# BANKRUPTCY LAW AND PRACTICE IN HISTORICAL PERSPECTIVE: A EUROPEAN COMPARATIVE VIEW (C.1880-1913)

Pierre-Cyrille Hautcoeur (PSE-EHESS)
Paolo Di Martino (University of Birmingham)

February 2011

Summary

Bankruptcy is crucial to the functioning of credit markets and the reallocation of capital. As such, it has given way to a theoretical normative literature in law and economics and to a historical literature in law. This paper tries to bring both together by analysing the actual practice of bankruptcy courts in a European historical comparative perspective. By doing this, it provides a different set of criteria with which to compare the efficiencies of various bankruptcy laws. We observe that most differences in the functioning of various bankruptcy procedures reflected the characteristics of the financial systems and the relationships between business and government in each country.

In the last two decades the analysis of the impact of institutions on long-term economic performance has re-acquired a central position in various fields of the social sciences such as international political economy, economics, and economic history*. In the former, an influential approach known as the 'varieties of capitalism' view (hereafter just VoC) has argued that institutions, conceived as 'the rules of the game', are pivotal to the success or failure of capitalist economies.[1] One distinctive mark of the VoC is that although it identifies different forms of capitalism depending on the extent to which they rely on the 'free market' as the main source of economic coordination, it does not rank them in terms of their ability to sustain long-term economic growth. Thus more or less closely-regulated systems can experience similar levels of economic performance, but only as long as complementarities reinforce the efficiency and consistency of the institutional setting, a point which closely relates to Douglas North's more recent ideas.[2]

In economics, the interest in the causal link between political and legal institutions and long-term economic performance has centred on the protection of property rights.[3] Empirically, cross-country studies have showed that a correlation between measures of property rights and economic development exists, but these results suffered frequently from a problem of endogeneity.[4] In order to overcome these problems, scholars have made recourse to various alternative approaches. One possible solution, adopted among the others by North and Weingast and Greif, was to substitute cross-countries analysis

* We wish to thank Isabelle Rojon for her help in collecting German data, Francesca Carnevali, Claire Lemercier, Mark Lester, and Michelangelo Vasta for comments and criticisms, Paul Lewis for inspiring conversations on the theme of 'varieties of capitalism', and Cepremap for financial support. We also thank participants to seminars at Ecole Normale Supérieure of Paris, Centro de Estudios Avanzados en Ciencias Sociales (Juan March Fundacion, Madrid), University Carlos III Madrid, and University of Siena, for useful comments. Usual disclaimer applies.

[1] The VoC approach uses a definition of 'institutions' in line with the one provided by North (Institutions,institutional change). The key reference in the VoT literature is Hall and Soskice, "An introduction". For more recent expositions see Hancké, Rhodes, and Thatcher, eds, Beyond varieties of capitalism; and Zysman, "How institutions".

[2] Amable, The diversity ; and North, Understanding.

[3] North and Thomas, The rise.

[4] For example, Hall and Jones, "Why Do Some Countries".

with the provision of detailed historical narratives of key institutional developments.[5] Another solution was to find perfectly exogenous variables, such as settlers' mortality as in the famous study by Acemoglu and his co-authors, or 'legal families' as in the 'law and growth' view (here since LaG).[6] The LaG approach stresses that legal institutions, in particular bankruptcy and insolvency law, promote economic growth by defending creditors' rights and, this way, by easing financial intermediation. Bankruptcy law plays a central role in these studies as it deals with what happens when normal credit relationships break up, private enforcement of contracts does not work anymore, and legal enforcement becomes crucial. The LaG view also argues that the ability to protect creditors' interests depends on the so-called 'legal origin', meaning the fact that a legal system originally belonged to a given legal tradition or 'family' (Anglo-Saxon, Scandinavian, Germanic, and French), something which is completely exogenous to the process of growth.

A remarkable difference among these literatures is that while the VoC is agnostic in terms of which type of capitalism is best in terms of economic performance, the LaG view clearly aims at discovering (and disseminating) the most efficient legal system, implicitly assuming the superiority of the free-market corporations-based Anglo-Saxon economies. In line with this hierarchical view, it ranks various legal systems according to their ability to fit this model, specifically how effective they are in protecting the rights of minority creditors against the power of institutional creditors or managers in incorporated businesses.

The LaG approach has been subject to strong criticisms from both economists and economic historians. From the theoretical point of view, its exclusive focus on the ex-ante creditors' incentive problem and on the credit market has been questioned. As a matter of fact the role of bankruptcy and insolvency institutions is to deal efficiently with a number of different and conflicting issues emerging among various categories of economic agents, a situation as complex as to suggest the absence of an ideal law, thus of a possible ranking among systems.[7] In recent years various economic historians too have added their voices to the chorus of criticisms of the LaG view. In particular it has been stressed that its main conclusions were supposed to be based on historical analysis,

[5] North and Weingast, "Constitutions and commitment"; and Greif Institutions and the path.
[6] Acemoglu et al. "Reversal of fortune" for the former; and La Porta et al. "Law and finance" for the latter.
[7] Aghion et al., "The economics of bankruptcy"; Cornelli and Felli, "Ex-ante efficiency"; Hart, Firms, contracts; and Stiglitz, "Bankruptcy laws".

but they have been only tested using contemporary data. When historical evidence has been used instead, various studies had found little (if any) support to the thesis of a strong link between the original belonging of laws to given legal families and the degree of financial development, either at national level or in comparative perspective.[8] Interestingly even the implicit assumption of the LaG approach of the superiority of the corporations-based Anglo-Saxon capitalism has been questioned showing how the adoption of this form of governance was more the result of lack of alternatives than the evidence of its superior efficiency.[9] These results are consistent with a series of non mutually-exclusive explanations, for example that differences in the formal degree of protection of creditors' rights in various legislations have been exaggerated (and probably did not depend on the 'legal origin' anyway), and/or that before 1913 they simply had little impact on financial development.[10] In this case the implication is that any positive correlation between creditors' protection and economic development visible after WWI cannot be seen as the immutable effect of exogenous causes as postulated by the LaG approach.

All these conclusions, however, are based on studies which share some of the structural limitations of the LaG approach itself, in particular the focus on formal aspects of legislations rather than on their actual functioning. The lack of attention for this aspect means that as we stand we simply do not know how legal systems that belonged to various families worked in practice, and whether or not in their implementation they protected creditors' rights to different extents and/or in different ways. Thus the LaG conclusions that some legal systems are more supportive to growth than others because they belonged to a given family may be spurious not only (or just) because such relationships did not hold in the past, but also because we completely ignore how the theoretical objectives of laws were actually implemented and enforced in legal procedures.

In theory the most accurate way to analyse this issue would be to look at individual cases, something which gives a first-hand perspective on how bankruptcy law affects the decisions of firms, creditors and judges.[11] However, such a methodology suffers from problems of representativeness and it is very difficult to undertake in comparative

[8] See Musacchio, "Can Civil Law" for the former; Bordo and Rousseau, "Legal-political factors"; Musacchio, "Do Legal Origins", and Rajan and Zingales "The great reversal" for the latter.
[9] Guinnane, Harris, Lamoreaux, and Rosenthal, "Putting the Corporation".
[10] Berglof, Rosenthal, and Von Thadden, "The Formation"; and Sgard, "Do Legal Origins Matter?".
[11] This approach has been used, for example, by Franks and Sussman, "An empirical study", and Hautcoeur and Levratto "Petites et grandes".

perspective. Given these problems, an alternative solution is to use aggregate statistics provided by official bodies in charge of the administration of justice.[12] This is the approach that we use in this paper where we analyse how bankruptcy law was put into practice in some major European economies (France, England, Germany, and Italy) in the period between the 1880s and the First World War. It is during this period that fundamental changes in bankruptcy laws and procedures took place and they acquired most of the features that characterised them until a new wave of changes in the late 1980s.

On top of filling the gap in the existing literature by focussing on the actual functioning of bankruptcy procedures, this paper has two further elements of novelty. Firstly, in line with recent developments in the economics of bankruptcy, it takes into account the balance between creditors' and debtors' interests rather than only the extent to which creditors' right were defended. This approach is based on the assumption that bankruptcy law impacts on financial development and growth not only by securing creditors' rights, but also by supporting debtors' propensity to borrow and invest in businesses.[13] Secondly, borrowing from the VoC approach we move beyond the narrow idea of 'absolute' efficiency and we analyse this dimension in terms of consistency of bankruptcy procedures with the wider institutional framework they were part of. This approach explains our focus on England, Germany, and France; they are not only the motherlands of the three most important legal families used in the LaG approach, but also the prime examples of what in the VoC literature are indicated as the main typologies of capitalist economies: 'market capitalism' (Britain), 'state capitalism' (France), and 'managed capitalism' (Germany) according to Crunch,[14] or the 'liberal market' type, the 'coordinated market' one, and the 'Mediterranean' one as in the original formulation by Hall and Soskice.[15] Italy is added to the study as a quasi 'control variable', being an economy where formal institutions, including bankruptcy and insolvency law, plaid a marginal role in the coordination of economic activity.[16]

The paper is organized as follows: Section 1 discusses the evolution of bankruptcy legislations during the period under investigation. Section 2 describes the data and the sources. Section 3, the core of the paper, uses them to provide an empirical investigation

[12] Data of this kind has been used, for example, in recent studies by Claessens and Klapper, "Bankruptcy around the world"; and Nabayashi and Okasaki "The role of courts".
[13] See, for example, White and Wei "Personal bankruptcy".
[14] Crunch, "Typologies of capitalism".
[15] Hall and Soskice, "An introduction".
[16] De Cecco "Piccole imprese"; and Di Martino and Vasta, "Companies' insolvency".

of the functioning of legal procedures. Section 4 looks at the results provided in section 3 in the light of the VoC literature. Section 5 concludes.

## THE EVOLUTION OF BANKRUPTCY LAW

During the 19th century two waves of reforms shaped the features of European bankruptcy and insolvency laws. The first one took place at the beginning of the century when most countries, with the remarkable exception of Britain, adopted the French 1807 Commercial Code as a result of the Napoleonic wars.[17] The other wave of reforms started in the 1880s and saw the introduction of procedures alternative to bankruptcy and liquidation. Although it is generally agreed that during this second phase all European legislations moved towards the same direction of mitigating the original harshness of bankruptcy law, the extent to which this led to a substantial homogenisation is still unclear.[18] Thus before moving to the analysis of the actual functioning of laws and procedures it is important to provide a general overview of these transformations and of the formal characteristics that various legislations acquired as a result of this process.

