As sketched in Figure 1, there are a set of lenders and borrowers who meet and negotiate. Some lenders decide not to lend; some borrowers decide not to borrow. Some other set of agents sign a contract.

Once the contract is signed, what matters to the creditor is that the contractual obligations are fulfilled. For some large set of contracts, the terms will be met, the debt repaid and the lender and borrower will exit the contract. However, for some other subset of contracts, the terms will not be fulfilled and, in the event of a default, the creditor is once again faced with a problem of asymmetric information. Does the debtor just need some more time? The creditor has to decide how to handle the situation. It is in this situation that the rules relating to residual claims over assets reduce uncertainty in this bad outcome. But the very rules of the game in this bad outcome, also affect the terms under which lenders and borrowers are willing to enter into contracts in the first place.

In a world without credit rating agencies, information regarding the credit worthiness of a borrower comes from family, kin and social networks and from work interactions. Kin and social networks (á la Greif) provide information to a creditor and also can provide an environment that is conducive to the fulfilling of a contract. In the event of a default, that same environment puts pressure on the debtor to do his or her best to meet the contractual obligations. Work interactions also provide information about the credit worthiness of an individual. For example, Gerrard Winstanley and Thomas Griggs both obtained credit from larger merchants. Winstanley was in the retail cloth business. He obtained cloth on credit from wholesale merchants which he then sold in his shop.[6] Thomas Griggs obtained bulk yarn on credit which he then retailed to independent craftsmen.[7] In both cases we know about these business connections because their revenue stream was not sufficient to cover their expenses and both ultimately were declared bankrupt.

Winstanley, the record shows, had obtained goods on credit from Richard Aldworth, a wealthy London skinner. Aldworth allowed Winstanley to restructure his contract a number of times in order to give him time to pay his debts. However, Winstanley was unable to do so and Aldworth finally had a writ of bankruptcy issued against him. Although the record does not note it, the same period of recontracting might have occurred for Griggs. But here too a write of bankruptcy was issued. Bankruptcy provides closure on the contract for the creditors.

In essence the laws in place affect the costs of capital or of doing business. The better defined are the rules governing outcomes in the low probability event of a default, the lower will be the cost of borrowing for all debtors. In their examination of the protections afforded by differing legal systems, La Porta et al. create a simple additive index over a number of features they define as important in understanding the relative strength of creditor/debtor rights. The components of their bankruptcy index measuring creditor rights are: (1) the country imposes restrictions, such as creditors' consent or minimum dividends to file for reorganization; (2) secured creditors are able to gain possession of their security once the reorganization petition has been approved (no automatic stay); (3) secured creditors are ranked first in the distribution of the proceeds that result from the disposition of the assets of a bankrupt firm; (4) the debtor does not retain the administration of its property pending the resolution of the reorganization.[8] Such an approach has become standard in the subsequent literature. For example, in his examination of creditor rights in the Brazilian bond market since 1850, Aldo Musacchio creates a comparable index.[9] His four components are:

1) Secured creditors can repossess collateral (no automatic stay)

2) Secured creditors have first priority

3) Approval of creditors for reorganization

4) Management does not automatically stay with reorganization.

Although differing somewhat from La Porta et al, due to the somewhat differing nature of the investigation, they retain the focus on the strength of creditor rights. The focus in much of the current work, such as La Porta et al. and Musacchio, is on the extent to which creditors are given priority in the event of a bankruptcy rather than the benefit going to the debtors. The focus is also on the bankruptcy of a firm as the unit under consideration. The firm as the unit of interest is very much a post-nineteenth century phenomenon. The firm as we conceive of it today was very much a nineteenth century innovation.[10] Prior to that time in England, bankruptcy related to the individual.

The current debate concerns the rights of creditors relative to debtors and by implication the extent to which debtor rights are 'too' strong. In this examination of the evolution of English statutes, I focus on the both creditor and debtor rights. As shown schematically, a contract between a creditor and debtor will be affected by the legal rights of both parties and the rules relating to both parties might reduce the willingness of either party to do so. Indeed, as will become quickly obvious in the discussion of the statutes, the rules laid out in England with respect to the rules of bankruptcy were strongly in favor of the creditor and were extremely punitive with regard to the debtor. This shifts through the early modern period and this shift in perception and rule regarding the treatment of debtors needs to be addressed. To do that, I amend Musacchio's index changing the focus in two ways. The first changes the focus of the index from what will happen in the event of a bankruptcy of a firm to that bankruptcy of an individual. The second change is a change in focus from the rights of the creditor to that of the debtor. One could consider the following components of the situation facing a bankrupt individual debtor in the early modern period:

1) Prison as a required part of the process.

2) Prison as a punishment strategy for non-compliance.

3) Death as a punishment strategy for non-compliance.

4) No exit strategy from bankruptcy.

Each component is either zero or one. An index of four would reflect a very harsh debtor situation. In the next section, I discuss the various statutes and the evolution of creditor/debtor rights.

Bankruptcy Statutes 1543 to 1706

During the early modern period in England, bankruptcy law focused on individuals not companies. These laws regarding residual rights of claimants developed over the same period as financial markets shifted from more personal to more impersonal relationships. I am not arguing that one caused the other, but it would not be unreasonable to expect that each influenced the other. A shift to more impersonal sources of credit required that there be mechanisms in place to control agency problems and also that there be ways in which creditors have access to assets in the case of insolvency.

It must also be recognized that during the early modern period, the failure to repay one's debts had a very serious moral dimension. Failure to repay one's debts is a crime against the creditors. And the bankruptcy statutes are originally written given the specific views of insolvent debtors. In fact, Adam Smith wrote that bankruptcy was "perhaps the greatest and most humiliating calamity which can befall an innocent man. The greater part of men, therefore, are sufficiently careful to avoid it. Some, indeed, do not avoid it; as some do not avoid the gallows." On the other hand, Blackstone, the leading eighteenth century jurist saw the bankruptcy statutes as "capital alterations of our legal polity" which were "highly convenient to that character, which the English now began to assume, of a great commercial people."[11] In an extended essay on the foundations of English bankruptcy, Jones (1979) sees the statutes which created the law of bankruptcy as "mundane attempts to establish new rules within the limited field of debt. They were commonplace and practical measures intended to provide solutions to a selection of immediate problems"[12]

Mundane rules or capital alterations, the bankruptcy statutes changed the transactions costs of doing business. They specified end-of-relationship rules. Where the relationships between the creditor and debtor were close, such as within a family nexus, or within a well-defined social or, perhaps, political network, the creditor could look to social, familial or political pressure to see the contract fulfilled. What, however, happened when the contract was between two people at arms length. What powers did the creditor have to ensure that the debtor repaid?

