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

Pierre-Cyrille Hautcoeur (PSE-EHESS)
Paolo Di Martino (University of Manchester, UK)

Address for correspondence: P.dimartino@manchester.ac.uk

The study of the evolution, functioning, and impact of bankruptcy and insolvency laws and practices is a growing field in both economics and economic history.

About a decade ago, some of path-breaking articles (among others, La Porta et al., 1997, 1998, and 2000) had shown the link between belonging to a given legal "family" (Anglo-Saxon, French, Scandinavian, or German), formal features of bankruptcy laws, the ability to defend creditors' rights, and level of financial intermediation (and eventually of economic growth).

The success of this approach, commonly know as the "law and growth" view, and its focus on long-term elements had attracted the attention of economic historians (Bordo and Rousseau, 2006; Lamoreaux and Rosenthal, 2005; Musacchio, 2008; Sgard 2006), whose efforts added-up to the ones who have analysed, in historical perspective, the evolution of laws and practices in various countries (among others, Hoppit, 1987; Lester, 1995; Marco, 1989; and Skell, 2001.). In most cases the new wave of historical analyses had casted doubts on the validity of the methodology and conclusions of the law and growth approach. In particular the idea of the belonging to a given legal family as an exogenous and immutable variable, and the alleged superiority of the Anglo-Saxon tradition have been severely questioned.

Despite growing attention to these themes, the last word on the matter is far from having been said. In fact, fundamental issues such as the actual functioning (and consequently the actual impact) of various laws have been so far neglected. On top of other limitations, for example the emphasis on creditors only and the de facto unhistorical approach, the law and growth view has not dealt with issues such as actual usage of procedures, costs, lengths, or level of debts' repayment. On these bases the ranking of various families and the search for a link with depth and effectiveness of financial intermediation still lacks fundamental elements of analysis.

A similar criticism can also be made to historical work, for example Sgard, who have emphasised similarities and convergence among various families, rather than differences.

This paper aims at filing this gap by focussing on elements that have been so far left at the margin of the analysis. This study thus provides an empirical analysis based on data on number of procedures and on their efficiency, as well as looking at their impact on creditors (therefore on supply of finance), but also on debtors and on the incentives to borrow. Given the nature of the data involved in the study, this paper focuses on limited number of cases (Belgium, England, France, Germany, Italy and Spain). However, these countries constitute an interesting sample allowing the test of both the alleged differences between countries belonging to different families, as well as the supposed similarities of systems belonging to the same tradition.

This paper shows, first of all, remarkable differences in the actual use of formal procedures and in the ability of various legislations to limit the recourse to extra-judicial solutions. In this regard England and France are both very successful cases, but they follow different routes. In England it is the introduction, in 1883, of registered and official outside-bankruptcy deals (*deeds of arrangement*) which increases the number of cases, while in France high number of official procedures seems to relate to older and more general reforms. Italy manages to attract cases of small bankruptcy via the introduction of a special legislation in 1903, but the attempt of attracting worthy creditors using compositions instead of liquidation fails. Germany, whose system is based on a one-size-fits-all approach and does contemplate the option of pre-bankruptcy compositions, is the worst performer. However, differences in the actual use of procedures do not reflect a similar appealing to different groups involved in bankruptcy cases; procedures are opened mainly by debtors in England, but by creditors in all other cases.

Differences are also evident in the efficiency in allocating different types of cases to different procedures (remarkably in offering worthy debtors the chance of benefiting from softer compositions rather than liquidations). In this case, the ranking sees England in the top position, followed by Belgium and France. This reflects both the number of available solutions, as well as differences in the actual administration of procedures. England, for example, allows compositions to take place both outside and before the actual bankruptcy procedure, an option which is not available in any other country. Italian cases of compositions are so few as to make any decision about

allocation of cases irrelevant. Belgium and France show different abilities in using what appear to be rather similar, yet not identical, legal devices.

These problems, in turn, are reflected in diverse levels of payment, as well as lengths of procedures. In this regard, however, Germany appears to have performed best, making the case for the German system being inefficient in many regards, but fast. Italy, on the contrary, seems to have not only inefficient but also slow procedures.

Our general conclusions are that belonging or not to a given family accounts for little of the similarities (or differences) between different systems. At macro level France appears to be very similar to England and very different from Italy. Belgium is, in many respects, a synthesis of France and Britain.

Concerning the relative efficiency of various legal systems, two main issues surface. Firstly, we show that once different trade-offs are taken into account (length vs. repayment; creditors vs. debtors) defining absolute efficiency becomes extremely complicated. This said, in a Pareto-like assessment, the established ranking of families does not hold, casting further doubts on the validity of the law and growth approach. On the other hand, also the expected convergence among system, advocated by economic historians, seem to apply more to the formal features of various laws than to their actual functioning and impact.

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