### Before the 1880s

Before the wave of reforms that took place in the last decades of the 19th century, European bankruptcy laws shared a number of similar aspects deriving from their common roots in the Roman law and in Italian late-medieval commercial norms and, in Germany, France and Italy, from the adoption of the French 1807 Code de Commerce. Firstly, bankruptcy was regulated by law and under the responsibility of the judiciary, something which had not always been the case earlier. Further, in all countries the opening of a procedure against a debtor by a court led to a suspension of the right of individual creditors to sue the debtor. This is a rule known as 'automatic stay' that aimed at avoiding a run on any debtor suspected of suffering liquidity problems. At the same time, in order to protect creditors, the debtor was dispossessed of his assets[19]. A

[17] This comparative analysis is based on contemporary sources such as Dunscomb and Whithey, Bankruptcy, a study; Lecomte, Etude comparée; and the collection of volumes in 'Lois commerciales de l'univers', and on recent literature such as Berglof, Rosenthal, and Von Thadden, "The Formation"; and Sgard, "Do Legal Origins Matter?".
[18] Sgard, "Do Legal Origins Matter?".
[19] In most countries, at that early stage assets remained in the hand of debtors but they lost the legal right of selling them. In England, however, assets were actually transferred in the hands of a trustee.

major aim of these procedures was to provide public information, which helped all creditors to reach a clearer assessment of the debtor's financial situation as compared to the one they could reach on the basis of private information. The public procedures thus resulted into lists of bankrupted debtors which were made public by the courts and subsequently published.[20]

However, despite many substantial similarities among various legislations and procedures, structural differences also existed. A major one was that whether in the French-based legislations (France and Italy) bankruptcy procedures were reserved to traders, in other countries such as England since the 1860s and Germany they were opened to all debtors. Also in France and Italy courts could open a bankruptcy case, something that suggests that in these countries insolvency was seen as a threat to public order to an extent which was unknown in other states.

New procedures

The most important change occurring in the period after the 1870s is the introduction of 'softer' pre-bankruptcy procedures. These emerged as a consequence of both an evolution in the moral attitude towards bankruptcy, and of profound transformations taking place in the economy. On the one hand, because of the growing awareness of the existence of exogenous trade cycles independent from the actions of individual businesses, insolvency started to be seen also as the result of bad luck and not only of incompetence or fraud.[21] On the other hand, the emergence of big corporations attracted the legislators' attention to the fact that the value of firms as going concerns could be much higher than the sum of the prices of individual assets, especially if precipitously sold in illiquid markets.

The new procedures differed from bankruptcy in that they could only be opened at the debtor's initiative (seeking protection from creditors in court), and aimed at avoiding the liquidation of the firm. Also they did not dispossess the debtor from his properties and spared him the shame and the legal effects of the bankrupt status. Although these procedures were not without precedents, this was the first organic attempt to provide structural remedies alternative to pure liquidation or debt moratorium. Starting from the early 1880s, within a few years relatively comparable procedures have been provided in almost all major economies (in the paper we will

[20] For example In France by Mascret, Dictionnaire des faillites, and in England in the London Gazzette.
[21] Juglar, Des Crises commerciales.

refer to these procedures with the generic term pre-bankruptcy procedures or pre-bankruptcy deeds). The first ones were introduced in 1883 in England (composition in bankruptcy), then in 1889 in France (liquidation judiciaire), and only in 1903 in Italy (concordato preventivo). In England a further reform was passed in 1887 allowing informal before-bankruptcy agreements (deeds of arrangement) to be registered and to be used, de facto, as an alternative to bankruptcy (in the paper we will refer to these devices as outside-bankruptcy procedures or outside-bankruptcy deeds). Germany was the only remarkable exception; in 1877 a new legislation was passed establishing a single procedure for all types of debtors, and even abolished the alternative solution of suspension of payment that previously existed.

Although provided for similar purposes and at the same moment, pre-bankruptcy deeds were of very diverse types: in Italy and England, they were conceived as 'one exit only' solutions: if the demand by the debtor was accepted by the court that a composition was granted, otherwise the case was simply re-directed towards the ordinary bankruptcy procedure. This meant that debtors had to arrive to court with an arrangement proposal, and the agreement of at least part of the creditors was needed too. England and Italy also placed some restrictions by asking for the guarantee of a minimum dividend (respectively 25 and 40%). In France pre-bankruptcy procedures could lead either to composition or liquidation (or rejection or transfer to outright bankruptcy). Similarly, in England outside-bankruptcy deeds could end-up in liquidation, compositions, or continuation of the business under the supervision of creditors.[22] Thus, if on the one hand it is clear that the introduction of alternatives to bankruptcy represents an element of convergence (with the possible exception of Germany), on the other hand it is also clear that these solutions varied a lot in terms of conditions to file to them, as well as possible outcomes.

On top of differences in the way pre-bankruptcy procedures were conceived and used, in the aftermath of the 1880s reforms various legal systems appeared to be very diverse also in other respects. Firstly, the differences existing before the 1880s, for example in terms of who could open bankruptcy procedures, were not affected by the reformative efforts. Also, ad hoc procedures were introduced in some countries but not in others; for example in England, and after 1903 in Italy as well, a dedicated pathway was reserved to cases of small debts (below 50£ in England). In Italy this device

[22] For a graphical representation of the types of procedures available in each system, see appendix.

operated alongside another special procedure used to deal with debtors with 'insufficient assets' (i.e. with an amount of assets unable to cover even the legal fees) which also existed in France, but not in England or Germany. A further important element of difference concerned discharge, in terms of both debtors' rehabilitation and of the inability of creditors to claim past debts in the future. In all countries pre-bankruptcy compositions implied forms of discharge but only if the debtor managed to make regular payments and the original composition was not turned into ordinary bankruptcy. In ordinary bankruptcies, only full repayment of all debts (sometimes including interests) could lead to complete discharge from debts and the infamous bankrupt status. Because of the harshness of these conditions, alternatives existed. In all countries, the relinquishment of all assets allowed debtor considered as honest to obtain full discharge. In England only, discharge was not restricted to debtors obtaining a pre-bankruptcy arrangement and even in case of ordinary bankruptcy debtors could file for it. The court in charge could then decide whether to grant discharge immediately, make it conditional to payment of a given amount of money, suspend it for a given length of time, or simply reject the application.[23] In France, composition was a possible outcome of ordinary bankruptcy, implying debt discharge (if agreed payments were made) but not full recovery of the status of 'merchant' (except in case of full repayment).

To sum-up, by the late 1880s most countries had adopted similar devices to deal with worthy firms and debtors without making recourse to bankruptcy and liquidation, although differences still existed in the formal features of such devices as well as in other aspects of laws and practices. The similarities among legislations justify the conclusion suggested by Sgard that no major differences among legal families anymore existed in terms of formal ability to protect creditors' right.[24] On the other hand, however, further investigation is needed to verify whether behind the degree of formal similarities in the characteristics of various laws, their actual implementation was inspired by the pursuit of the same aims and achieved comparable results. In this regard the general dimension to be analysed is the balance between two possible opposite risks; the one of keeping alive firms which should be terminated, and the opposite scenario of pushing worthy debtors towards unnecessary liquidation. In the next sections of the paper this general dimension is explored by looking at four more specific points: whether the separation between worthy and un-worthy businesses was conducted with

[23] Di Martino, "Law, class and entrepreneurship".
[24] Sgard, "Do Legal Origins Matter?".

the same efficiency in various systems; what kind of practical solutions were found to deal with both categories; what levels of dividends were paid to creditors; and how long procedures took to be concluded.

## BANKRUPTCY DATA

Before start addressing the issues described above, an overview of the available sources and data is in order. During the late 19th century, most European countries started publishing judiciary statistics. Although information tended to focus mainly on penal crimes, attention was also turned to commercial procedures, including bankruptcy.[25] The typology of statistics collected reflected specific national legal concepts, but during the course of the century efforts were also attempted to compile comparable data published by public administrations all over Europe.[26] By the 1880s, these efforts had led to significant improvements, and statistical categories were relatively similar across countries even if legal procedures were still significantly different. Some contemporary studies used these data to analyse bankruptcy in particular countries, and even to suggest international comparisons.[27] Surprisingly, however, to our knowledge no systematic attempt at using this information to compare bankruptcy systems has ever been made.

The statistics were collected by justice departments, and provided information on three main dimensions: origin of cases (either pre-bankruptcy procedures or formal bankruptcy, started by either the debtor, the creditor, or the court), the result of various procedure (composition or liquidation, with corresponding assets and liabilities involved, and 'dividends' paid), and indicators of efficiency (above all, the length of procedures, something which was of particular interest to governments). Some of this information is frequently provided desegregated at regional level; although these data have not been used in this paper they may provide the basis for further research.[28]

However, statistics were collected mainly with the aim of measuring and assessing the activity of the judiciary and rarely, or not at all not, to evaluate the economic impact of insolvency and the efficiency of bankruptcy law. This means that from the point of

[25] For details on how and for what reasons these data were gathered in the French case, see Hautcoeur, "Origines et usages".
[26] Yvernès, L'administration.
[27] "Comparative statistics".
[28] For an example of the use of these data in France, see Hautcoeur and Levratto, "Legal versus economic", and for England and Wales, Lester, Victorian Insolvency.

view of economic analysis these data suffer from various problems. Firstly, by registering courts' activity only, virtually no information is provided regarding defaults that were settled privately (with the possible exception of England, were outside-bankruptcy deeds were registered and de facto included as part of the official procedures).[29] More importantly, the available data do not allow to compare the fate of similar firms in different legal systems, as they do not follow the destiny of specific cases; for instance data for bankruptcies ending in a given year do not give information on how they had been started, and costs and durations are provided for types of procedures, but not disaggregated by type of debtor. More generally, no economic or social information is gathered on firms, except sometimes the sector they belonged to, a dimension which in international comparison is difficult to use anyway because of different definitions of various industries. Even a basic separation between partnerships and incorporated businesses is generally not provided. England is the only exception, as the two types of businesses were subject to different laws, bankruptcy and insolvency respectively. This leads to a problem of international comparison, as for England information on length of procedures, on the subject in charge of opening them, and on dividends paid is available only for businesses subject to bankruptcy (sole ownerships; partnerships; limited-liability partnerships), while in all other countries they include joint-stock limited-liabilities companies as well. Although the vast majority of cases in Europe were very likely small businesses, still the inclusion of incorporated companies in the sample might affect the comparability of statistics. This is particularly true for the average length of procedures, as they usually tend to be longer and more complicated the bigger the size of the firm involved. Although we are aware of this issue, we do not think there is any sensible way of solving the problem.

Comparability of data among countries, however, is a more general problem that just this; despite the improvement we mentioned above, data still suffer from differences in the procedures and, sometimes, from lack of harmonization. For example, in most cases data on length of procedures consider closed ones, but this is not true for France where what is provided is the distribution according to the age of ongoing procedures at the end of each year. In this particular case we made these measures comparable using simple statistical assumptions. However, this is much more difficult to do in the case of assets and liabilities, which in Italy and England are measured for opened procedures,

[29] English reports mention, from time to time, the problem of outside-courts friendly deals, but they only provided extremely patchy information.

while in France and Germany they are measured for closed ones. In the former cases, all cases were included, but the asset evaluation was probably provided by the debtors who tended to overestimate them. In the later, procedures interrupted because of insufficient assets were not included, but assets evaluation was the result of the procedure itself. Because of debtors' overvaluation and the difference between the value of an ongoing concern and that of separated assets, data are not easy to compare. For instance, using a sample of Parisian bankruptcies, Hautcoeur and Levratto showed that the difference between assets evaluation at the beginning and at the closing of procedures was on average about 80%.[30]

Finally, even when comparable information is provided for every country, very rarely they cover the same time span. In the paper we generically refer to the period between 1881 and 1913, but data are often available only to a limited section of the period. Below, table 1 provides a summary of the most important data available (or not) for each county, and the beginning of the period covered by each statistical series.