In specifying a law of bankruptcy, the English system was changing the levels of asymmetric information at a point when it would be very difficult for one party to the contract to obtain verifiable information regarding the longer term situation. As such a bankruptcy statute through reducing the level of uncertainly that existed in the event of a bad outcome reduced the transactions costs of doing business and as such should increase the scale or number of transactions. The rules themselves were not set out in these terms but rather couched in a moral and ethical framework about a person's conduct with respect to debts owing.

The first major piece of legislation is generally taken to be that passed in the reign of Henry VIII, with legislation in the reign of Anne I as determining the structure until the broad-based changes in the middle of the nineteenth century. There was one earlier statute in 1350 (25 Edw. III 5 c. 23) which. applied only to Italian merchants. The statute imposed liability on an Italian company for the debt incurred by any of its representatives.[13] The final piece of legislation considered here are two acts passed in the first decade of the eighteenth century in the reign of Anne. This legislation set the rules pertaining to bankruptcy until roughly the middle of the nineteenth century.

34 &35 Hen. VIII c 4

Passed in 1543, *An Act against such persons as do make Bankrupt*, is a very short statute and one in which the term bankrupt appears only in the title. It is written within a tradition that sees debtors as having behaved fraudulently, not just in the final stages of the contract but rather from the very beginning of the contract. The preamble lays this out very clearly:

> Where diverse and sundry persons craftily obtaining into their hands great substance of other men's goods do suddenly flee to parts unknown or keep their houses, not minding to pay or restore to any their creditors their debts and duties, but at their own wiles and pleasures consume the substance obtained by credit of other men, for their own pleasures

> and delicate living, against all reason quiet and good conscience...

Thus the very basis of the statute is a perception of the debtor as someone who is not honorable either in his original intent or in his conduct with respect to his debts. Evidence of misbehavior or misconduct is given by the debtor fleeing country or just not keeping to one's normal routine and not paying one's creditors.[14]

Without a bankruptcy statute and in the event of a default, creditors would have first to find the debtor and then to obtain redress for the individual debts owing. It also meant that there was the potential for a race between creditors, where the first creditor or the largest creditor or the most socially powerful was able to obtain greater redress. This statute laid out mechanisms that would continue in some form through all subsequent statutes discussed here. First:

> Be it therefore enacted by the authority of this present Parliament the Lord Chancellor of England or Keep of the great Seal, the Lord Treasurer ..., upon every complaint made to them in writing by any parties grieved ... shall have power and authority by virtue of this Act to take ... the bodies of such offenders ... by imprisonment of their bodies or otherwise...

Thus a complaint filed by any one creditor would set a procedure in motion The act empowered the "taking of the body" and imprisoning the debtor.

A second important feature of the statute was the relationship it specified between and among creditors that would hold in all subsequent acts. The statute specified that every creditor was to be paid "a portion, rate and rate like, according to the quantity of their debts." What this statute accepted was the equality of claims by all creditors and was binding on all creditors whether they agreed or not. The statute removed the power of any one creditor to hold out for a better outcome.[15] In effect, this statute created a socially and financially level playing field for all creditors at a time when the social structure did not regard all as equal.

The statute also dealt with how the creditors would be repaid. The act allowed the "land tenement fees annuities offices fees chattels wares merchandises and debts to be searched viewed rented and appraised, and to make sale of said lands tenements fees annuities and offices" ... "for true satisfaction and payment of the said creditor." was then binding on all creditors. The statute also legalized all sales of the debtors assets as if the "sale had been made by the said Offender or Offenders at his or their own free will and liberty, by writing indented enrolled in any of the Kings courts of record." This, therefore, protected the property rights of those who purchased assets in a bankruptcy case. But before the a debtor's assets could be sold, they had to be found.

A slide into insolvency by any debtor could obviously induce a change in behavior and a debtor might well try to shelter assets for the future. Such behavior was obvious to those writing the statute which made it clear that the state would not tolerate a debtor hiding or concealing his assets. It allowed that any land, tenement fees, annuities and offices which might be held in the "right of their wives" would also be sold.[16] The act was even more specific than this and stated that any person suspected of holding assets for the debtor could be summoned by the Lord Chancellor and questioned. If it was found that guilty then he was liable for a fine equivalent to double the value of the assets hidden. Interestingly, the statute recognized that all agents involved could act with impropriety. Not only might the debtor hide assets but there could also be fraudulent claims by creditors. Again the penalty was symmetric, a person claiming a debt owed found to have made a fraudulent claim was also liable to a fine double the value of the claim.

A major theme in this and subsequent legislation is the concern that a debtor might flee the country to escape his creditors.[17] Yet it was also recognized that a merchant had legitimate reasons for traveling overseas, and so the statute specified a time period of three months after the proclamation for the bankrupt to return. If he did not do so he would be declared an outlaw and thus could not enjoy the benefit of clergy in the event of their death. In addition, the statute penalized any one who helped the bankrupt to escape by "imprisonment of their bodies, or pay such fine to our Sovereign Lord the King his heirs or successors." In its final paragraph the statute declared that in the event that the value of the estate did not meet all of the debts outstanding, then the creditors could pursue the debtor until all debts were repaid.

The focus of this first bankruptcy statute is about protection of the creditors' assets. It leaves the bankrupt, potentially, with nothing and if the debts were not fully repaid through the sale of assets, all future assets or earnings would be garnished until the debts owed were fully repaid. This statute can be compared to the description of the avenues open to creditors of the German merchant Ambrose Höchstetter. In his examination of business failure in early modern Europe, Safely uses the case of the Höchstetter brothers, Ambrose and Hanns to discuss the intertwining of business failure and civic scandal. Unable to pay his debts, Ambrose Höchstetter was 'placed in chains' by his creditors in 1531. He subsequently died in prison chained to a wall. However, the brothers "had refused to divulge the extent of its resources, obscuring and hiding capital that might satisfy the just claims of its creditors."[18] Thus while the creditors could take the body of the debtor, the relinquishment of assets by the debtor was required. After 1543, English creditors could ask the state to find and sell the debtors assets to meet their claims.

13 Eliz.I c 7

Whereas *34 &35 Henry* essentially made the rules regarding bankruptcy available to all insolvent debtors, this changed with *13 Elizabeth* passed in 1571, thirty six years after Henry's legislation. *An Act touching Orders for Bankrupts* sets more precisely sets out the parameters that were to define the nature of bankruptcy for the next century and a half. The act would define who could be declared bankrupt by nationality, by occupation, and by gender. As in the prior legislation, an writ of bankruptcy could again be obtained by any single creditor who had only to make a complaint in writing to the Lord Chancellor of England or Lord Keeper of the Great Seal. *13 Elizabeth* goes further in that it now specifies the actions of the Lord Chancellor. Upon receiving a request for a writ he was required to create a commission whose role was to find, sell, and divide the debtors assets among all creditors on an equal ratable basis.

The most radical change in the Elizabethan statute is the definition of who could be declared a bankrupt. Where under the 1543 statute, it had been open to the creditors of all insolvent debtors, now only the creditors of those debtors who were a "Merchant or other person using or exercising the trade of Merchandise by way of Bargaining Exchanging Rechange Barter Chevisance (making of contracts) or otherwise, in gross or by retail, of seeking his or her trade of living by buying and selling" could be declared bankrupt. The statute also specifically refers to debtors as either man or woman unlike the Henry statute which only referred to men. In addition, the statute states that only those debtors who were a "subject borne of this realm or any of the Queen's Dominions, or Denizen" could have a writ of bankruptcy issued against them.

13 Elizabeth essentially elaborates on the mechanism for determining the estate of the bankrupt merchant and for its sale. As always the object was to find as many assets as possible and to make it as difficult as possible for someone to have sheltered assets or helped the bankrupt to evade his or her creditors in any way. Any person found to have done so would be liable for double the value of those assets sheltered. If the sale of assets did not fully cover the debts owing, rather than implying that future assets could be garnished, this statute specifically states that all future assets or lands acquired would be liable for any outstanding debts remaining after the dispersal of the assets sold.

What comes through in *13 Elizabeth* is a concern over the nature of contracts undertaken at various points in relation to the bankrupt and to his/her assets. Obviously the pursuit of a debtor's assets had implications for the nature of property rights. The issue was the validity of transfers that had occurred prior to the declaration of bankruptcy. Firstly, the act stated that any contract made before the person knew he or she would be declared bankrupt is legally valid. It specified that:

> This act shall not extend to any lands tenements or hereditaments free or copyhold which heretofore; have been assured by any such bankrupt, or hereafter shall be assured by any bankrupt before he become bankrupt; so always that such assurance be made bona fide and not to the use of the bankrupt himself only or of his heirs

This provision defines the security of contracts undertaken earlier in a business career as long as there was no question that the transfer had been intended to shelter assets. Given that few who borrow intend to default and that insolvency can be the result of misfortune as well as inability or fraud, the contract system could not survive if any prior contract undertaken by a bankrupt was declared invalid. There still remained an element of uncertainty in that some decision had to be made about contracts close to the time of insolvency. The commissioners had to decide whether those contacts had occurred to shelter assets. At issue also were the rights of those who purchased the debtor's assets, in particular land. Purchasers had to be certain that their purchases could not be abrogated. The act makes it clear that anyone who purchased copyhold lands must "satisfy the Fines to Lords of the Manor" and in turn the Lord of the Manor must register them as tenants with all the rights that went with that status and register the contract on the relevant Court rolls.

The statute, however, remained punitive. Commissioners had "full power and authority to send for and call before them, by such process ways or means as they shall think convenient by their discretions, all and every such person ... and upon their appearance to examine them and every of them, as well by their oaths as otherwise by such ways and means" as the commissioners thought appropriate. What exactly was possible here in terms of prison, chaining and torture is not yet known, but it does give to the commissioners a wide scope of action. Of course a bankrupt who fled the country or tried to evade his debtors was giving de facto proof of misconduct and if found could be arrested and imprisoned without bail.

As in the prior act, if the sale of assets did not cover all the debts outstanding, creditors were able to pursue the debtor until all debts were fully paid. At the same time, the act does recognize that the sale of all assets might more than cover the debts outstanding. In this case, the act did not allow any confiscation of assets beyond the value claimed by creditors. Any 'overplus' remaining had to be paid back to the bankrupt or his heirs. At the same time, in the case of an 'overplus' occurring as a result of the doubling fine on those sheltering a bankrupt's assets, half was to go to the Crown and the other half to be "employed and distributed to and among the poor within the hospitals in every city town or county where any such bankrupt shall happen to be."

When we consider the rules laid out in the statute in terms of the components of the index used to measure creditors' rights. Neither in this act nor in *34&35 Henry* is there any mention of collateral being given by the borrower and so no mention of repossession of such collateral. Both Henry and Elizabeth allow the debtor to be imprisoned and there is no discharge from bankruptcy except to repay all debts owed. These two acts completely focus on getting creditors repaid.

1 Jac I c. 15

In the first year of James I's reign, parliament passed a further bankruptcy statute, entitled *An Act for the better relief of the creditors against such as shall become bankrupt*. The opening sentences of the act state that :

> For that frauds and deceit as new diseases daily increase amongst such as live by buying and selling, to the hindrance of traffic and mutual commerce, and to the general hurt of the realm, by such as wickedly and wilfully become bankrupt.

The opening statement goes on to state that prior definitions of bankrupts were insufficient as were the powers given to the commissioners. Although the opening remarks start in a tradition of seeing bankruptcy as involving some fraudulent intent on the part of the debtor, the remarks also show an understanding between the role of security of contracts and economic growth in the state. The title suggests stronger rules regarding the rights of creditors, and with those a lowering of the cost of credit. However, the act actually goes on to reiterates the rules already in place and rather than further increase the rights of creditors, it rather argued for more fully delineated rights.

The first such delineation occurs with respect to the timing of the rights of creditors. Obviously, creditors knew that there was a problem when the borrower failed to meet the obligations of the extant contract.[19] Only then could a creditor seek redress. By this time, however, the creditor was being penalized because his or her assets were now not earning a return. Where the previous acts allowed the creditor to use the bankruptcy statute, there was nothing in the act about the timing of actions. In Safely discussion of the brothers Höchstetter, as in Schick's discussion of bankruptcy regulation in southern Europe, the time involved in trying to recoup losses could be quite long. As noted above, the Höchstetter case took years with one of the brothers dying in jail and the creditors still remaining unpaid. Schick give an example of the Tolomei firm in Siena in 1312 , where legislation was passed authorizing the detention of the partners upon petition by their creditors, yet these bankruptcy proceedings dragged on for another 21 years.[20]

Under *1 James*, once a written complaint has been filed and a commission struck, the act specifies timing of events. In both *1 James* and indeed carried over to *21 James*, there is a focus on timing to ensure that the situation gets ratified as quickly as possible. The act sets out a time limit for creditors wanting to pursue their debts. "And that it shall be lawful for any of the creditors of the said bankrupt within four months after any such commission shall be sued forth, and until distribution shall be made ... to partake and join with the other creditors ... if the creditors come not in within four months, then the commissioners to have power to distribute." Those creditors who did not see or hear the notice of bankruptcy will then, presumably, have to try to get some repayment from the debtor after all the assets have been sold. Although this provision has the potential to disenfranchise a creditor, it is very important in that it specifies a finite time by which creditors knew they would get some recompense on their debts.