[Table 1 here]

## AN EMPIRICAL EVALUATION OF BANKRUPTCY LAWS AND PRACTICES

Before addressing the issues of how various procedures worked in different systems, it is worthwhile to provide information about the total number of official procedures opened in each country over time (Figure 1).

[Figure 1 here]

One major influence on the number of bankruptcy cases should have been the transformation of the set of choices available to both creditors and debtors. In fact, as we have argued in the sections above, the introduction of new procedures precisely aimed at raising the number of failing firms which were brought for settlement to courts and not abandoned (from the legislator's point of view) to the darkness of private settlements and subject to abuse by best-informed creditors. Were legislators successful in their effort? Usually they were, but not always. As figure one shows, in Italy the

[30] Hautcoeur and Levratto, "Petites et grandes".

introduction in 1903 of a dedicated procedure to deal with small debts had an important impact on the number of cases which strongly increased from 1904. However the introduction of procedures alternative to bankruptcy had a more mixed impact.

[Figure 2 here]

As figure two shows, in England and in France the new procedures were successful in that they were used by a substantial proportion of debtors (around 30%), but while in England the introduction of deeds of arrangement in 1887 also impacted on the total number of cases (which increased from 1888), this did not happen in France after 1889 when liquidation judiciaire became available (figure 1). In fact in France the impact of new solutions could only be visible in the distribution of failed firms among different procedures, but not in the total number. Finally, in Italy pre-bankruptcy composition introduced in 1903 were almost not used (figure 2), and had no impact on the total number of cases (figure 1).

One possible reason why apparently-similar new procedures were so much more or less successful in different cases can be their different appealing to various constituencies. In order to investigate this dimension in figure 3.1 we plot data on who initiated various procedures in each country.

[Figure 3.1 here]

Data show that considering all procedures jointly (including all types of pre and outside-bankruptcy deeds), there was a clear hierarchy, from England where procedures were mainly (80% of them) opened by debtors, to Italy (above 60% opened by creditors), passing through France (no data is available for Germany). Since in all countries, pre or outside-bankruptcy procedures could be opened only by debtors, this hierarchy also reflects the proportion of these devices over the number of cases (very high in England, negligible in Italy).

However this might not be the entire story and a more nuanced explanation can be provided by looking at the same ratio but only considering bankruptcy procedures (Figure 3.2)

[Figure 3.2 here]

In this case too data show that the proportion of procedures started by debtors was still higher in England than in France and much higher than in Italy. The interpretation of this result is not straightforward. At first glance, the group that initiated bankruptcies should be the one the bankruptcy legislation favored. There is nevertheless a caveat to this rule: being accessible to both categories of actors, bankruptcy must have been initiated by those who could gain more, but compared to the situation outside bankruptcy, something that could differ a lot across countries. For example when during the second half of the 19th century imprisonment for debt disappeared in most European countries, this deprived creditors of a powerful device. As a result a higher proportion of creditors started using bankruptcy law instead, something which is perfectly visible in the French statistics around 1867, the year of the abolition of imprisonment for debt[31] Thus in order to interpret the data on who started bankruptcy procedures it is then necessary to have in mind what was the alternative situation. With this caveat, we can provide two complementary explanations to why there were so many English debtors that applied for official bankruptcy. The 'carrot' reason was the relatively broad availability of the discharge option that, as we have seen, provided both rehabilitation and stopped future claims on past debts. On top of this, as we will show later in the paper, English bankruptcy procedures were also very fast. The 'stick' explanation is that prison for debt was not entirely abolished in England, increasing the risk for debtors and the power of creditors.[32] In France, the introduction of the liquidation judiciaire led to a separation between those debtors who applied for this procedure in the hope of favorable outcome, and the remaining ones who seldom filed for formal bankruptcy (debtors initiate only about one third of the cases). In Italy pre-bankruptcy compositions were very few and procedures were in most cases initiated by creditors, two things that went hand-in-hand. It is well documented that in Italy getting a composition was extremely hard and worthy debtors often opted for informal deals.[33] This explains why few procedures in general (bankruptcy and pre-bankruptcy) were opened by debtors, but also why bankruptcy procedures alone were mainly opened by creditors: without the

[31] See Hautcoeur and Levratto "Legal versus economic".
[32] Automatic imprisonment at the creditor's request was suppressed, but a debtor no repaying in spite of a court order could be sentenced to jail for 'contempt at court' (Lester Victorian Insolvency). This was used up to 1970, although increasingly sparsely.
[33] Di Martino and Vasta, "Companies' insolvency".

option of friendly procedures, bankruptcy became the last resort for desperate cases, not surprisingly opened by creditors.

The general conclusion emerging from these statistics is that the decision from both creditors and debtors on whether or not to use formal procedures depended on the same incentives and that the 1880s reforms altered them in a way which was not consistent across countries. In particular while in England and France debtors found it relatively more convenient to make recourse to courts, this was not the case in Italy, part from cases of small debts.

Bankruptcy courts as screening devices

If the study of who decided to open the procedures gives us an insight on the orientation of bankruptcy systems, their practical efficiency can be explored by analyzing the extent to which bankruptcy law was able to gather and distribute information as to avoid the opposite risks of excessive severity or excessive generosity towards debtors. The key to achieve such efficiency was for courts to select among various types of debtors and to treat them differently. This may be reached through two instruments: first, pre-bankruptcy procedures should be opened to (and by) serious debtors hit by exogenous shocks, while formal bankruptcy should be reserved to debtors who had engaged with excessively risky behavior; second, composition should be reserved to those 'unlucky but honest traders' and liquidation to the dishonest, frivolous or excessive risk-takers. How efficient were different legal systems at reaching these objectives? Given the nature of the data, these two dimensions cannot be analyzed separately.

Efficient systems should first of all contemplate a variety of procedures and end-up with each one (pre or outside-bankruptcy deeds and ordinary bankruptcy) being polarized toward an outcome (composition in the case of deeds, and liquidation in the case of bankruptcy). In our sample measuring whether or not this was the case is complicated by the fact that procedures available in various countries were not fully equivalent. Apart from the fact that Germany simply did not have any type of pre-bankruptcy deeds, in Italy and England pre-bankruptcy procedures could either be accepted or refused by the court, but their only possible outcome was an agreement to pay on installments, while in France both pre-bankruptcy procedures and bankruptcy itself could lead to either composition or liquidation. In England, however, a similar situation existed regarding outside-bankruptcy deeds. With these considerations in mind

we can look at how polarized various procedures were by analyzing the ratio between the number of compositions and the number of liquidations in all types of procedures (Figure 4).

[Figure 4 here]

In England very few firms obtained a composition, either in outside-bankruptcy deeds (around 15%) or in bankruptcy (below 5%, except during a few years immediately after the 1883 reform), which suggest the existence of a liquidation bias. However, the difference between the two procedures was significant implying that deeds and bankruptcies were used, at least to an extent, to discriminate between debtors of different quality. In France the outcomes of the two procedures were very different too and the share of liquidations was lower than in England. Specifically, the proportion of composition was consistently higher for deeds (40%) than for bankruptcies (15%), even if this was still similar or higher than the share of compositions in English deeds. This evidence suggests that France was overall immune from a liquidation bias, and that the information gathered allowed for the two available procedures to be used for different purposes. In Germany and Italy, there was, de jure or de facto, only one procedure, thus compositions only took place as a result of the bankruptcy procedure. By definition, then, debtors were not selected and channeled to alternative paths. This does not mean, however, that compositions did not take place. In fact both in Germany and Italy the share of compositions is similar (once in the case of Italy the number of procedures dedicated to small firms is added to the total denominator) and higher than in France (and England). Nonetheless, both in Italy and Germany compositions were reached at the end of a costly procedure and after having imposed the shame of bankruptcy on debtors who might have deserved a better treatment.

The results above require further qualifications. The relative distribution of liquidation/composition among procedures simply indicates how many cases ended-up with a given outcome, and just measures whether or not some type of selection took place. However it does not provide any information on the functioning and efficiency of such selection, in particular whether the destiny of various businesses was in line with their quality. In order to assess this point we analyse relative levels of dividends in various procedures, keeping in mind that dividends in compositions and in liquidations cannot be fully compared since the former measures a promise to pay in the future,

while the latter represents the actual payment received by creditors. With this consideration in mind, the hypothesis that we test is that if selection were efficient at channeling relatively better debtors towards deeds and the rest towards bankruptcy, one should expect compositions in pre-bankruptcy deeds to promise higher dividends than compositions in bankruptcy; similarly, liquidations in deeds to pay higher dividends than those in bankruptcy. One would also expect higher dividends in compositions in those countries in which access to this solution was more selective. To analyze this point, figures 5 and 6 plot the average dividend paid in all types of compositions (Figure 5) and liquidations (Figure 6)

[Figure 5 here]

[Figure 6 here]

These data confirm the existence of major differences across countries. In England, dividends in compositions were very high (above 50% except for the very early period), both in deeds and in bankruptcies, which is consistent with the idea of a strong mechanism of selection being at work: English creditors (in outside-bankruptcy deeds) and courts (in pre-bankruptcy procedures) only gave compositions to firms in very good shape as compared to those on the continent (Figure 5). This interpretation is supported by the evidence (in Figure 6) of high dividends for firms liquidated as result of outside-bankruptcy deeds. The opposite happened in Italy (Figure 5), where compositions were easily obtained as a result of the bankruptcy procedure, but paid low rates of dividend (20% on average). This reflects both the costs of long procedures and the fact that, very likely, some kind of adverse selection among debtors operated, and firms in good shape went for extrajudicial solutions. The situation is not dissimilar in Germany which had de jure what Italy had de facto. As compared to England, dividends in compositions in France are lower. Also dividends in compositions are not clearly different in deeds and in bankruptcies, and the same is true for liquidations (Figure 6), where dividends are more or less the same for the two procedures (faillite and liquidation judiciaire). This suggests that the original allocation of firms to different procedures was not perfect, and some average ‘good’ firm ended-up reaching a composition but as the result of bankruptcy, while some average ‘bad’ firm was liquidated, but under the softer pre-bankruptcy procedure. This was less the case for England where dividends were similar

in various types of compositions (deeds and bankruptcies), but different in liquidations; in this case 'bad' companies were efficiently allocated the 'right' procedure, but some worthy firms had to go into bankruptcy to get a composition. These, however, were very few cases in absolute, probably relatively big firms for which a full agreement among creditors, necessary to obtain an outside-bankruptcy deal, was hard to be reached.