In an attempt to reduce the likelihood that a creditor or the bankrupt would not know what was occurring, the statute specifies the steps that were to be taken to publicize the bankruptcy. The law required the equivalent of the repeated announcement of marriage bans. A notice in writing had to be posted at the bankrupt's dwelling place or house on three separate occasions, and the notice of writ must "upon five several proclamations made in some public place."

As in the previous acts, the statute lists the materials that have to be provided to the commissioners. Now the bankrupt must provide not only a listing of all "land, tenements, goods, chattels, and bonds" but also all bills and "books of account and such other things that may tend to disclose his her or their estate." The inclusion of books of accounts in the list of materials required by the bankruptcy commissioners speaks to the growing commercialization of the mercantile system. The focus on account books would continue to grow, as Jones points out; at the same time there was in fact little expectation of well maintained account books by the bankrupt person. Rather more there was a view of a strong correlation between poor accounting and the very act of bankruptcy. Those sliding into insolvency were unlikely to want to spend too much time with their account books.

Although the act uses the language of protecting the rights of creditors, it also delineates the rights of other parties involved in the case. In particular it focuses on the actions of commissioners or their assignees and on specifying their rights. The act now uses very language not found in the previous acts. It states:

> that the same grant assignment or disposition of the said debts in form aforesaid, to be made by the said commissioners, ... , *shall so vest the property right* ... in the person or persons ... to whom it shall be granted assigned or ordered by the said commissioners.

This makes very clear that all actions undertaken by the commissioners are legally valid. They had the right to involuntarily transfer the ownership of the debtors assets. Thus it had to be very clear that such transfers were legally valid in law, because if this was not the case, the whole bankruptcy structure would be undermined.

Another set of contracts that were elucidated in this statues were the rights of those who were debtors of the bankrupt person. Such debts owing were of course part of the estate and so had to be taken into account. But a contract had been entered into by the borrower who would not necessarily have known that his/her creditor was going to be declared bankrupt. The central issue here is the sanctity of those contracts and the security of contracts made between parties at different points in time. Paragraph nine is short and to the point: “no debtor of the bankrupt be hereby endangered for the payment of his or her debt, truly and bona fide to any such bankrupt, before such time as he shall understand or know that he is become a bankrupt.”

As in all the previous statutes, this one is again an absolutely creditor-friendly piece of legislation. All the assets of any bankrupt will be sold and the bankrupt left with nothing in the aftermath of the bankruptcy and into the future as along as any debts remain. In such situations, the bankrupt and his or her family would have to depend on the generosity of family and friends. The act also notes that if a bankrupt failed to appear before the commissioner at the appointed time, he or she would be arrested and imprisoned. The structure of the act, however, is built around an expectation of compliance by the bankrupt and those who might hold any of his or her assets. As in all previous statutes, the commissioners powers to seek out those who might have had the opportunity to shelter assets are clearly delineated.

21 Jac I c. 19

Passed in 1624, *An Act for the description of a bankrupt and relief of creditors* change the terms under which a state of bankruptcy will apply. Rather than pinning down the rights of various parties or the property rights associated with various actions, this act refocuses the conditions under which a bankruptcy writ can be issued and in doing so it illuminates the expansion economic activity in the nations and an understanding of what it meant to earn one's living by buying and selling.[21] Whereas in the previous acts the use of words suggested a focus on mercantile trade, this act specifically refers to the growth in the financial sector. Now the act pertains not just to those who "shall use the trade of merchandise" or who make their livelihood by bargain or sale, but now those "that shall use the trade or profession of a scrivener, receiving other men's money or estates into his trust or custody." This is a broadening of what was understood to be the realm of trade. Another major change again suggesting the growing importance in international trade the growth in importance of the international trading community in the net of credit relationships in England and probably more particularly in London is the fact that the act was now extended to cover not just those who were borne or denizens of the country but to all "citizen and alien alike". This provision meant that a foreign creditor could use the English system to obtain redress for debts owing.

What changes dramatically with this act is what 'debts owing' meant. In all prior statutes, the restrictions over who could be declared bankrupt concerned occupation. *21 James* added a financial requirement in that someone must now be "indebted to any person or persons in the sum of one hundred pounds or more" before creditors could make use of the statute. Anyone owing a debt less than £100 irrespective of whether s/he worked as a merchant, or in trade, or as a scrivener or made one's living by buying and selling would be an insolvent debtor and creditors would have to try and claim redress through the use of debtor's prison or some other form of suasion. One hundred pounds is a large sum of money and raises issues as to why this amount was chosen as the lower bound but it does suggest a growth in wealth within the mercantile class and perhaps a perception that such creditor/debtor relationships required a special position before the law.[22]

As previously, there is much focus on minimizing the potential for bankrupts to conceal assets. To attenuate such behavior, the act strengthens the powers of the commissioners or their assignees. With the passing of this statute a bankrupt can no longer hide from his or her creditors by locking himself or herself inside his house. Commissioners could now "break open the house or houses chambers shops warehouses doors trunks or chests of the said bankrupt, where the said bankrupt or any his or her goods or estate shall be or reputed to be, and to seize ... the body goods chattels ready money and other estate of such bankrupt." In addition, the act makes it legally clear that the commissioners could interrogate the wife of the bankrupt to see whether any assets had been hidden. As in all prior acts, the commission was charged with sale of all assets which included any entailed land held by the debtor. No assets were protected from the commissioners.

Whether the hiding of assets happened in fact, there was a very clear concern about this moral hazard problem, with continued concern that this was happening. In an attempt to reduce the probability that such actions would be taken, the statute levies very strict penalties on any debtor found to have "fraudulently or deceitfully" conveyed away assets worth £20 or more. That this had happened, had to be sustained by the Assizes or Justices of the Peace. If the courts found the party guilty, the penalty was very severe. He or she would be convicted to the pillory for two hours. In addition, the guilty party would have one of his or her ears nailed to the pillory and cut off. This is very punitive and would make it clear to everyone the nature of the crime. This provision would be dropped in the subsequent act but this was not passed until the first decade of the eighteenth century.

4&5 Anne c. 4 An Act to prevent frauds frequently committed by bankrupts

Although the language in the preamble here is concerned with the moral hazard problems that could occur when someone had become insolvent; using again the language of a debtor's "intent to defraud and hinder their creditors", this act for the first time actually lays out the basis for some rights of bankrupts. But while providing some rights for bankrupts, the Act takes a very punitive stance for non-compliance. What is strikingly different in this act relative to all previous statutes is a recognition that bankruptcy could be the result of "unavoidable misfortunes" rather an intent to defraud. It acknowledges for the first time that there was not necessarily any ill intent on the part of the bankrupt in his or her prior actions. It could well be the case that the plague outbreak in mid century, the Great Fire 1666 or the Stop of the Mint in 1672 affected public perception about individual control or responsibility over all actions.[23]

The changing nature of information dissemination by the beginning of the eighteenth century are also apparent.   Rather than the announcing of the writ by voice, the act now specifies that the commissioners must not only place a notice on the place of residence as before but also in the London Gazette on three separate occasions. The notice must specify the time and place of the first meeting of the commissioners so that both parties can appear. Although the potential bankrupt had to know that debts were owing, this notice on his or her house or in the Gazette might be the first that the debtor heard about his or her impending bankruptcy proceedings. Because of this, perhaps, and because merchants could be traveling, this act now allows for a longer time for the bankrupt to appear before the commission. None the less, the time cannot be lengthened beyond sixty days. After that time, failure to appear will be taken as evidence of an intent to defraud and also for the issuing of a warrant for the person's arrest and imprisonment.

For the first time, the act mentions benefits for the bankrupt. It specifically allows for the provision of an allowance of five percent of the value but only up to £200 in total, but only if the creditors are receiving at least 8/- in the pound of their debts. An allowance, however, can be received only by a bankrupt who has fully complied with the letter of the law. Interestingly here, even a bankrupt who was apprehended rather than appearing voluntarily before the commission, could still be eligible for the allowance the act allows if he or she then fully complies from that point forward. Although a prior statute allowed for some clothing for children, this provision of an allowance was an important change from the punitive role of all previous acts.

Probably the most important innovation contained within the framework of this statute, which was not, however, part of the main act but set out in a separate schedule appended to the *4&5 Anne* was the certificate of discharge. The act, for the first time, makes provision for a bankrupt to emerge from bankruptcy and thus allows for a discharge of all debts remaining. This is very much in keeping with a view that the bankruptcy was not necessarily the result of misconduct or fraud. The statute gives to the commissioners the power to issue the certificate of discharge which had to be confirmed by the "Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal of England for the time being or by such to of the Judges of the [Court] of Queen's Bench Common Pleas and Court of Exchequer at Westminster". As it was written the provision makes no mention of the rights of creditors and whether the creditors agreed to such a discharge. What, in effect, the discharge did was to remove from the creditors the right to recoup the remainder of their debts in the future. The act removed what might have been a valuable asset. Ignoring the rights of credits regarding what had been a right was quickly amended. An act passed in the following year required permission of creditors before the discharge could be granted.

Although all previous acts had focused on the behavior of many of the agents involved in the bankruptcy proceedings, the one group that had been ignored were the commissioners themselves. Where the previous acts had sought to maximize the estate by finding all assets, this statute focused on the maintenance of the estate by making it illegal for the commissioners to use the estate to pay for personal eating and drinking. And any commissioners so doing would be fined.

But even while this statute provided rights for bankrupts, it also laid out a very extreme penalty for non-compliance. The statute stated that "he she or they the said bankrupt in case of any default or wilful omission therein or in any the premisses and being thereof lawfully convicted by indictment or information shall suffer as a felon without the benefit of clergy."

What this means is that in the most extreme case, a non-compliant debtor would face capital punishment. There appears to have been very few cases in which this happened. Indeed, although some sources cite the number as four, it appears that one Alexander Thompson was executed in London during 1756 "during 1756 for failing to surrender to commissioners with the grace period."[24] Even this one case must have had a compliance effect on other bankrupts.

6 Anne 1 c. 22

6 Anne is very much a housecleaning statute. *4&5 Anne*, which had quite dramatically changed the very nature of bankruptcy, had been given only a two year life. *6 Anne* gave *4&5 Anne* another two year extension. This series of continuations was to continue to 1740 when the provisions of the act were made permanent. In this first renewal, Parliament sought to amend the most important provision in the prior Act. In particular, it made more clear when a bankrupt would be eligible for a certificate of discharge. The previous act said that a certificate could be awarded by the commissioners. But it was quickly recognized that this could leave the commissioners open to moral hazard, and so in its first substantive paragraph *6 Anne* specifies that a bankrupt cannot be discharged or indeed entitled to the allowance unless four fifths of the creditors both by number and value of debts agree. It went on to say that any action by a bankrupt trying to induce a creditor to provide a certificate would make the provision void, if discovered.

This statute also lays out more specifically how the case is to be handled. It allows the Commissioners to immediately appoint an assignee who will manage the estate for the creditors. In the event that the creditors do not approve of the assignee, he can be removed and must hand over all assets and his account books on the case within fourteen days. In the event that he does not do so, or if he holds back any assets, the act requires a fine of £100 over and above the value any assets owing. The fine would be distributed among the creditors. The statute is also very specific in stating that not only must the assignee and hence the commission keep account books documenting all actions but that those books must also be open and available to the creditors for their inspection.

As in all prior statutes, the issue of fraudulent behavior remains an issue. Whereas in previous acts, the statute addressed fraudulent behavior by the debtor, here Parliament was concerned also with the potential for serious misconduct by creditors, in that a creditor might maliciously declare a debtor bankrupt. Now all creditors who want to have a person declared bankrupt had to post a bond of £200 which would be paid to the debtor if the bankruptcy was not proven. It also further specifies the size of debts owing as a precondition for a declaration of bankruptcy. For any single creditor, the debt owing continued to be £100 or more; £150 or more for two creditors, and £200 or more if there were three or more debtors. It is not clear, however, how the creditors would know who was owed money. In a peculiar penultimate paragraph, the statute further limited those who can be covered by the statute. It ruled ineligible farmers, graziers, drovers or receivers general of taxes.

This statute continues to contain the phrase not found in the previous acts. Both acts state that a debtor who tries to defraud his or her creditors by hiding assets, if those assets have a value of more than twenty pounds, then the bankrupt "shall suffer as a felon without benefit of clergy". So although the statute made the conditions of the discharge more clear, it maintained the threat point for non-compliant debtors. Indeed, this position was to be maintained for the whole of the eighteenth century.

Index of Creditor/Debtor Rights

The bankruptcy statutes described above show a progression in how parliament thought about the rights of creditors in particular debt situations. It is important to recognize that what these bankruptcy statutes did was to privilege certain debts situations over others. They did provide a solution in the event that a debtor became insolvent. They provided a solution only for those whose primary occupation was buying and selling and exchanging; for those involved in trade or in finance. It specified a required size of debt to be eligible and over time the protection was extended to non nationals which must have increased cross border contracting.

All of the statutes are written in favor of the creditors. The statutes defined the time limits on how long a creditor would have to wait to recoup at least some money. But an important feature of all the statutes from *34 &35 Hen. VIII* is the equality of creditors in the eyes of the law. This equality came along two dimensions. All creditors were treated the same.T he law saw all creditors as having the same standing irrespective of social status. Each debt had the same claim compensation in that the law provided that each would receive the same percentage of the amount owing. If someone earned their living from ‘buying and selling’ then any creditor could use the bankruptcy rules.