These results are confirmed, and appear even clearer, when we look at figure 7 which plots the difference between the average dividend paid in composition and in liquidation, for procedures which include both outcomes.

[Figure 7 here]

England is the best performers, while France does not appear to make the most efficient division between composition and liquidation, neither in pre-bankruptcy procedures nor in bankruptcy ones (the difference among dividends is similar for the two procedures and lower than in England). However, France still performed much better than Germany and in particular Italy. In Italy the difference is sometimes even negative (especially before the end of the century). Also, payment in liquidation (figure 6) is among the highest in the group, suggesting that probably some of the firms that ended up being liquidated, probably deserved not only a composition in bankruptcy, but maybe even a pre-bankruptcy one (for example the level of payment in Italian liquidations is not too far from the one of compositions in France). A similar consideration applies to England too: although compositions in deeds or bankruptcy paid much more than liquidations, suggesting a very efficient screening procedure, still liquidations in deeds paid a lot in absolute terms (figure 6). These were business that in other systems might have ended-up in a composition. However, despite sharing an apparent similar liquidation-oriented character, differences between England and Italy are still remarkable. Firstly, English firms were liquidated as a result of creditors' decision at a pre-bankruptcy stage, not at the end of a long and financially-exhausting formal procedure. Furthermore, although firms were liquidated, English entrepreneurs could still file for discharge and start again with a different concern, something that was not legally possible in Italy where entrepreneurs, at least formally, followed the fate of their businesses.

Administrative efficiency

A further perspective on the problem of the relative efficiency of bankruptcy procedures is their length, something which was considered by contemporaries as an essential issue and hence precisely documented in the official statistics. Figure 8 plots the average length of procedures (in months) in various countries.

[Figure 8 here]

The general picture is one of strong convergence towards the end of the period, with most countries performing in a similar way. Interestingly for both France and England there is virtually no difference between deeds and bankruptcy (in fact in England deeds took constantly longer than bankruptcy). Pre-bankruptcy deeds were therefore a 'softer' procedure from the point of view of debtors and paid higher dividends, but were not faster, partly because compositions took longer than liquidations. Despite substantial convergence, however, there are exceptions; for example Italian courts appear to have been remarkably inefficient. On the other hand Germany was the best performer, especially when it comes to compositions. Thus the commonplace about English procedures being faster than in the continent is only confirmed in the case of bankruptcies and only when compared to Italy and to a much lesser extent to France, but not to Germany, especially if we consider that corporations – which probably entailed longer procedures – are not included in British figures.

Comparing these results with the ones of the above section, a general conclusion is thus that German procedures were relatively unsophisticated in terms of selection among claimants, but they were fast. The opposite is true for Italy where selection was equally inadequate, but procedures were also slow.

## VARIETIES OF CAPITALISM, VARIETIES OF FINANCIAL SYSTEMS

The general picture which emerges is that although to an extent the legislations of various European countries converged in terms of formal features, remarkable differences existed in the way laws were implemented and procedures functioned. In particular the English system shows a pro-liquidation attitude, consistent with the belief in the efficiency of the market for physical and financial assets, while the other cases appear more prone to compositions, although in Germany mainly as result of

bankruptcy procedures rather than pre-bankruptcy agreements. However, if we look at the overall balance between the two opposite risks of excessive liquidation of firm in good shape and excessive continuation of unworthy firms, with the possible exception of Italy one cannot easily indicate one system as less efficient that the others.

Following the VoC approach, we thus suggest to assess the relative efficiency of various systems not on a single a priori scale, but in relation to the characteristics of the wider institutional setting in which they operated. Given that bankruptcy institutions is, by definition, an area where state intervention over-imposes its presence over 'natural' market solutions, one important dimension to look at it is the degree to which the state or the market was the main provider of institutional coordination. However it is also important to consider that in many cases economic coordination was provided neither by the market nor by the state, but by firm-to-firm institutional agreements. Given that bankruptcy law is the ultimate enforcing mechanism of debt/credit contract, in this scenario the most relevant dimension of the firm-to-firm interaction is the one between businesses and credit institutions. Thus the nature and features of the credit sector of various countries is a further dimension that needs to be taken into account.

The English system put the decisions between continuation and liquidation in the hands of economic agents with minimum interference from official bodies, in line with the liberal-market orientation of its economy stressed by the VaC approach. This system proved to be efficient in polarizing the outcomes of various procedures and in channeling different categories of debtors towards the most suitable path. However it also showed the tendency to prefer liquidation to continuation. This is particularly clear in the case of outside-bankruptcy deeds which were as popular, if not more, as the equivalent pre-bankruptcy procedures in France, but tended to produce a much higher share of liquidations. Official bankruptcy as well was biased towards liquidation and continuation was allowed only to those few firms able to promise a high dividend. Thanks to debt-discharge, however, entrepreneurs had the possibility of restarting even when firms were liquidated and a separation took place, much more than in most other countries, between the fate of the firm and that of its head. Available studies show that, on average, discharge was used by about one third of failed debtors.[34] This structure appears to be coherent with the nature of financial intermediation. Firstly England had probably a higher share of incorporated businesses that the other countries and a

[34] Di Martino "Law, class and entrepreneurship".

dedicated and more continuation-prone law dealt with these cases.[35] As far as banks were concerned, Davydenko and Franks[36] argued that as the main creditor of firms, the law allowed them to exploit the so-called 'floating charge' mechanism and being, de facto, put in charge of insolvency procedures and bend them in their own favour. According to Baker and Collins,[37] British banks managed to minimise losses when dealing with distressed clients anyway because of their ability in monitoring and selecting them. Either way, a market-based procedure with little external intervention clearly fitted the needs of British banks.

The French system was based on the idea that many bankruptcies resulted not from individual behavior but from market failures, and that there could be some social gain in the continuity of firms struggling for survival, even if this required the use of some contingent rules and giving courts wide room for maneuvering.[38] This philosophy is apparently in line with the characterization of France as a 'state capitalism' provided by the VoC literature. The practical implementation of this principle is visible in the high level of intervention of the judiciary system which managed the decision between composition and liquidation both in the case of pre-bankruptcy procedures and in the case of bankruptcy too. However, the portrait of the French bankruptcy system as part of a state-led capitalism might be misleading. In fact the powerful French commercial courts were not an instrument of government policy: they were very autonomous, being elected by and among merchants, and de facto in the hands of local trading elites. These were proud of their independence and power, which was reinforced rather than diminished by their capture of government institutions such as bankruptcy ones.[39] As a matter of fact commercial courts were likely to have first-hand information about the firms, and procedures could be bent to eliminate competing companies or influence the structure of business networks.[40] Although not in line with the idea of a strong influence of the government over the management of economic relationships, the functioning of bankruptcy practices is in line with the features of the French credit system. In general as compared to Britain banks played a relatively less important and direct role in the financing of business which was mainly based on inter-firm commercial credit and the

[35] See Di Martino and Vasta "Companies' insolvency" for a comparison between the features of the English corporate insolvency law and similar devices existing in Italy and Belgium.
[36] Davydenko and Franks. "Do Bankruptcy Codes Matter?".
[37] Baker and Collins, "English industrial distress".
[38] Sgard, "On market discipline".
[39] Hirsch Les deux rêves; and Lemercier Un si discret pouvoir.
[40] Martin, "Le commerçant, la faillite".

use of bills of exchange. Thus local merchants had hierarchical credit relationships with each other, and the management of bankruptcy procedures was a key element of these relations. In some instances the control of procedures could have led to systemic efficiency, for example because it allowed the collection and dissemination of information about credit worthiness. In other instances, however, it only served the purpose of advantaging given firms over others, for example the ones closest to judges in key positions.

In Germany the legislation did not contemplate any specific device to play the key role of selecting among viable firms and offering them an alternative to bankruptcy, thus compositions were allowed only as a result of the bankruptcy procedure itself. Germany, however, had very fast procedures and dividends were higher than in Italy which was de facto in a similar situation given that pre-bankruptcy deeds were legally allowed but not used. However, dividends in both compositions and liquidations were low as compared to other countries, so the suspicion arises that some kind of selection among cases might had operated at an earlier stage that the formal declaration of bankruptcy. As a consequence only businesses in desperate conditions would have used formal procedures, and firms in better shape might have reached extrajudicial agreements with creditors. Although in the absence of direct evidence this remains a tentative conclusion, it fits the characterization of Germany as a case of 'coordinated-market' capitalism where institutional links among firms play a key role. It is also in line with the idea maintained by a number of economic historians that German banks (the main creditors in case of bankruptcy) were particularly close to their clients and efficient in monitoring their behavior.[41] This view, and in particular the alleged superiority of German universal banks, has been strongly criticized by some Anglo-Saxon historians, but recently re-launched by other scholars. They argue that the German banking sector had a unique 'systemic' strength which did not come from 'superior' mixed banks, rather by virtuous interactions among a variety of credit institutions operating in different segments of the market and/or at different geographic levels. [42] Should further research confirm this hypothesis, then Germany would appear as a system in which unworthy businesses were quickly and cheaply processed by

[41] Gerschenkron, Economic backwardness.
[42] See Collins "English banks development"; and Fohlin "Universal banking" for the former view. Carnevali Europe's advantage; Deeg Finance capitalism; Guinnane "Delegated Monitors"; and Vitols, 'Changes", for the latter

bankruptcy institutors, while firms deserving a further chance were dealt with directly by institutional creditors.

As compared to the other three cases Italy emerges as the worst system in absolute; despite the formal availability of pre-bankruptcy composition, de facto the choice between liquidation and continuation took place after bankruptcy, as deeds were very rarely used. The attempt to compensate for the low number of pre-bankruptcy deeds probably led to a disproportionate use of compositions in bankruptcy which, however, paid little, probably because of the length of procedures. An institution which appears inefficient in absolute terms, however, might not be much of a paradox in a variety of capitalism where economic coordination often took the form of informal behind-closed-doors agreements, with the back-up option of state-led bail-outs.[43] Thus in a distorted perspective the Italian bankruptcy system can even be seen as 'efficient' as long as it served the purposes of the main stake-holders in the process (for example the industrial families), an interpretation which has been suggested by some recent studies.[44]

## CONCLUSIONS

The aim of the papers is to address the question of the comparative efficiency of bankruptcy and insolvency institutions moving away from the exclusive focus on the formal features of various laws and the defense of creditors' rights which characterize the literature. To do so we analyze the neglected issue of the functioning of legal practices and we take into account the balance between creditors' and debtors' interests. The main conclusion that emerges from this empirical analysis is that as far as France, England, and Germany are concerned various systems had different strengths and weaknesses, but they can hardly be ranked in terms of absolute efficiency. Italy is in many ways the outlier as its bankruptcy system seems to perform less efficiently whatever measure is considered. However, differences in the functioning of various bankruptcy procedures reflected the characteristics of the financial system and the relationship between business and government in each country. In this perspective even the Italian case might look less of an oddity than we previously believed.