At the same time, the statutes came to restrict rights when they set lower-bound thresholds on access to this solution. From Henry to James, the statutes were punitive in that a debtor had all of his or her assets sold and the debtor and family left dependent on the good will of family or community. These statutes also allowed for the imprisonment of a debtor and for corporal punishment such as the removal of an ear. With the Anne statute, there is the first balancing of rights between creditors and debtors. The certificate of discharge allows for a person to emerge from bankruptcy and to go back into businesses, but this type of reorganization required the permission of four fifths of the creditors by value and number.

Table 1 constructs an index of creditor and debtor rights as set out in La Porta et al and then used in subsequent papers. What comes through from the delineation of English statutes is that there was from the earliest act secure protection of creditor rights. This is further recognized when creditor permission is required for discharge or re-organization broadly defined. Although the literature has been constructed in terms of creditor rights, it is also important to understand the evolution of debtor rights. The borrower is also undertaking some risk and has to determine whether he or she will undertake the activity. In terms of a debtor rights index for England, all of the statutes are punitive with *21 James* being extremely so. But the use of an index hides important changes. For all the act other than *21 James*, the index has a value of 2. Yet the situation under *6 Anne* is much more forgiving of an act of bankruptcy than any previous act and sets up a much more modern interpretation of bankruptcy in terms of the incentives facing a person undertaking some business activity, yet it too has an index of 2. What is perhaps more important is to recognize the shift in the treatment of debtors from punitive to rehabilitative. This is a very fundamental shift and come somewhere in the second half of the seventeenth century.

A snap shot of a bankruptcy Commission - Johanna Cock

The structure of bankruptcy arrived at by the first decade of the 18^{th} century was intended to be straightforward, effective, efficient and timely. The system is designed to protect the integrity of the contract and to recompense the creditor in a timely manner.[25] Once receiving a written complaint, a commission was struck, announcements placed in the London Gazette, an assignee appointed to collect all assets, to sell them and to divide the revenue among all creditors on a ratable basis. Time limits were set for all of these activities. The eighteenth century system eliminated all costly bargaining among creditors and put all creditors on an equal footing. The debtor could not play one creditor off against another nor could s/he make different compositions with different creditors.

Johanna Cock provides an excellent example of the bankruptcy mechanism in operation. Johanna Cock was declared bankrupt at the end of 1720. The writ of bankruptcy, shown in Figure 2, was dated December 6. The ledger entry gives her name, occupation, address, and the creditor's name, occupation and address.[26] On the same date, the following announcement occurred in the London Gazette:

> Whereas a Commission of Bankrupt is awarded against Johanna Cock, of London, widow and merchant, and she being declared a bankrupt is hereby required to surrender herself to the commissioners on the 14th instant, at three in the afternoon, and on the 22nd instant and 9th January next, at nine in the forenoon, at Guildhall, London; at the second of which sittings the creditors are to come prepared to prove their debts pay contribution money and chose assignees; and such persons whose proof of debts is wrote in Dutch, are to get the same translated by a Notary Public. And all persons indebted to the said bankrupt, or that have any goods of effects of hers in their hands, are desired to give notice to

Mr. Capel Billingsley, at his chambers in the Middle Temple, London.

Johanna Cock was a broker/jobber in financial assets. Johanna acquired control of her initial shares in the Bank of England on the death of her husband, Walter Cock a wealthy merchant, in 1712. In total, he bequeathed £5,660 book value of shares to his wife. In this regard, Johanna was probably little different from the vast majority of widows who held shares, obtaining them through the death of a husband. She began to deal in Bank of England stock and was the thirteenth largest purchaser of Bank shares (out of 2,304 unique buyers) and the twenty-first largest seller 9 (out of 2,233 unique sellers) of shares by book value during 1720. In total, Johanna Cock purchased £33,000 and sold £36,230 book value of shares with a value per transaction of over £1,200. As the market price of shares ranged from 150% to over 200% of book value over the course of the Bubble, this is a considerable level of business activity.[27] Johanna Cock was legally enabled to engage in the stock jobbing business when she became a widow. The Bank of England accounts list her simply as a widow living in Camberwell, Surrey but the bankruptcy records list her as a widow and merchant. She made her living buying and selling. Johanna's activities were not solely related to dealing in Bank of England stock. Johanna was also heavily involved in buying and selling East India Company shares. Over the course of the year, she sold £48,000 book value of East India Company shares in 45 separate transactions and purchased £51,000 book value in 44 transactions.[28]

A note in Bank of England stock ledger, however, states that a Commission of Bankruptcy (number 2251) had declared her bankrupt. We do not know what caused this bankruptcy but from the statutes we know that she had to have at least one debt outstanding of £100. In November she had only £3,000 book value of Bank of England shares remaining to her credit. The Gazette announcement makes it clear that some of the creditors were Dutch. Their use of the bankruptcy commission shows knowledge of and trust in the system. The notice also shows that the Commissioners had a system in place to deal with debts not written in English. Both actions suggest an effective system.

An announcement on the 17th January 1721 in the Gazette gave the names of the assignees: Charles Goodfellow, Robert Thornton, Peter Gausen, Peter Crellius, John Coggs. All were London merchants. The main function of the assignees would be to make a full accounting of the estate both of the assets and the liabilities The notice also required all those holding any of Johanna's assets to place them in the hands of one of the assignees. Those discovered not to have done so would be sued. A further announcement on 7th February gave the time and place and date of a further meeting where those creditors who had not yet proven their debts and paid their bonds could do so. Each of these announcement were placed in the Gazette on three consecutive dates issue.

It appears that Johanna's case was complicated. She had dealings in England and in the Netherlands, that we know about. A notice by the Commissioners in the Gazette on 21st April 1722, stated that:

> upon inspecting the depositions taken under the said commission, find reason to suspect that several persons have proved larger debts upon Bills of Exchange endorsed than were really due to them, and others have since their proving their debts received a considerable part thereof from other persons: therefore, that equal justice may be done to all the said bankrupt's creditors, and a speedy distribution made, all the creditors are desired, before the 30th day of May next, to produce to Mr. Godfrey Corie, ... the several vouchers of

> their respective debts by them proved, in order to the commissioners ascertaining thereof; and such persons as shall not comply with this notice, will, in default thereof, stand only as claimants in the commissioners deed of distribution ...