In general while these results are in line with the 'varieties of capitalism' view, they conflict with the idea of a precise ranking of systems suggested by the LaG approach.

[43] Di Martino, "Banking crises".
[44] De Cecco "Piccole imprese"; and Di Martino and Vasta "Companies' insolvency".

So where does this paper stand in regard to this literature? Our conclusion is that the LaG approach does not help to understand European financial development, but its results still apply to less developed economies. As far as Europe is concerned, in fact one can argue that various bankruptcy laws converged as part of 19th century globalization, taking the best components of various national traditions but preserving those differences which best fitted the features of individual financial systems. Thus the 'legal origin' has a marginal (if any) role in an explanation which sees financial development as endogenous to the evolution of legal institutions. The fact that bankruptcy laws reflected the characteristics of the wider institutional environment, however, is in line with some of the overall results of the LaG, specifically the fact that outside Europe the transplant of Anglo-Saxon legal institutions appears to be the most successful. A possible explanation is that although English law was consistent with the nature of financial intermediation, its functioning was independent from it and mainly relied on the working of the asset market and the efficiency of independent courts. On the other hand, in both Germany and France the functioning of bankruptcy procedures was not only consistent with the features of the credit market, but it actually depended on the practical involvement of communities of merchants and/or credit institutions with specific characteristics. This meant that in order for English-based laws to be exported successfully a lighter set of complementary institutions needed to be transplanted as compared to what the French or the German legal systems required.

## FIGURES AND TABLE

*Remark : The sources for all the figures are*: England: Board of Trade, *Bankruptcy Annual Report*, London, various years*;* France*:* Ministère de la Justice, *Compte général de l'administration de la justice civile et commerciale*, Paris, Imprimerie Nationale, various years ; Italy: Ministero della Giustizia e degli Affari di Culto, *Statistica giudiziaria civile e commerciale*, Rome, Tiprografia L. Cecchini, various years; Germany: Kaiserlichen Statistichen Amte, *Statistisches Jahrbuch für das Deutsche Reich*, Berlin, Verlag von Puttkammer & Mühlbrecht, various years.

### FIGURE 1:

### TOTAL NUMBER OF PROCEDURES IN VARIOUS COUNTRIES

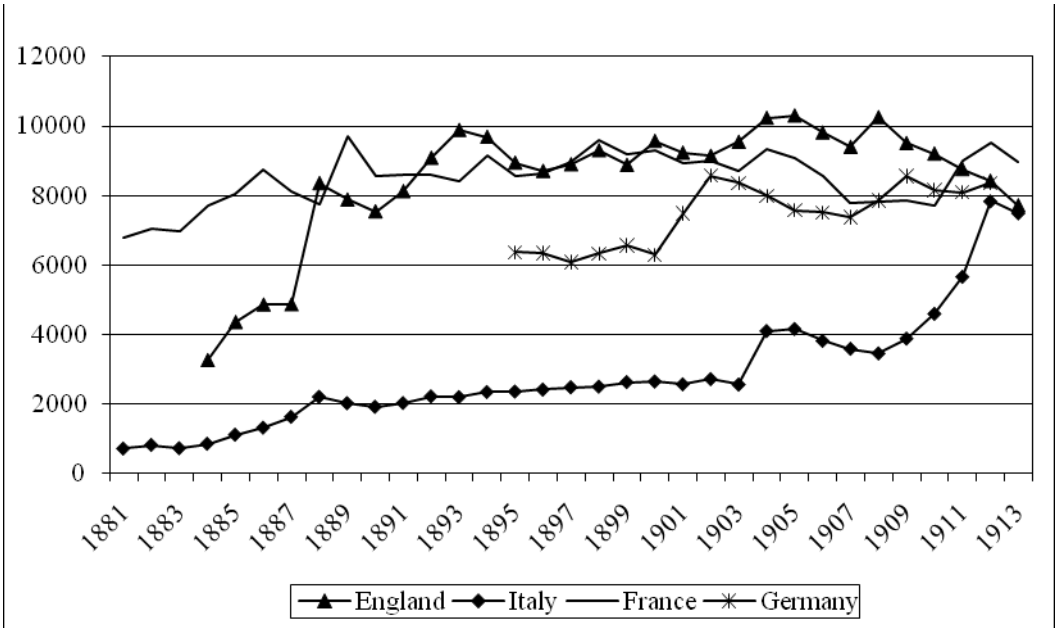


**FIGURE 2**

**SHARE OF *PRE-BANKRUPTCY* (AND *OUTSIDE-BANKRUPTCY*) PROCEDURES/TOTAL PROCEDURES**

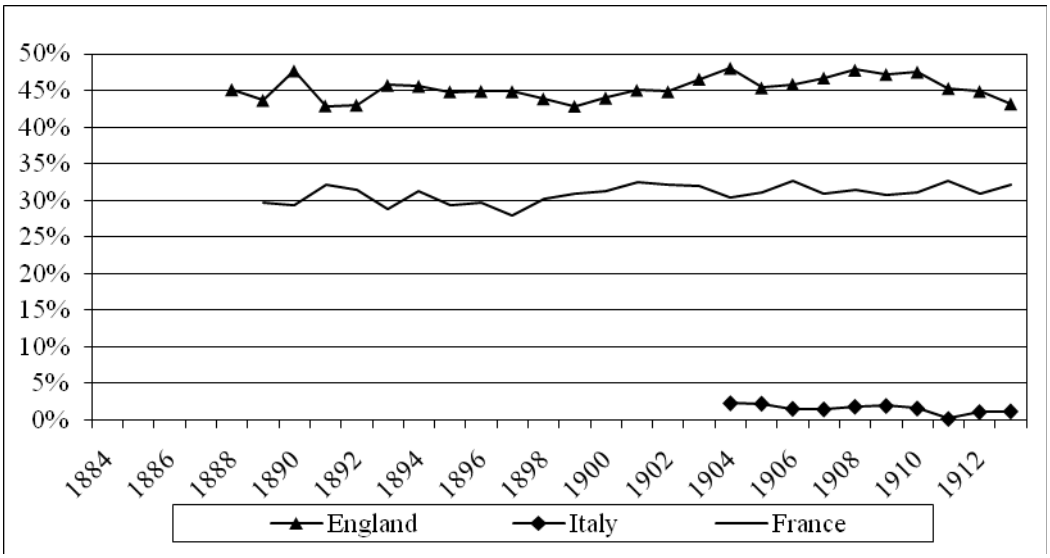



**FIGURE 3.1**

**SHARE OF PROCEDURES STARTED BY DEBTORS/TOTAL PROCEDURES (EXCLUDING PROCEDURES OPENED BY COURT)**

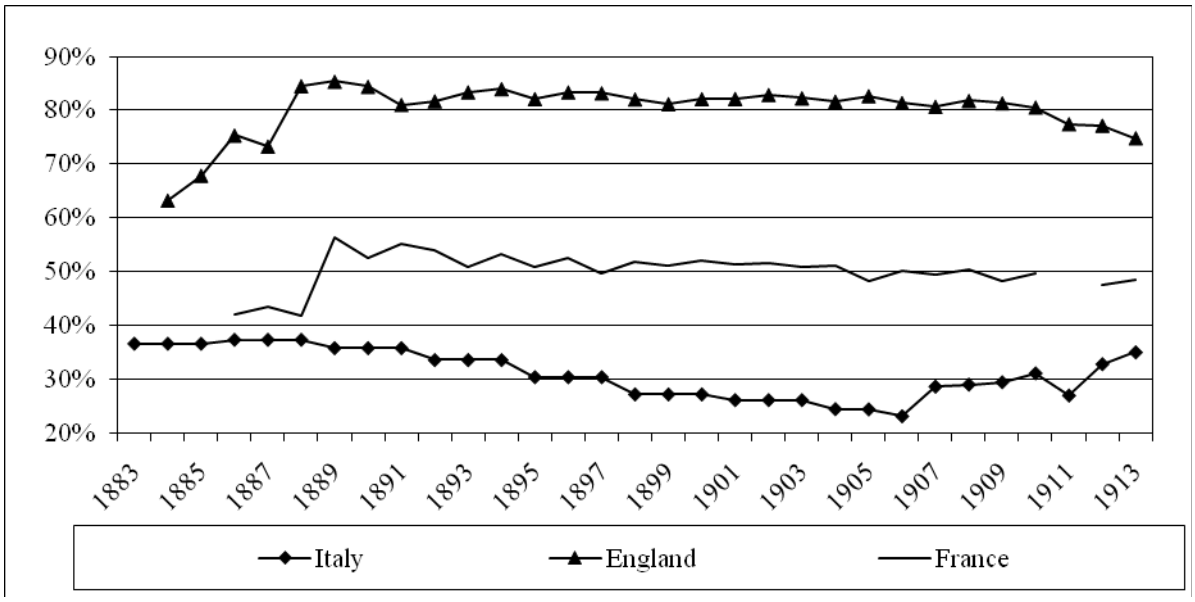


**FIGURE 3.2:**

**SHARE OF BANKRUPTCIES OPENED BY DEBTORS/TOTAL BANKRUPTCIES (EXCLUDING PROCEDURES OPENED BY COURT)**

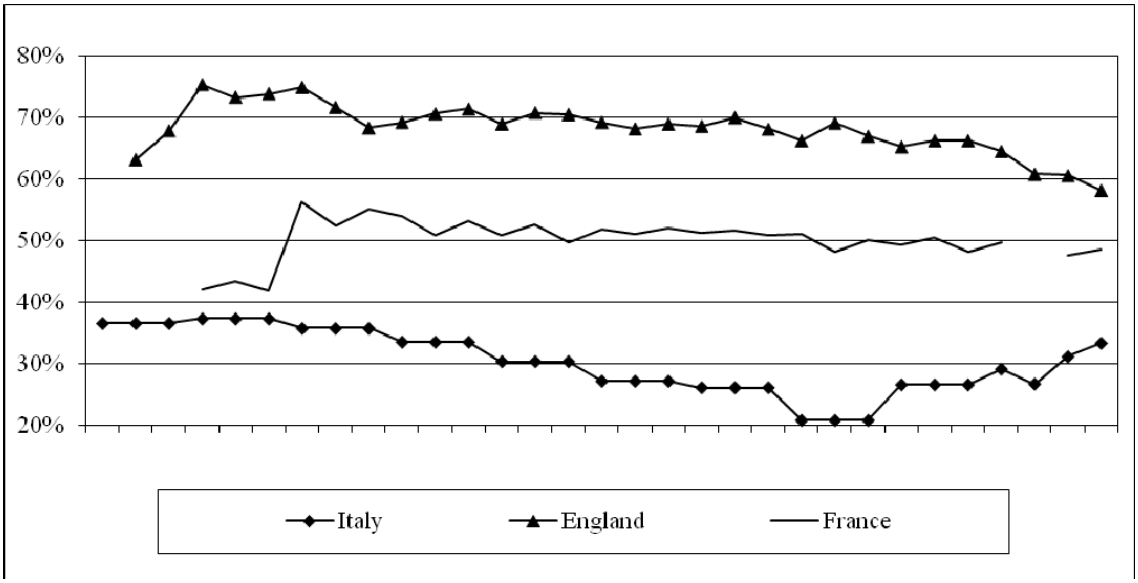



**FIGURE 4:**

**SHARE OF COMPOSITIONS (ALL TYPES)/TOTAL PROCEDURES**

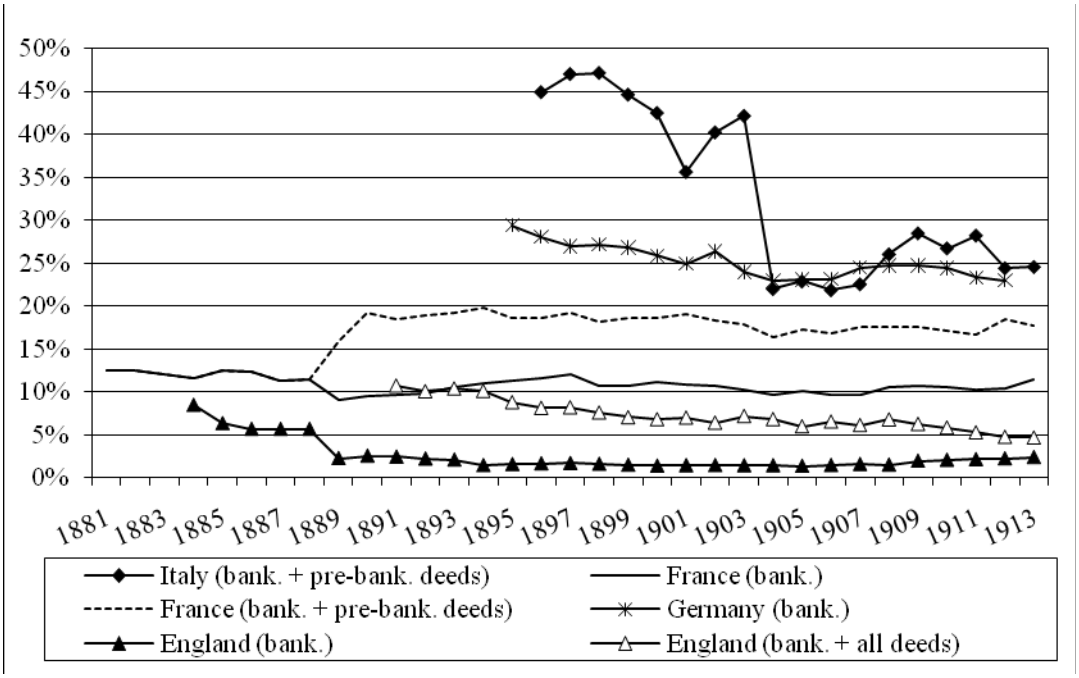


**FIGURE 5:**

**AVERAGE DIVIDEND IN *COMPOSITIONS* IN VARIOUS PROCEDURES (% OF LIABILITIES)**

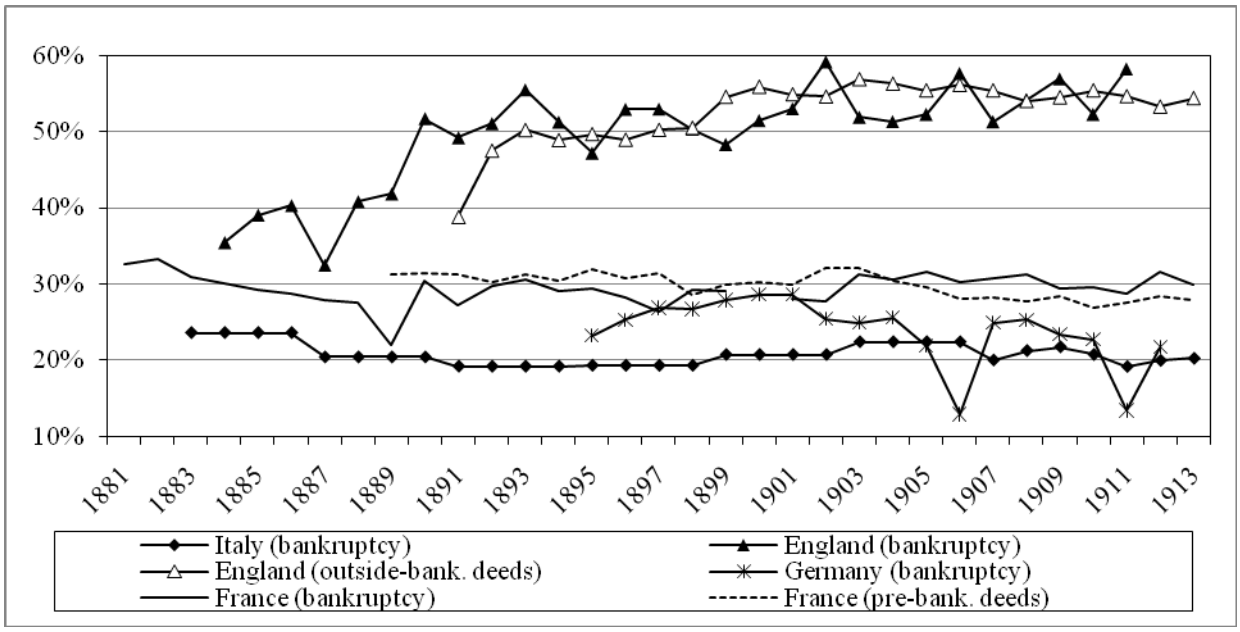



**FIGURE 6:**

**AVERAGE DIVIDEND IN *LIQUIDATIONS* (% OF LIABILITIES)**

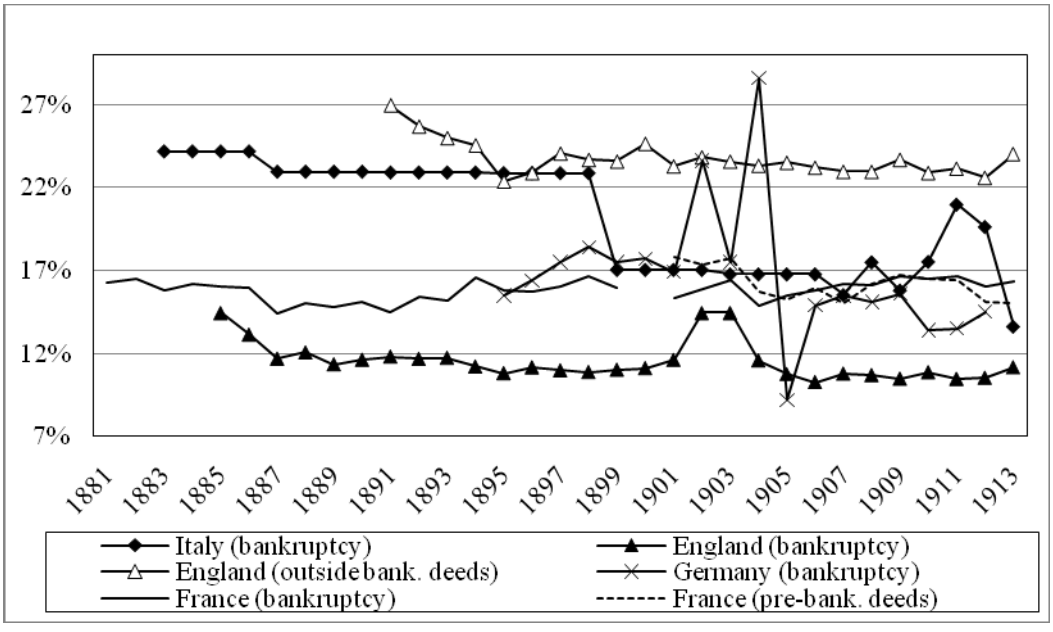


**FIGURE 7:**

**DIFFERENCE (% OF LIABILITIES PAID) BETWEEN THE AVERAGE DIVIDEND IN COMPOSITION AND LIQUIDATION IN VARIOUS PROCEDURES**

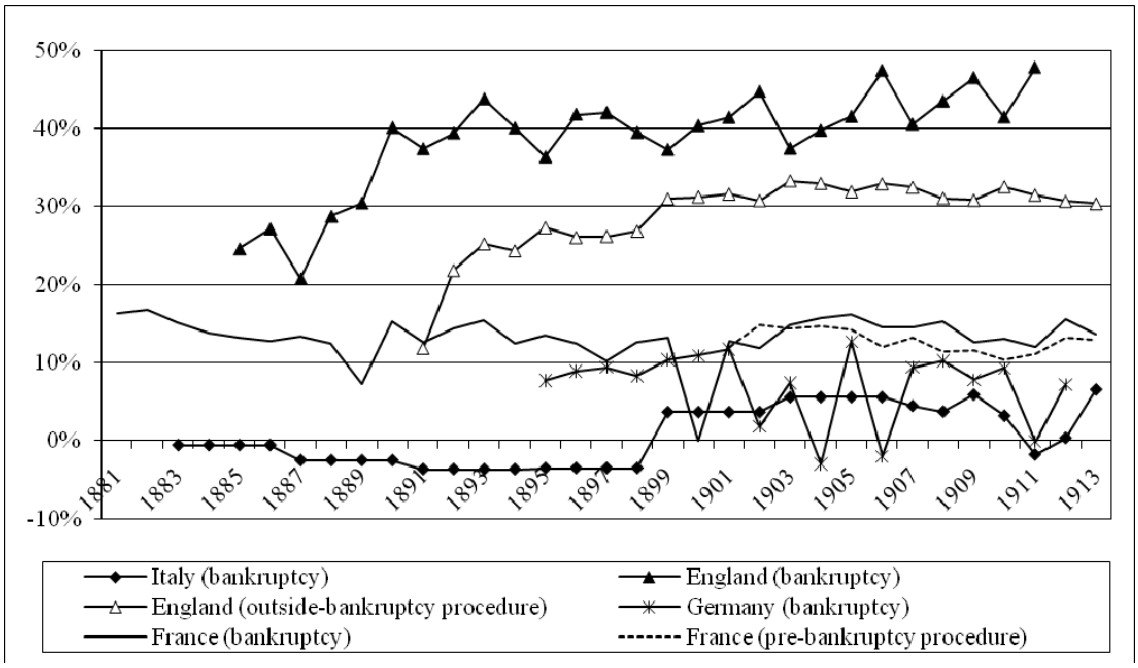



**FIGURE 8:**

**AVERAGE LENGTH OF PROCEDURES (IN MONTHS)**

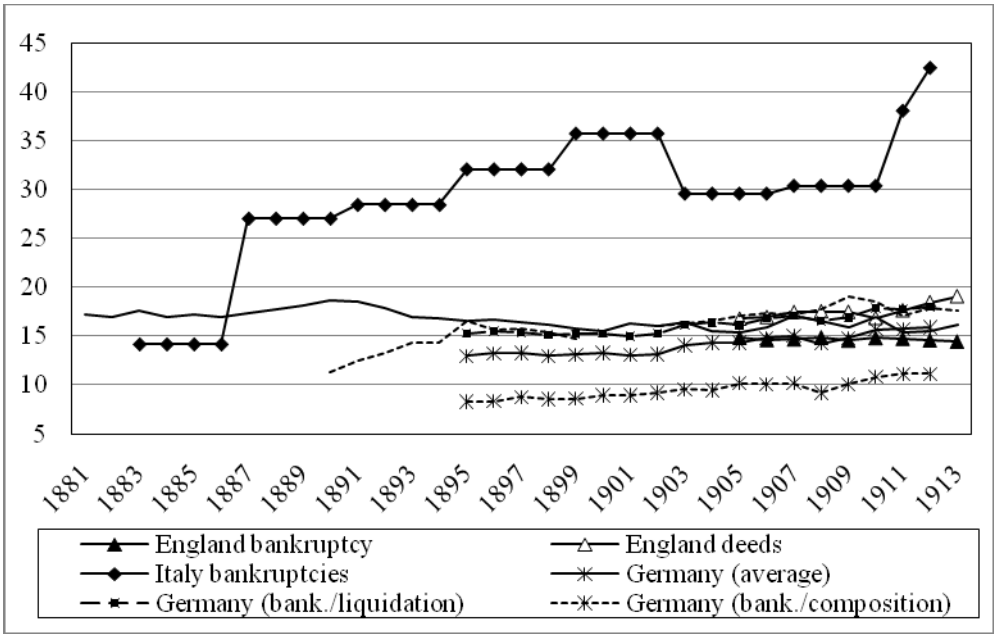


Table 1.