Quite obviously, the commissioners were taking their responsibilities very seriously to ensure the rights of the respective claimants and to maximize the size of the payout to each creditor. A note in the Bank of England ledgers notes that "she consents by the following notarial declarations that £1,500 thereof shall be transferred to Paulus Schepers of Rotterdam, and £1,500 more thereof to Nicolas Kops of Haarlem. Ordered by Thomas Scawen, Deputy Governor."[29]

On 28th May 1723, the Gazette announced that as she had conformed to all the directives of the commission, a certificate of discharge would be issued to Johanna Cock. We know a little about Johanna in the years following. She did not continue as a broker/jobber. In early March 1726, a notice in the Gazette announced that a sale in Camberwell Surrey of a freehold estate of about 142 acres with a farm house and conveniences. The announcement went on to say that the sale also included "an estate for the life of Johanna Cock, widow, of diverse messuages and lands in Camberwell of about £450 year." Johanna was still alive when her son's was probated in 1738 in which he gave and bequeathed 'unto my honoured Mother Johanna Cock for and during the Term of her natural life an Annuity or yearly sum of ffifty pounds of lawfull money of Great Britain ... from and out of all and singular the Messuages Lands Tenements in Camberwell aforesaid which I purchased for her life under a decree of the High Court of Chancery."[30] Johanna was apparently still living in July 1760, when another son Theodore died and bequeathed "unto my honoured Mother Mrs. Johanna Cock the sum of twenty Guineas of lawful money of Great Britain".[31] Her name appears one last time in the pages of the Gazette in 1790 when the London Assurance company gave a list of proprietors of unclaimed dividends. It also gave the number of unclaimed dividends. Johanna or her daughter Johanna had taken possession of shares in this company in 1722 and never claimed any of the 136 dividends owing. Whether these were part of her estate when she was declared bankrupt or whether she purchased them after, we do not know. Now will we ever know why they remained unclaimed. Perhaps they were forgotten.

Conclusions

By the first decades of the eighteenth century, England had a well functioning bankruptcy system which balanced the rights of the creditors with some protections for the debtor and for his estate. It preserved the integrity of the contract. In comparison to the situation facing in insolvent debtor whose creditors did not have access to the bankruptcy system, this law provided a straight forward and a timely resolution. Although often written in the language of fraud and misconduct, the reality was that good merchants and traders could be hit by bad outcomes and this was internalized into the structure. The possibility of being awarded a certificate of discharge and an allowance allowed those declared bankrupt a second chance.

The shift from personal to more impersonal sources of finance, increases in the volume of trade internally and internationally and the rise of financial capitalism are characteristics of the early modern period. Each of these changes was predicated on an institutional and legal framework that provided the medium in which finance and trade could incubate and grow. Protection of contracts and definition of the residual rights of claimants was crucial for the growth seen in the eighteenth century. Perhaps instrumental in this growth was the certificate of discharge and the possibility of a second chance.

Figure 1

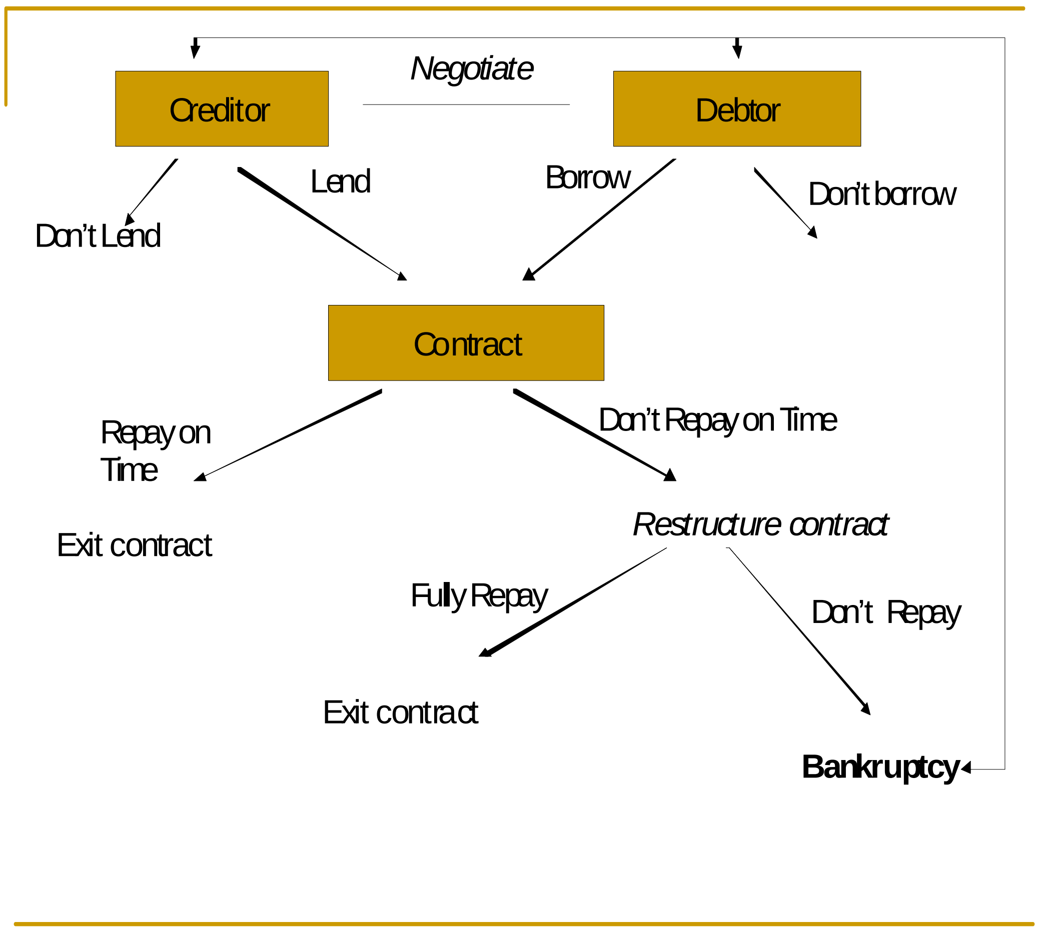
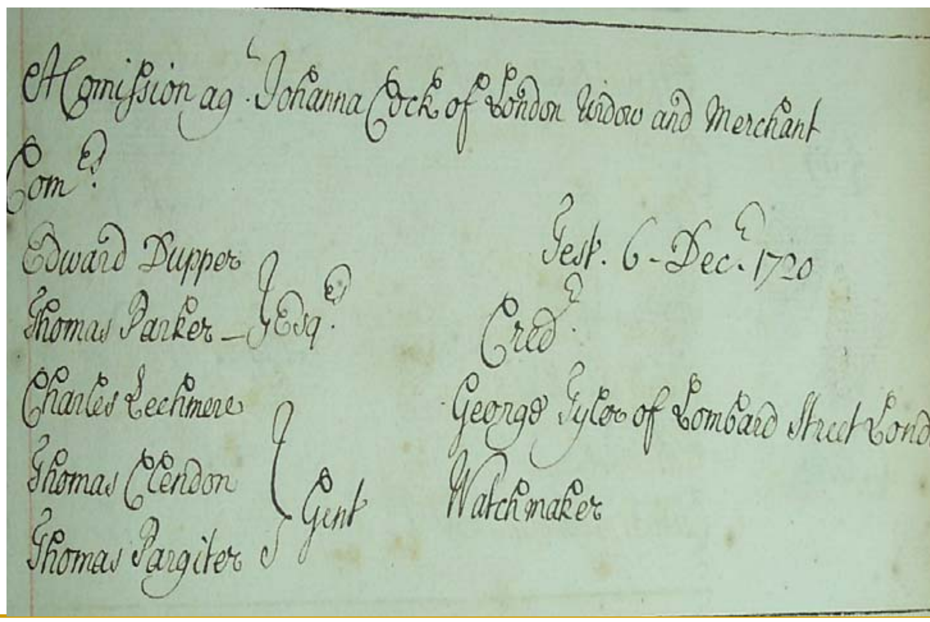