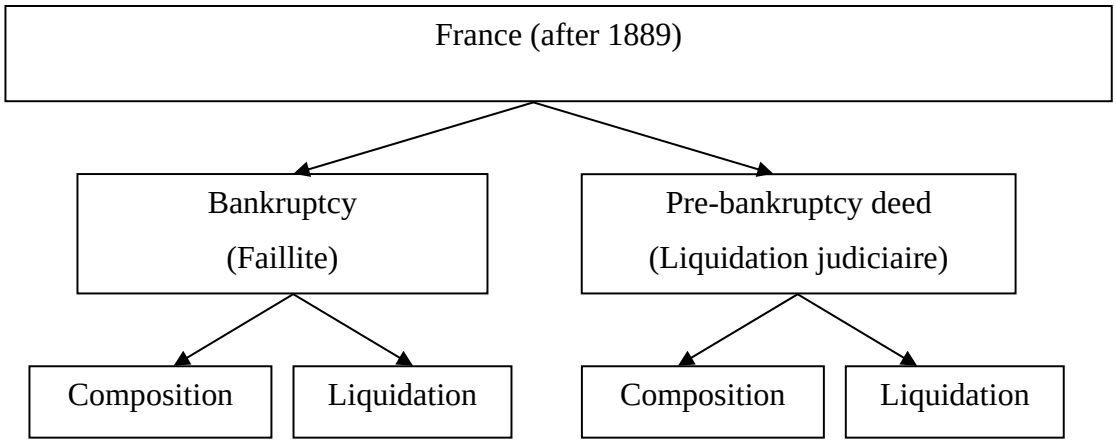
DATA AVAILABLE FOR EACH COUNTRY,

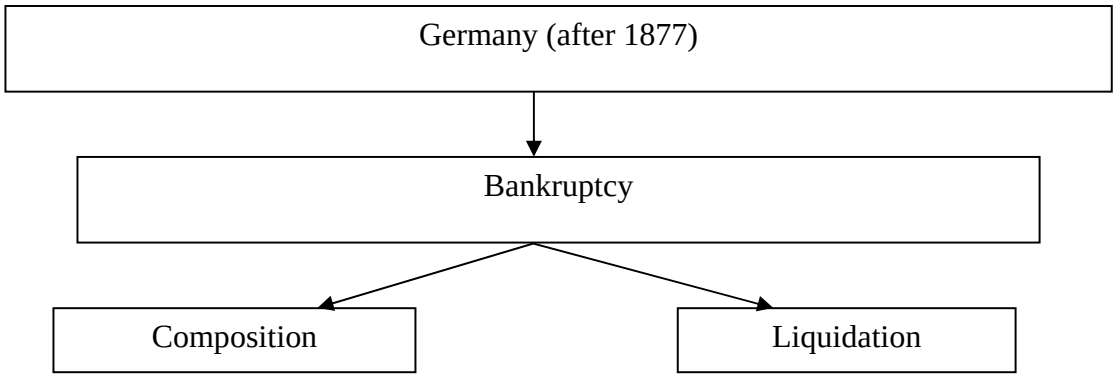
AND YEAR IN WHICH THE SERIES BEGINS

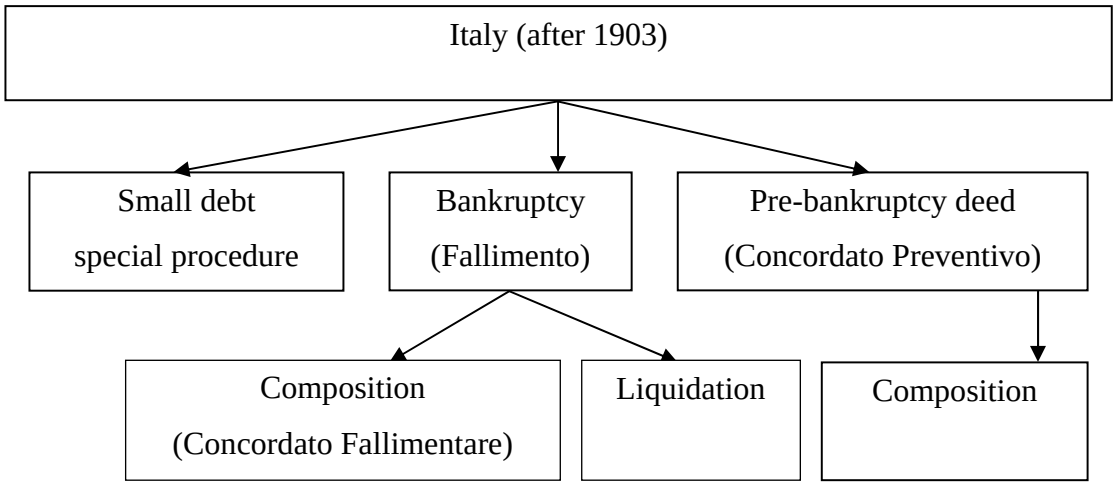
| | | England | Italy | France | Germany |
|---|---|---|---|---|---|
| **Number of new cases**: | *Bankruptcy* | 1884 | 1881 | 1820 | 1895 |
| | *Pre/outside bank. deeds* | 1888 | 1904 | 1889 | n.a. |
| **Opener** | | 1884 | 1883 | 1886 | n.a. |
| **Results of bankruptcy** *(liquidation vs. composition)* | | 1884 | 1896 | 1840 | 1895 |
| **Results of pre/outside bankruptcy deeds** *(liquidation vs. composition)* | | 1891 | n.a | 1889 | n.a |
| **Assets, at beginning/end of bankruptcy** | | 1884 | 1896 | 1846 (end) | 1895 (end) |
| **Liabilities, at beginning/end of bankruptcy** | | 1884 | 1896 | 1840 (end) | 1895 (end) |
| **Size distribution of bankruptcies** *(measured by liabilities except if stated otherwise)* | | 1884 (assets) | 1891 | 1840 | 1895 |
| **Assets, start/ end of deeds** | | 1888 (start) | n.a. | 1889 (end) | n.a. |
| **Liabilities, start/ end of deeds** | | 1888 (start) | n.a. | 1889 (end) | n.a. |
| **Dividends of bankruptcy** | *Composition* | 1885 | 1883 | 1840 | 1895 |
| | *Liquidation* | 1885 | 1883 | 1840 | 1895 |
| **Dividends of deeds** | *Composition* | 1891 | n.a. | 1889 | n.a. |
| | *Liquidation* | 1891 | n.a. | 1901 | n.a. |
| **Length of procedures** | | 1905 | 1883 | 1881 (estimated) | 1895 |
| **Costs of procedures** | | 1884/ 1891 | n.a | n.a | 1895 |

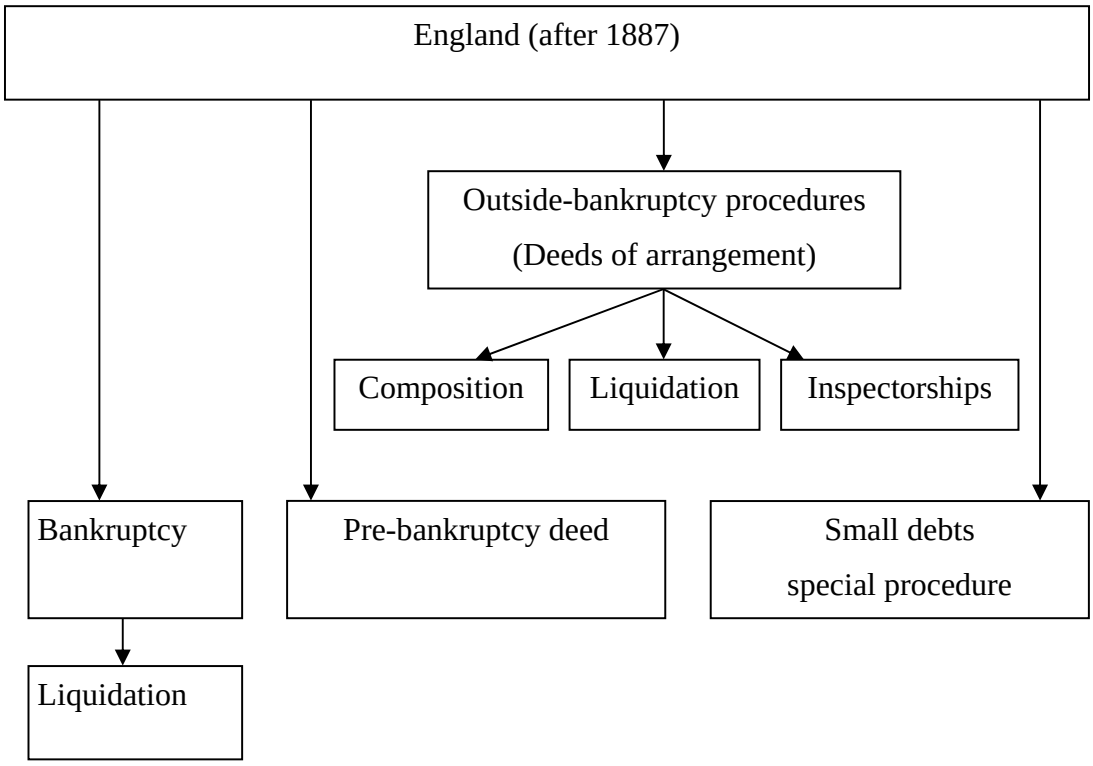
*Source*: England: Board of Trade, *Bankruptcy Annual Report*, London, various years*;* France*:* Ministère de la Justice, *Compte général de l'administration de la justice civile et commerciale*, Paris, Imprimerie Nationale, various years ; Italy: Ministero della Giustizia e degli Affari di Culto, *Statistica giudiziaria civile e commerciale*, Rome, Tiprografia L. Cecchini, various years; Germany: Kaiserlichen Statistichen Amte, *Statistisches Jahrbuch für das Deutsche Reich*, Berlin, Verlag von Puttkammer & Mühlbrecht, various years.