Negotiate
Creditor
Debtor
Don't Lend
Lend
Borrow
Don't borrow
Contract
Repay on Time
Don't Repay on Time
Exit contract
Restructure contract
Fully Repay
Don't Repay
Exit contract
Bankruptcy

Figure 2

Snap shot of a case – Johanna Cock


A Comission ag.t Johanna Cock of London Widow and Merchant

Com.rs

Edward Dupper
Thomas Parker – Esq.rs

Charles Lechmere
Thomas Clendon
Thomas Pargiter Gent

Test. 6 Dec.r 1720

Cred.r

George Tytoe of Lombard Street Lond
Watchmaker

Source: Bankruptcy Writ Ledger, Public Records Office, PRO B1.

Table 1

Creditor Rights Index	34&35 Hen. VIII	13 Eliz.I	1 Jac I	21 Jac I	4&5 Anne	6 Anne
1. Secured creditors can repossess collateral (no automatic stay)	1	1	1	1	1	1
2. Secured creditors have first priority	1	1	1	1	1	1
3. Approval of creditors for reorganization	~	~	~	~	~	1
Creditor Index Total	2	2	2	2	2	3
Debtor Rights Index						
1. Prison as a required part of the process	0	0	0	0	0	0
2. Prison as a punishment strategy for non-compliance	1	1	1	1	1	1
3. Physical punishment or capital punishment for non-compliance	~	~	~	1	1	1
4. No exit strategy from bankruptcy	1	1	1	1	0	0
Debtor Index Total	2	2	2	3	2	2

1. Jones “The Foundations of English Bankruptcy”; Schick “Globalization, Bankruptcy”. These two overviews are written from a historical, legal perspective.

2. There is some sense here of Schumpeterian creative destruction at work.

3. The bankruptcy code is essentially set for at the beginning of the eighteenth century as I discuss below and remains unchanged to the middle of the nineteenth century.

4.Glaeser and Schleifer, “Legal Origins”,describe common-law traditions depend on statute law, oral argument and the role of precedent, while civil-law systems rely to a greater extent on legal codes and an appointed judiciary with a judge-inquisitor model. pp. 1193, 1194.

5. La Porta et al, “Law and Finance”, p. 1114.

6. Alsop “Ethics in the Marketplace”, p.100.

7. Burley, “An Essex Clothier”, p. 290.

8. La Porta et al, “Law and Finance”, Table 1, p. 1124.

9. Musacchio, “Can Civil Law Countries get Good Institutions?”, p. 85.

10. There were of course legally constituted firms in England before the middle of the nineteenth century. There were joint-stock limited liability chartered companies. Indeed, until the middle of the nineteenth century there was no clean legal way to wind up such a firm. General chartering legislation was not passed until the 1850s in England and indeed about the same time in the US. There were partnerships but these did not have limited liability for the partners.

11. Quoted in Jones p. 7.

12. Ibid.

13. Schick, “Globalization, Bankruptcy”, p. 254.

14. Indeed, the statute speaks of evidence of problems being given by a person doing business ‘behind closed doors”, of “shutting one’s door”.

15. Jones (1979) in talking about the rights of creditors gives various examples of how the wishes of one or two creditors could thwart the wishes of the majority.

16. Of course given that a wife was fême coverte, in that she had no legal status independent of her husband, selling her assets was essentially selling those of her husband.

17. Indeed, the action of fleeing would also be taken as evidence of debtor status. It seems that anything that changed one’s pattern of activity could be suspect.

18. Safely, “Business Failure” p. 52.

19. Of course, in a tightly knit commercial community, creditors might know earlier that a particular merchant was in trouble. But until the debtor defaulted, the creditor could not take legal action. The creditor could allow for a reworking of the terms of the contract as happened between Gerrard Winstanley and Richard Aldworth.

20. Schick, “Globalization, Bankruptcy”, p 240.

21. This Act was passed during a period of economic contraction in trade.

22. £100 in 1624 would be the equivalent of £14,000 in 2008 using the retail price index and £188,000 using average earnings. Officer, *Measuring Worth.*

23. That the current position could be the result of misfortune rather than misconduct was part of the Italian codes many centuries earlier . Thus the Venetian constitution of 1457 stated that the office of *sopraconsoli,* who were special bankruptcy commissioners, “was created on the principle and for the sole purpose of making certain that our citizens, when reduced to insolvency by adverse fortune, would be able to carry on their business and not be forced to leave their families and wander about like idle beggars.” Schick, p. 233.

24. See Pomykala, “Bankruptcy’s Origins” p.2.

25. In “The Economics of Bankruptcy Reform”, Aghion, Hart and Moore posit just such a bankruptcy structure for the former Eastern European and Soviet bloc countries. Their suggested procedure would have an individual in charge whose job would be to solicit cash bids for all of the assets; allocate the equity all in a timely manner of within one to three months.

26. These are the records that Hoppit used in his work on bankruptcy.

27. To provide a benchmark for these figures, consider that £100 pounds in 1720 was the equivalent of £9766 today. This means that the current value of Johanna Cock’s book value of sales of £36000 lies in the range of £3.5 million. John J. McCusker, “How Much is That”, <www.eh.net>

28. East India Company, Transfer Books, India Office Record, L/AG/14/5/5.

29. Alphabet Ledgers, AC27/434, folio 6226. Kops was her father-in-law’s family name. It had been changed to Koch in Walter’s generation.

30. Public Record Office, Prob 11/682 Peter Cock.

31. Public Record Office, Prob 11/682 Thomas Cock.

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21 Jac I c. 19 *An Act for the description of a bankrupt and relief of creditors*
4&5 Anne c. 4 *An Act to prevent frauds frequently committed by bankrupts*
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