Appendix: graphical representation of various bankruptcy procedures in Europe after the 1870s-1880s reforms




Italy (after 1903)
Small debt
special procedure
Bankruptcy
(Fallimento)
Pre-bankruptcy deed
(Concordato Preventivo)
Composition
(Concordato Fallimentare)
Liquidation
Composition


England (after 1887)
Outside-bankruptcy procedures
(Deeds of arrangement)
Composition
Liquidation
Inspectorships
Bankruptcy
Pre-bankruptcy deed
Small debts
special procedure
Liquidation

## REFERENCES


Official publications

Board of Trade, Bankruptcy Annual Report, London, various years

Ministère de la Justice, Compte général de l'administration de la justice civile et commerciale, Paris, Imprimerie Nationale, various years.

Ministero della Giustizia e degli Affari di Culto, Statistica giudiziaria civile e commerciale, Rome, Tiprografia L. Cecchini, various years.

Kaiserlichen Statistichen Amte, Statistisches Jahrbuch für das Deutsche Reich, Berlin, Verlag von Puttkammer & Mühlbrecht, various years.

Contemporary sources

Carpentier, Paul (ed.) Législation commerciale de l'Allemagne. Code de commerce, mis en vigueur en 1900, loi sur le change, loi sur la faillite (législation refondue), texte, annotations, jurisprudence, droit comparé, Paris : A. Chevalier-Marescq, 1901

"Comparative statistics of bankruptcies in England and France", The Economist, December 16th, 1882, pp. 1552-53.

Dunscomb, S. Whithey, Bankruptcy, a Study in Comparative Legislation, New York: Columbia College, 1893

Juglar, C., Des Crises commerciales et de leur retour périodique en France, en Angleterre et aux États-Unis, Paris: A. Picard, 1891

Lecomte, Maxime, Etude comparée des principales législations européennes en matière de faillite, Paris : Pedone-Lauriel, 1879

"Lois commerciales de l'univers", a collection of books publishing and translating the commercial and bankruptcy laws of all countries around 1913, Paris: Librairie Générale de Droit et de Jurisprudence, 1911-1913

Mascret, Hippolyte-François, Dictionnaire des faillites, Paris, L'Auteur, 1863-1872

Yvernès, Émile, L'administration de la justice civile et commerciale en Europe, législation et statistique, Paris, Imprimerie Nationale, 1876.

References to modern literature

Acemoglu, D., et al. "Reversal of fortune: geography and institutions in the making of the modern world income distribution." Quarterly Journal of Economics, 2002, 117: 1231-94.

Aghion, P., O. Hart, and J. Moore, “The Economics of Bankruptcy Reform”, Journal of Law, Economics and Organization, 1992, 8(3), 523-46.

Amable, Bruno, The diversity of modern capitalism, Oxford, Oxford University Press, 2003

Baker M. and M. Collins, “English industrial distress before 1914 and the response of the banks”, European Review of Economic History, 1999, 3, pp. 1-24

Berglof, E., H. Rosenthal and E.L. Von Thadden, “The Formation of Legal Institutions for Bankruptcy: A Comparative Study of the Legislative History”, Mimeo, 2001

Boe Hancké, Martin Rhodes, Mark Thatcher, eds, Beyond varieties of capitalism: conflict, contradictions, and complementarities in the European economy, Oxford: Oxford University Press, 2007

Bordo, M. D. and P. L. Rousseau,”Legal-political factors and the historical evolution of the finance-growth link”, European Review of Economic History, 2006, 10, pp. 421-44

Carnevali, F., Europe’s advantage: banks and small firms in Britain, France, Germany, and Italy since 1918, Oxford: Oxford University Press, 2005

Claessens, S. and L. F. Klapper, “Bankruptcy around the World: Explanations of Its Relative Use,” American Law and Economics Review, 2005, 7(1), pp. 253-283

Cruch Colin, “Typologies of capitalism”, in Bob Hancké (ed.), Debating varieties of capitalism: a reader, Oxford: Oxford University Press, 2009

Collins, M., “English banks development within a European context, 1870-1939”, Economic History Review, 1998, 51, 1-24

Cornelli, F. and L. Felli, “Ex-ante efficiency of Bankruptcy Procedures”, European Economic Review, 1997, 41 (3-5): 475-485.

Davydenko, S.A. and J. R. Franks, “Do Bankruptcy Codes Matter? A Study of defaults in France, Germany and the UK”, The Journal of Finance, 2008, 63 (2), pp. 565-608

De Cecco, M. “Piccole imprese, banche, commercialisti. Note sui protagonisti della seconda industrializzazione italiana”, in L. Cafagna and N. Crepax, a cura di, Atti di intelligenza e sviluppo economico. Saggi per il bicentenario della nascita di Carlo Cattaneo, Bologna, Il Mulino, 2001, pp. 425–49.

Deeg, R., Finance capitalism unveiled: banks and the German political economy, Ann Harbour, University of Michigan Press, 1999

Di Martino, P., “Banking crises and the evolution of bankruptcy legislation in Italy”, Rivista di Storia Economica, 2004, XX (1), pp. 65-85

Di Martino, P., “Law, class and entrepreneurship: bankruptcy and debt discharge in England and Wales, c. 1890-1939” Manchester Papers in Economic and Social History, 2008, 64.

Di Martino, Paolo and Michelangelo Vasta, “Companies’ insolvency and ‘the nature of the firm’ in Italy, 1920s-70s”, Economic History Review, 2010, 63 (1), pp. 137-164

Fohlin, C., “Universal banking in pre-world war I Germany: model or myth?”, Explorations in Economic History, 1999, 36, pp. 305-43.

Franks, J. and O. Sussman, “An Empirical Study of Financial Distress of Small Bank-Financed UK Companies: A Reassessment of English Insolvency Law”, WP, London Business School, 2000.

Gerschenkron A., Economic backwardness in historical perspective, Cambridge (Ma.): Harvard University Press, 1962

Greif, A., Institutions and the path to the modern economy: Lessons from medieval trade, Cambridge: Cambridge University Press, 2006

Guinnane, T. W., “Delegated Monitors, Large and Small: Germany’s Banking System, 1800-1914”, Journal of Economic Literature, 2002, XL, pp. 73-124

Guinnane, T., Harris, R., Lamoreaux, N.R., and J. Rosenthal, “Putting the Corporation in its Place”, Enterprise and Society, 8 (2007), pp. 687 - 729.

Robert E. Hall, Robert and Charles I. Jones, “Why do some countries produce so much more output per worker than others?”, Quarterly Journal of Economics, 1999, Vol. 114, No. 1, pp. 83-116

Hall Peter A. and David Soskice “An Introduction to Varieties of Capitalism”, in Varieties of capitalism: the institutional foundations of comparative advantage, Oxford, Oxford University Press, 2001

Hart, O., Firms, Contracts and Financial Structure, Oxford: Oxford University Press, 1995

Hautcoeur, P.-C. and N. Levratto, “Legal versus economic explanations of the rise in bankruptcies in XIXth century France”, WP Paris school of economics, n°47, 2007.

Hautcoeur, P.-C. and N. Levratto, “Petites et grandes entreprises face à la faillite en France au 19e siècle : du droit à la pratique” in A. Stanziani et N. Levratto (eds), Droit et crédit : la France au 19e siècle, Economica, Forthcoming

Hautcoeur, P.-C., “Origines et usages de la statistique des faillites en France au 19e siècle: histoire d'un échec”, Histoire et Mesure, 2008, XXIII, 1, pp. 85-136

Hirsch, J.-P., Les deux rêves du commerce : entreprise et institution dans la région lilloise, 1780-1860, Paris: Editions de l’Ehess, 1991

La Porta R., F. Lopez-de-Silanes, A. Shleifer, and R.W. Vishny, “Law and Finance.” Journal of Political Economy, 1998, 106(6), 1113-1155.

Lemercier, C., Un si discret pouvoir. Aux origines de la Chambre de commerce de Paris, 1803-1853, Paris: La Découverte, 2003.

Lester, V. M., Victorian Insolvency : Bankruptcy, Imprisonment for Debt, and Company Winding-Up in Nineteenth Century England, Oxford, Oxford University Press, 1995

Martin, J.C., “Le commerçant, la faillite et l’historien”, Annales, 35-6, 1980, p. 1251-1268.

Musacchio A., “Do Legal Origins Have Persistent Effects Over Time? A Look at Law and Finance around the World c. 1900”, mimeo, 2007

Musacchio, A., “Can Civil Law Countries Get Good Institutions? Lessons from the History of Creditor Rights and Bond Markets in Brazil” Journal of Economic History, 2008, 68, pp. 80-108

Nabayashi, M., and Tetsuji Okasaki, “Role of Courts in economic Development: A Case of Prewar Japan”, WP CIRJE, 2007

North, D. C., Institutions, institutional change and economic performance, Cambridge, Cambridge University Press, 1990

North, D. C., Understanding the problem of economic change, Princeton, Princeton University Press, 2005

North , D. C. and B. Weingast, “Constitutions and commitment: the evolution of institutions governing public choice in seventeenth England”, Journal of Economic History, 1989, 49, 4, pp. 803-832.

North and Thomas, The rise of the Western world: A new economic history, Cambridge, Cambridge University Press, 1973

Rajan, R. G. and L. Zingales, “The great reversal: the politics of financial development in the twenthienten century”, Journal of Financial economics, 2003, 69, pp.5-50.

Sgard, J., “Do Legal Origins Matter? The Case of Bankruptcy Laws in Europe, 1808-1914”, European Review of Economic History, 2006, X-3, p. 389-419.

Sgard, J., “On market discipline: Bankruptcy, debt discharge, and renegotiation in England and France (17th-19th century)”, mimeo, 2007.

Stiglitz, J., “Bankruptcy Laws: Some Basic Economic Principles”, in S. Claessens and A. Mody (eds), Resolution of Financial Distress, Washington, World Bank Institute, 2001, pp. 1-23

Vitols, S., “Changes in Germany's bank-based financial system: a varieties of capitalism perspective”, Corporate governance: an international review, 2005, 13, 3, pp. 386-396

White, M. and F. Wei, “Personal Bankruptcy and the Level of Entrepreneurial Activity”, Journal of Law & Economics, 2003 46(2): 543-568.

Zysman J., “How institutions create historically rooted trajectories of growth”, Industrial and corporate change, 1994, 3, 12, pp. 248-83